

## The complaint

Mrs S says that her creditor- debtor relationship with Clydesdale Financial Services Limited, trading as Barclays Partner Finance – (the Lender), was unfair to her in essence, under section 140A of the Consumer Credit Act 1974 ('CCA'). She's also said that representations were made to her that were false and that she couldn't book the holidays she wanted when she wanted.

## What happened

In June 2010, Mrs S with her husband, purchased a timeshare membership – which I'll call "European Collection membership" – from a timeshare provider (the 'Supplier'). It provided 5,000 European Collection points.

The purchase price for the European Collection membership was £7,600. Mrs S paid for the membership by borrowing £7,600 from the Lender in her sole name.

On 19 September 2024, Mrs S – using a professional representative ('PR') – wrote to the Lender (the 'Letter of Claim'), to make a claim regarding the unfairness of the relationship between Mrs S and the Lender.

The Letter of Claim made a number of allegations in respect of what was considered to be an unfairness in the relationship between the Lender and Mrs S, and in respect of false representations that had been made to her. In summary:

- Mrs S wasn't provided with the required information.
- The upgrade was positioned as a good investment that would increase in value that she would be able to sell back to the Supplier at a profit.
- She was told she would be able to go on luxury holidays and struggled to book holidays due to what seemed to be a constant lack of availability.
- The representations were false.
- An appropriate credit worthiness assessment wasn't carried out, thereby creating an unfair relationship between Mrs S and the Lender.
- Mrs S and her husband felt pressured into signing the purchase documents.
- The PR queried whether the Supplier and its sales agent were authorized to undertake credit/and or loan broking.

The Lender dealt with the Letter of Claim as a complaint and issued its final response letter on 20 November 2024. It said that in respect of the allegation of irresponsible lending, the complaint had been made out of time. It didn't uphold the complaint in respect of the other aspects of the complaint and said that the Timeshare was a non-fractional product and wasn't linked with any property ownership.

The complaint was referred to this service and considered by one of our investigators who didn't uphold it. The Lender in its response to the view said that they agreed with the outcome of the complaint and were happy for it to be reviewed by an ombudsman. It also said it had no further comments at that time.

Mrs S disagreed with the Investigator's assessment, and the PR made further representations in respect of the points of complaint. And it submitted that the misrepresentations made to Mrs S had not been made out of time, as section 32 of the Limitation Act 1980 was relevant to her and extended time. It asked for an Ombudsman's decision. The case has been referred to me for review.

### **The legal and regulatory context**

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

#### The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, I am of the opinion that this complaint should not be upheld. I've set out my reasoning below. Although the European Collection membership was taken out in the names of Mrs S and her husband, the finance was taken out in Mrs S' sole name. So, I will refer to Mrs S throughout the rest of my decision.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it. Although the letter of complaint is predominantly framed in the context of the existence of an unfair relationship between Mrs S and the Lender, there are aspects of the complaint that I think it's appropriate to consider through the lens of Section 75 of the CCA. So, that is what I have gone on to do next.

### **Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mrs S could have made against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint, but I don't think Mrs S would have been able to make a successful claim for misrepresentation under Section 75. I'll explain why.

At the time the PR notified the Lender of Mrs S' claim, in 2024, I think it would have been time-barred under the Limitation Act 1980 ("LA"). The LA sets out limitation periods (time limits) for bringing various types of legal claim. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the limit normally runs six years from the date a person suffers damage as a result of the misrepresentation – such as entering into a contract and incurring liabilities they wouldn't have otherwise. This means the time to bring a claim for misrepresentation would have been six years from the Time of Sale, so the limitation period for such a claim would have expired in June 2016, which was before the PR notified the Lender of the claim. But Mrs S didn't make her claim until September 2024, which is outside the time limits set by the LA.

The PR says section 32 of the LA also gives Mrs S more time to make their claim. I disagree. Section 32 of the LA has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here. But in this case the PR has simply referenced section 32, but it hasn't explained what misrepresentations the Lender carried out or provided supporting evidence that would make it a relevant consideration that might extend time. So, I find it very difficult to see taking into account the brief submissions provided by the PR in this case, how section 32 could extend the time limit for Mrs S.

In the complaint referral to this service, the PR referred to a number of concerns that Mrs S became aware of shortly after purchasing her Timeshare. And in particular, it refers to Mrs S not being able to go on the holidays she wanted at the times she wanted due to a constant lack of availability. Therefore, my understanding is that she believed the Timeshare was misrepresented because she couldn't holiday in the way she says she was led to believe by the Supplier. But that would have been clear to her soon after the Time of Sale.

So, even if it could be said that section 32 is likely to have postponed the limitation period until she first discovered that the availability of holidays was not what she thought it would be (and I make no such finding that it would), I'm not persuaded that would make a difference here.

Therefore, I do not think the Lender would be wrong to decline it. However, the judgment in *Scotland and Reast* explains that, even if a limitation period has expired for a standalone misrepresentation claim, relevant misrepresentations that could be attributed to the Lender can be considered as part of the assessment of the unfairness of the credit relationship. So, I have gone on to consider those matters later in this decision.

### **Section 75 of the CCA: the Supplier's breach of contract**

The LA also applies to claims for breach of contract, with the relevant limitation period normally expiring six years after the date of the breach or breaches in question. Any breaches that occurred within six years of any claim being raised with the Lender would be in time. However, very little information has been provided in the letter of claim about exactly

what the alleged breaches were, or when they occurred. This makes it difficult to arrive at any conclusion that the Supplier must have been in breach of contract.

Overall, therefore, from the little evidence I have seen, I do not think the Lender is liable to pay any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

### **Section 140A of the CCA: did the Lender participate in an unfair credit relationship?**

Having considered the entirety of the credit relationship between Mrs S and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale in relation to European Collection membership, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs S and the Lender.

### **The Supplier's sales & marketing practices at the Times of Sale**

Mrs S' complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

The PR suggests, for instance that no affordability checks were carried out to ensure that Mrs S could afford the loan. I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs S was actually unaffordable, before also concluding that she lost out as a result, and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs S.

Mrs S says that she was pressured by the Supplier into signing the purchase agreement documents at the Time of Sale. I acknowledge that she may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during her sales presentation that made her feel as if she had no choice but to purchase European Collection membership when she simply did not want to. She was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel her membership during that time. I've noted that in its response to the investigator's assessment, the PR has said that Mrs S wasn't informed that she had a cooling off period. I'm not persuaded that was the case. I say this because I can see from the purchase documentation that it included a section headed in capital letters:

**“IMPORTANT – YOU SHOULD READ THIS CAREFULLY YOUR RIGHT TO CANCEL THIS AGREEMENT”**

So, I think it's more likely than not that Mrs S would have been aware that she could cancel her agreement if she changed her mind.

And with all of that being the case, there is insufficient evidence to demonstrate that Mrs S made the decision to purchase European Collection membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

As for the other allegations regarding unfair commercial practices that the PR says were carried out by the Supplier, and the promises that it says were made, given the limited evidence in this complaint, I'm not persuaded that any breaches were carried out or promises made as alleged.

Overall, therefore, I don't think that Mrs S' credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above.

### **Was European Collection membership marketed and sold at the Time of Sale as an investment?**

In its submissions, the PR has referred to the judgement in the case of Shawbrook Bank Limited and Clydesdale -v- Financial Ombudsman Service [2023] EWHC 1069, and the references in that judgement to regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010, in respect of the marketing or sale of timeshares as investments.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the European Collection as an investment. This is what the provision said at the Time of Sale:

*“A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract.”*

But the PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next. Although the PR appears to consider that the Timeshare Regulations were relevant at the Time of Sale, they weren't. I say this because the Timeshare Regulations didn't come into force until February 2011, and the sale complained about in this case took place in 2010. And I can't retrospectively consider these regulations in the context of any unfairness in the relationship between Mrs S and the Lender, as they weren't applicable at the time of this sale in 2010.

I'm also hindered in applying any weight to the submissions made on Mrs S' behalf as I don't have direct testimony from her, in her own words, as to what she was told when purchasing the European Collection membership. I've simply been presented with a submission by her PR with no evidence to support it, such as direct testimony from Mrs S. And in my opinion, it's vital in a case such as this to have Mrs S' testimony as to what happened, as it allows me to assess the credibility and consistency of the submissions made and to clearly understand what was supposedly said, and to know the context in which it was apparently said. Mrs S' membership was a European Collection membership. And the benefits provided by the membership were through the use of the points that were purchased through that membership. There was no underlying investment through that membership in an allocated property. So, Mrs S couldn't have a share in an underlying investment, because there wasn't one. Consequently, for the reasons I've set out above, I'm not persuaded that the European Collection membership purchased by Mrs S was marketed to her as an investment that

would provide a considerable return, profit / financial gain, in the way that has been suggested by the PR.

### **The provision of information by the Supplier at the Time of Sale**

The PR says that Mrs S was not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of European Collection membership. The case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is possible that the Supplier did not give Mrs S sufficient information, in good time, on the various charges she could have been subject to as a European Collection member. But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mrs S nor the PR have persuaded me that she would not have pressed ahead with her purchase had the finer details of the European Collection's ongoing costs been disclosed by the Supplier, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

### **The suggestion that the Credit Agreement was unenforceable because it was arranged by a credit broker that was not regulated to carry out that activity**

Mrs S' PR also questioned whether the Credit Agreement was arranged by an individual who was not an authorised credit broker, the upshot of which is to suggest that the Lender wasn't and isn't permitted to enforce the Credit Agreement as a result. The business named on the Credit Agreement as the credit intermediary was, at the Time of Sale, authorised by the Financial Services Authority (FSA) for credit broking. And as a result, it came within the jurisdiction of this service to consider credit broking complaints about it.

Also, it looks to me like Mrs S knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for the European Collection membership. So, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs S' financial loss – such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate her, even if the loan wasn't arranged properly.

### **Overall conclusion**

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs S' Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

### **My final decision**

For the reasons I've set out above, I have decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 14 May 2026.

Simon Dibble  
**Ombudsman**