

The complaint

Mr D complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 (as amended) (the 'CCA') and failing to disclose a payment of commission.

Background to the complaint

Mr D purchased a membership from a timeshare provider on 10 May 2016. To help pay for the membership, he took out a loan of £14,694 with BPF. The loan was repaid on 30 March 2017.

Through a professional representative (the 'PR'), Mr D complained to BPF on 22 November 2023 that the Supplier had misrepresented the Fractional Club membership in a number of ways, giving him a claim against BPF under Section 75 of the CCA. He was also concerned that a payment of commission made by BPF to the Supplier hadn't been disclosed to him, and that the loan had been brokered by an unauthorised credit intermediary.

Mr D also complained that the credit relationship between him and BPF was unfair to him under Section 140A of the CCA. But by way of a separate decision, I have explained that we are unable to consider that aspect of the complaint as it was raised outside of the time limits within the rules that govern us.

BPF didn't respond to the complaint. So Mr D referred it to us, and it was reviewed by an Investigator who did not recommend that it be upheld.

As Mr D didn't accept our Investigator's view, the matter was passed to me to decide.

My provisional decision

I issued a provisional decision setting out why I didn't intend to uphold Mr D's complaint. I said:

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

The Section 75 claim

As both sides may already know, a claim against BPF under Section 75 essentially mirrors the claim Mr D could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. BPF does not dispute that the relevant conditions are met in this complaint.

As noted above, BPF didn't respond to Mr D's complaint and therefore did not assess his claim under Section 75. However, there are certain time limits that apply – and I think these mean Mr D's claim would've been time-barred.

The Limitation Act 1980 sets out limitation periods, or time limits, for bringing various types of legal claim. For a claim based on contract, it's not generally possible to start court action more than six years after the cause of action arose. 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 time limit would typically be six years from the date the claimant suffers damage as a result of the misrepresentation. For example, entering into a contract – and incurring liabilities – when they would otherwise not have done.

Mr D's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, he wouldn't have purchased the timeshare membership (and, therefore, entered into the related loan with BPF). So it is the date on which he entered into those agreements that his cause of action arose, meaning he had six years from that date within which to bring this claim.

Mr D purchased the membership on 10 May 2016. He raised his Section 75 claim on 22 November 2023 – more than six years later. So I think BPF had a complete defence to the claim, having been raised outside of the six-year statutory limit.

That being the case, I don't think there are any grounds on which I could reasonably require BPF to take any action in response to Mr D's Section 75 claim.

The commission complaint

While I found that the complaint relating to the unfairness of Mr D's credit relationship with BPF wasn't something we could consider – and which included a number of concerns about the disclosure of a commission payment – some of the grounds relating to that aspect of the complaint also constitute separate and freestanding complaints that we can consider. So I've considered those grounds here.

The first ground relates to whether BPF is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr D (i.e., secretly). And the second relates to BPF's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

Dealing with the first, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr D a fiduciary duty. Based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr D but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to Mr D.

And while it's possible that BPF failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on BPF's part is itself a reason to uphold this complaint. The amount of commission paid by BPF to the Supplier for arranging the Credit Agreement that Mr D entered into wasn't high. At

£367.35 it was only 2.50% of the amount borrowed and even less than that (2.32%) as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr D wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

The credit intermediary

The PR suggests that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that BPF wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr D knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for him, 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 Mr D suffering a financial loss. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell BPF to compensate him, even if the loan wasn't arranged properly.

I invited both parties to let me have any further comments or evidence they wanted me to take into account before I made a final decision.

BPF confirmed it accepted my provisional decision.

The PR did not respond.

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.

Having reviewed everything afresh and without any further comments or evidence to take into account, I see no reason to depart from my initial conclusions.

So this final decision simply confirms my provisional findings as set out above.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 March 2026.

Ben Jennings
Ombudsman