

The complaint

Mrs M's complaint is, in essence, that Clydesdale Financial Services trading as Barclays Partner Finance, (the 'Lender'), acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), and (2) deciding against paying claims under Section 75 of the CCA.

What happened

On 18 September 2011 (the 'Time of Sale 1'), Mrs M purchased a Fractional Club membership (the 'Purchase Agreement 1') from a timeshare provider (the 'Supplier'), which was funded by finance from the Lender (the 'Credit Agreement 1') at a cost of £24,600. After trading in her existing trial membership, she paid £20,600, which she funded by finance from the Lender (the 'Credit Agreement 1')

On 24 July 2012 (the 'Time of Sale 2'), Mrs M purchased another Fractional Club membership from the Supplier (the 'Purchase Agreement 2'), which was funded by the trade in of her existing Fractional Club membership, and finance from the Lender (the 'Credit Agreement 2') at a cost of £7,399.

Where appropriate, I shall refer to these collectively as the 'Times of Sale', 'Purchase Agreements', and 'Credit Agreements'.

Mrs M settled both the Credit Agreements on 15 April 2014 by debit card payment.

Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 24 August 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs M's concerns as a complaint and issued its final response letter on 30 August 2022, saying the claim under Section 75 was raised outside of the time limits set out in the Limitation Act 1980 ('LA'). The Lender says that the complaint about an unfair relationship under Section 140A of the CCA was raised too late as the Credit Agreement was paid off more than six years before the PR raised the complaint.

On 26 September 2022, The PR wrote to our service to ask us to investigate matters.

One of our Investigators looked into things and concluded that the complaint that the Lender was party to an unfair debtor-creditor relationship fell outside the jurisdiction of the Financial Ombudsman Service as they were raised too late. And he concluded that the complaint about the handling of the Section 75 claims was raised outside the time limits set out under the LA.

The PR rejected the investigator's view and asked for an Ombudsman's decision – which is why it was passed to me.

I set out my initial thoughts in a provisional decision (the 'PD') because, having considered everything, I thought that aspect (1) of Mrs M's complaint was raised too late, so did not fall within the jurisdiction of the Financial Ombudsman Service. But I thought that the merits of aspect (2) of the complaint could be considered as it had been raised in time because the event complained about, being the handling of the claim, took place within six years of the date Mrs M raised her complaint with the Lender.

The Lender did not have anything to add to the PD.

The PR, on behalf of Mrs M, provided me with some lengthy submissions to argue why the complaint should be upheld.

I have dealt with the matter of whether the Financial Ombudsman Service has jurisdiction over the complaint about an unfair relationship under Section 140A in a separate decision.

This decision relates only to the parts of Mrs M's complaint that I found to fall within the Financial Ombudsman Service's jurisdiction.

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 so, I remain satisfied that Mrs M's complaint should not be upheld. For clarity, I will set out my reasons for reaching that outcome and will cover the PR's response to the PD.

The complaint about the Lender's handling of Mr M's Section 75 claims

Mrs M's claims under Section 75 CCA are "like" claims against the Lender which mirror the claims she could make against the Supplier. And so, it wouldn't be fair to expect the Lender to pay claims that arose after such a limitation defence would be available to the Supplier in court. As such, it's a relevant for me to consider whether Mrs M's claims were time-barred under the LA before she first raised them with the Lender.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967, and the limitation period to make such a claim expires six years from the date on which the cause of action accrued.

Mrs M's claim is subject to the limitation periods set out under Sections 2 and 9 of the LA, which are both six years from the date on which the cause of action accrued.

The dates on which the causes of action accrued were at the Times of Sale. I say this because Mrs M entered into the Purchase Agreements at those times based on alleged misrepresentations of the Supplier, which she says she relied upon when deciding whether or not to make the purchases. And the Credit Agreements were used to finance the purchases, so it was when Mrs M entered into this that she suffered a loss.

Mrs M first notified the Lender of her claims against it on 30 August 2022, which was more than six years after each of the Times of Sale. With that being the case, I don't think it was unfair or unreasonable of the Lender to decline to pay the claim Mrs M made against it for the Supplier's alleged misrepresentations.

Mrs M can also raise "like" claims against the Lender in the event that the Supplier breaches the contract. As Mrs M says she was unable to book the holidays she was told she could

book, I think she's saying the Supplier breached the contract with her and she thinks the Lender ought to pay her claim.

The limitation period for these claims is also six years, as set out in the LA, but the dates on which the causes of action accrued are not necessarily the same dates as for the claims about the alleged misrepresentation. Rather, the cause of action accrued when Mrs M alleges the breach of contract took place.

As Mrs M says she was not able to book the holidays she was promised, and that she received accommodation that was not of the standard she was led to believe she could receive, I think this put her on notice that the Supplier may have breached the contract with her. And I think this would have become apparent to her soon after she entered into each of the Purchase Agreements, as that is what she says happened. So, I don't think the Lender acted unfairly or unreasonably when it declined to pay the claims Mrs M made against it for the Supplier's alleged breaches of contract.

The PR's response to my PD

The PR has argued that the time limit to bring the claims under Section 75 of the CCA should be extended by both Section 14A and Section 32 of the LA. But I do not see any reason why it is unfair or unreasonable to conclude that Section 2 and Section 9 of the LA are relevant as I have done here. After all, the PR is not seeking damage for negligence, and it has not persuaded me that it would be fair or reasonable to apply the time limits set out under Section 32 of the LA or explained why that section applies here.

The PR has not commented on my findings as far as they relate to the claim for breach of contract. Overall, I maintain the conclusion I reached in the PD that the Lender did not act unfairly or unreasonably when it declined to pay the claims under Section 75 of the CCA.

Other matters

I note that one of Mrs M's other concerns about the sale of the Fractional Club memberships relate to an alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreements.

As I mentioned in the PD, and explained in a separate correspondence, although the PR raised their concerns about the commission arrangements as part of the complaint about an unfair relationship under Section 140A of the CCA, which I concluded was raised too late and is outside our jurisdiction, there are two separate and freestanding complaints that I considered to be relevant, and that I will repeat here.

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

As both sides know, the Supreme Court's judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Johnson, Wrench and Hopcraft*') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers.

While it's possible that the Lender failed to follow the regulatory guidance in place at the Times 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 the Lender's part is itself a reason to

uphold this complaint. For the reasons I have also previously set out, I think Mrs M would still have taken out the loans to fund her purchases at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at that time. And for the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs M 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 her.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. I do not think that Clydesdale Financial Services trading as Barclays Partner Finance acted unfairly or unreasonably when it did not agree to pay Mrs M's claims under Section 75 of the CCA, and I do not think there is any other reason why her complaint should be upheld.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 15 March 2026.

Andrew Anderson
Ombudsman