

The complaint

Mr O's complaint is, in essence, that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, (the 'Lender'), acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him 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 29 March 2012 (the 'Time of Sale'), Mr O purchased a timeshare membership (the 'Purchase Agreement') from a timeshare provider (the 'Supplier'), which was funded by finance from the Lender (the 'Credit Agreement') at a total cost of £5,499.

Mr O settled the Credit Agreement on 16 April 2013.

Mr O – using a professional representative (the 'PR') – wrote to the Lender on 1 March 2023 (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 does not appear to have responded to the complaint.

On 15 June 2023, 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 it was raised too late. And she 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 Mr O'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 Mr O raised their complaint with the Lender.

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

The PR, on behalf of Mr O, 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 Mr O'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 Mr O'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 O's Section 75 claims

I will first explain why I think the complaint about the Lender's handling of Mr O's Section 75 claims falls under the jurisdiction of the Financial Ombudsman Service.

Section 75 CCA imposes a "like claim" on the Lender for any misrepresentations or breaches of contract by the Supplier. So, the debtor, here Mr O, is able to notify the Lender of his claim against it and, if the Lender fails or refuses to pay the claim, that may give rise to a complaint to the Financial Ombudsman Service.

So, the activity Mr O is complaining about here is the Lender's refusal to accept and pay his claims under Section 75 CCA. As a result, the time limit set out under the rules we must follow (these are set out in the FCA Handbook and are known as the 'DISP' Rules) doesn't usually begin until the respondent business answers the claim. In this case, Mr O referred his complaint to the Financial Ombudsman Service within six years of this activity taking place, meaning that he raised it in time for the purposes of the time limits set out in DISP 2.8.2(2) R.

However, I don't think it would be fair or reasonable to uphold his complaint about the Lender's handling of his claims. I'll explain why.

As I've explained, Mr O's claims under Section 75 CCA are "like" claims against the Lender which mirror the claims he 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 relevant for me to consider whether Mr O's claims were time-barred under the LA before he first raised them to 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.

Mr O'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 date on which the cause of action accrued was at the Time of Sale. I say this because Mr O entered into the Purchase Agreement at that time based on alleged misrepresentations of the Supplier, which he says he relied upon when deciding whether or not to make the purchase. And the Credit Agreement was used to finance the purchase, so it was when Mr O entered into this that he suffered a loss.

The PR first notified the Lender of Mr O's claims against it on 1 March 2023, which was more than six years after the Time 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 Mr O made against it for the Supplier's alleged misrepresentations.

Mr O can also raise "like" claims against the Lender in the event that the Supplier breaches the contract. As Mr O says he was unable to book the holidays he was told he could book using the membership, I think he's saying the Supplier breached the contract with him and he thinks the Lender ought to pay his claim.

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

As Mr O says he could not access accommodation he was promised at a particular resort, I think this put him on notice that the Supplier may have breached the contract with him when he tried to use the membership, so any alleged breach of the timeshare contract must have occurred soon after the Time of Sale. In any case, I am satisfied that any such breach would have occurred more than six years prior to the date he first raised the claim, on 1 March 2023, as I can see that he covers this in his witness statement that he signed on 17 February 2017. So, I don't think the Lender acted unfairly or unreasonably when it declined to pay the claim Mr O made against it for the Supplier's alleged breach 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 Mr O's other concerns about the sale of the Fractional Club membership relates to an alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement.

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 Time 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 a payment of commission from the Lender without telling Mr O (i.e., secretly).

As both sides know, the Supreme Court's recent 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 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 the Lender's part is itself a reason to uphold this complaint. For the reasons I have also previously set out, I think Mr O would still have taken out the loans to fund his purchases at the Time 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 Mr O 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 him.

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 Limited, trading as Barclays Partner Finance acted unfairly or unreasonably when it did not agree to pay Mr O's claims under Section 75 of the CCA, and I do not think there is any other reason why his 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 Mr O to accept or reject my decision before 23 March 2026.

Andrew Anderson
Ombudsman