

## **The complaint**

Mr C'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**

Mr C was the member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he and his wife, Mrs C, bought on 14 September 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 4,068 fractional points at a cost of £57,804.67 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr C more than just holiday rights. It also included a share in the net sale proceeds of a property named on his Purchase Agreement (the 'Allocated Property') after his membership term ends.

Mr C paid for his Fractional Club membership by trading in his existing timeshare, paying a deposit and taking finance for the remaining £6,255 from the Lender (the 'Credit Agreement') in his sole name.

Mr C – using a professional representative (the 'PR') – wrote to the Lender on 15 February 2024 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr C's concerns as a complaint and issued its final response letter on 21 February 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint that the Lender hadn't properly considered a claim made under Section 75 of the CCA on its merits. The Investigator felt the complaint that there was an unfair credit relationship under Section 140A, and that the lending was unaffordable, hadn't been made in time as per the rules this service must follow and that it couldn't be considered.

Mr C initially disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

Having reviewed the file afresh, I issued a provisional decision (PD) and gave the parties the opportunity to respond before I reconsidered the complaint. The PD included the following:

### ***'What I've provisionally 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 done so, I conclude that:*

- 1. Mr C's complaint about a credit relationship with the Lender that was unfair to him is not within our jurisdiction because it was not made within the time limits set out in DISP 2.8.2 R (2). Prior to my review of the complaint, the PR confirmed its acceptance of this finding by the Investigator. As such, I won't address this issue in detail in this decision, other than to confirm that I agree with those findings, subject to what I'll come onto say later.*
- 2. The rest of Mr C's complaint – including about unaffordable lending and the Lender's decision to reject his concerns about the Supplier's alleged misrepresentations and breaches under Section 75 of the CCA – was made in time under DISP 2.8.2 R (2). But for the reasons I give below, I don't think that part of the complaint should succeed.*

*...*

*I'll now go on to address the merits of the aspects of the complaint that can be considered.*

### ***Mr C's Lending Complaint***

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*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 Mr C was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason.*

*I'm also mindful of the fact that the loan was settled in full just a matter of days after the start of the 180-month term.*

*With all of that in mind, I am not satisfied from the available evidence that the lending was unaffordable for Mr C.*

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

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*As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr C's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.*

*As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr C could make against the Supplier.*

*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 (see Section 2 of the LA).*

*But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.*

*The date on which the cause of action accrued was the Time of Sale. I say this because Mr C entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.*

*Mr C first notified the Lender of his Section 75 claim on 15 February 2024. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender not to accept Mr C's concerns about the Supplier's alleged misrepresentations.*

*The PR has argued that the limitation period can be extended in cases of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances. However, I don't think the PR's brought persuasive evidence of concealment in this case. In any event, its argument that the investment aspect of the product was concealed by the Supplier is inconsistent with another of the PR's allegations that the Supplier marketed and sold the product to Mr C as an investment.*

*Aside from issues related to the LA, I also note that the purchase price of the Fractional Club membership was £57,804.67. This is more than the £30,000 limit that applies to claims for misrepresentation under Section 75 of the CCA. So, Section 75 doesn't apply to the claim in any event.*

### **Section 75 of the CCA: the Supplier's Breach of Contract**

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*Breach of contract claims for goods costing more than £30,000 with a linked credit agreement for credit not exceeding £60,260 can still be considered under the CCA in certain circumstances. Given the facts of this case, I think a breach a contract claim can still be considered here, notwithstanding my findings regarding misrepresentation.*

*I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.*

*As noted above when looking at the claim there was an unfair credit relationship, Mr C says that he could not holiday where and when he wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.*

*Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr C states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.*

*So, from the evidence I have seen, I do not think the Lender is liable to pay Mr C 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 in relation to this aspect of the complaint*

*either.'*

The Lender confirmed its acceptance of the PD and that it had no further comments to make.

The PR said it had nothing to add to the PD.

### **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.

In the light of the responses to my PD, and absent any further comments or evidence for me to consider, I see no need to alter my previous decision on the merits of this complaint. So, I affirm the decision I reached.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 April 2026.

Nimish Patel  
**Ombudsman**