

## **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 1 October 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 4,120 fractional points at a cost of £63,941 (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 £5,673 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 19 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 including 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, the credit broker not being authorised 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.*

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*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 few months 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.*

### ***Complaint that the Credit Agreement was arranged by an unauthorised broker***

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*Connected to the lending complaint is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr C 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 C's financial loss – such that I can say that the credit relationship in question was unfair on him 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 Mr C, even if the loan wasn't arranged properly.*

### ***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 to reject 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 £63,941. 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 Mr C's breach of contract claim is excluded due to the amount of credit in question.*

*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**