

The complaint

Mr S'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 a claim under Section 75 of the CCA.

The timeshare in question was bought in the joint names of Mr and Mrs S, but as the associated credit agreement was in Mr S's sole name, he is the only eligible complainant here. I shall, however, refer to both Mr and Mrs S where it is appropriate to do so.

What happened

Mr and Mrs S purchased membership of a timeshare (the 'Vacation Club') from a timeshare provider (the 'Supplier') on 31 May 2009 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,501 Vacation Club points (the 'Purchase Agreement').

Mr S paid for their Vacation Club membership by taking finance of £19,701 from the Lender in his sole name (the 'Credit Agreement'). The outstanding balance of this account was cleared on 16 September 2009.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 16 September 2024 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA; and
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

As the details of these complaints are well known to both sides it isn't necessary to set them out in detail here.

The Lender dealt with Mr S's concerns as a complaint and issued its final response letter on 17 October 2024, rejecting it on every ground. It said Mr S had made his complaint too late. As Mr S was unhappy with this response, he asked the Financial Ombudsman Service to consider his complaint.

An Investigator at this Service considered everything that had been submitted and thought Mr S's complaint ought not to be upheld. She thought that the Lender would have had a defence to Mr S's Section 75 claim under the Limitation Act 1980 (the 'LA') as he had made the claim more than six years after the event complained about. So, she didn't think the Lender had been unfair or unreasonable in not accepting his claim. She also thought that Mr S had made his complaint under Section 140A of the CCA too late, so it was not in the jurisdiction of this Service.

The PR did not agree with this outcome. As regards Mr S's claim under Section 75 of the CCA it said that the LA did not provide the Lender with a defence to Mr S's claim because

the misrepresentations had involved fraud, concealment or mistake by the Supplier, and he would not have been aware of these until he had engaged the PR.

The Investigator, having considered this, did not change her mind. She thought that Section 32 of the LA (as cited by the PR) provided a consumer with six years to make a claim after discovering fraud, concealment or a mistake. And she thought Mr S would have been aware that something had gone wrong shortly after the Time of Sale. But in any case, she didn't agree that the problems raised by Mr S amounted to an act of fraud, concealment or mistake.

As no agreement on whether this Service had jurisdiction to consider Mr S's complaint could be reached, the matter came to me for a decision.

Having considered everything, I issued a decision setting out that Mr S's complaint of an unfair credit relationship with the Lender under Section 140A of the CCA was not in the jurisdiction of the Financial Ombudsman Service as it had been made too late. But I thought his complaint about his claim of misrepresentation under Section 75 of the CCA could be considered.

As such, this decision only relates to Mr S's complaint that the Supplier misrepresented the Vacation Club at the Time of Sale, so the Lender was unfair and unreasonable in rejecting his claim under Section 75 of the CCA.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

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 that, I do not think this complaint should be upheld, for broadly the same reasons as previously given by the Investigator.

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction.

However, as the Investigator set out, the LA says Mr S has six years from the date on which the 'cause of action accrued' to make his claim, after which the Lender has a complete defence.

It is of course for a court to determine whether a respondent can rely on the LA to defend a claim, as the Lender originally did when rejecting Mr S's claim under Section 75. But I wouldn't normally think it was unfair for a firm to rely on the LA to decline a claim that's been made outside the limitation period.

The date on which the cause of action accrued is, in this case, 31 May 2009 – the Time of Sale. It was then that Mr S entered into an agreement based, he alleges, on the Supplier's misrepresentation(s). As the loan from the Lender was used to finance the purchase, it was also then that he says he suffered a loss. It follows that Mr S had six years from the Time of Sale to make a claim for misrepresentation. But he didn't make his claim until 16 September 2024, which is outside the time limits set by the LA.

The PR, in response to the Investigator's view, has referred to Section 32 of the LA, which postpones the limitation period in cases of fraud, concealment, or mistake. It's also referred to a county court judgment.

Essentially, it says Mr and Mrs S's purchase was 'ill-founded in law' and that Mr S couldn't have known their purchase was based on misrepresentations or that 'their arrangement was unlawful' until they took legal advice and the judgment was handed down in *Shawbrook & BPF v FOS*¹, which only happened on 5 May 2023. The PR says the issues concerning the legality of the timeshare arrangement with the Supplier were concealed from Mr and Mrs S at the Time of Sale. But the PR hasn't provided persuasive evidence of fraud, concealment or mistake, such that Section 32 of the LA would postpone the limitation period in this case. I'd like to reiterate that only a court can decide whether this claim was made out of time. My finding is simply that I don't think it was unfair for the Lender to rely on the LA to decline the claim in this case.

So, as Mr S did not make his misrepresentation claim under Section 75 of the CCA to the Lender within six years of the date the cause of action accrued, I do not think the Lender needs to do anything further in regard to this claim.

Conclusion

I do not think the Lender was unfair or unreasonable when it did not accept and pay Mr S's claim under Section 75 of the CCA, so I do not think it needs to do anything further in this regard.

My final decision

I do not uphold this complaint.

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

Chris Riggs
Ombudsman

¹ *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin)