

The complaint

Mr J complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') is liable to pay him compensation following a complaint made about a timeshare bought using credit provided by BPF.

What happened

On 9 February 2011, Mr J bought membership of a timeshare from a timeshare company (the 'Supplier'). The purchase was made using finance from BPF, taken in Mr J's sole name. He entered into a Fixed Sum Loan Agreement (the 'Credit Agreement') for £7,550. This Credit Agreement was paid off and cleared by Mr J on 29 November 2011.

On 3 May 2019, via a professional representative, Mr J complained to BPF. In essence, he complained that BPF was party to an unfair credit relationship with him, under Section 140A of the Consumer Credit Act 1974 (the 'CCA'), and he made a claim under Section 75 of the CCA. He said:

- There was a lack of available accommodation, and the accommodation was of poor quality;
- He was told the resorts were exclusive to members. This was untrue;
- He had been placed under undue pressure to make the purchase; and
- No affordability or credit checks were carried out at the time of sale.

BPF did not accept Mr J's claim under Section 75, nor did they uphold his complaint under Section 140A as it said they had both been made too late under the Limitation Act 1980 (the 'LA').

Mr J referred his complaint to our Service. His complaint was in two parts. He complained that his credit relationship with BPF was unfair, under Section 140A of the CCA, and secondly, that BPF was unfair and unreasonable in refusing to accept his claim under Section 75 of the CCA.

Having considered everything, our Investigator thought Mr J's complaint under Section 140A of the CCA had been made too late under the rules by which we operate so was not in our jurisdiction. She explained that the Financial Conduct Authority's (FCA) Handbook required complaints to be made within six years of the event complained about, or if later, three years from when the complainant was aware, or ought reasonably to have become aware of cause to complain, unless exceptional circumstances applied. And in relation to Mr J's complaint about BPF's handling of his claim under Section 75 of the CCA, she thought BPF were not unfair or unreasonable in rejecting his claim.

Mr J did not agree with the Investigator's view, and asked for his complaints to be considered by an Ombudsman, so the matter has been referred to me.

This decision only considers the merits of Mr J's complaint about the way BPF handled his claim under Section 75 of the CCA. I have dealt with whether our Service has jurisdiction to

consider Mr J's complaint, that the credit relationship between himself and BPF was unfair to him under Section 140A of the CCA, in a separate decision.

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 this part of Mr J's complaint, he is alleging that BPF was unfair and unreasonable in refusing to allow his claim under Section 75 of the CCA. He says BPF ought to have allowed it as there were misrepresentations made by the Supplier at the time of sale, and these misrepresentations induced him into making the purchase. BPF, in response to his claim, said it had a defence under the LA.

The LA imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we'd usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier. The limitation period to make such a claim against BPF for alleged misrepresentations by the Supplier expires six years from the date on which Mr J had everything he needed to make such a claim.

As the letter of complaint to BPF makes clear, Mr J entered into the purchase of the timeshare on 9 February 2011 based on the alleged misrepresentations of the Supplier, which he says he relied on. And as the credit arrangement from BPF was used to help finance the purchase, it was when Mr J entered into the Credit Agreement that he suffered a loss – which means it was at that time that he had everything he needed to make a claim.

Mr J first notified BPF of his claim for alleged misrepresentations by the Supplier on 3 May 2019. As that was more than 6 years after he entered into the Credit Agreement and related timeshare agreement, I don't think it was unfair or unreasonable of BPF to rely on the LA to decline Mr J's claim.

My final decision

I do not uphold this complaint against Clydesdale Financial Services Limited trading as Barclays Partner Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 July 2024.

Chris Riggs
Ombudsman