

## **The complaint**

Mrs S complains through her representative, Mr S, that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") didn't fairly or reasonably deal with claims under Sections 75 and 140A of the Consumer Credit Act 1974 (the 'CCA') in relation to the purchase of a holiday product in May 2013. I understand the purchase was in Mr and Mrs S's name though the purchase was funded by a loan from BPF to Mrs S which means she is the eligible complainant.

## **What happened**

Mr S has submitted a large quantity of documents and material relating to a number of timeshare purchases, funded by different lenders, but in this decision I am only addressing Mrs S's complaint against BPF in relation to one of these acquisitions. Any complaints about other lenders will be dealt with separately.

In May 2013 Mrs S purchased timeshare points from a company I will call M at a cost of £9,000. This was funded by a loan from BPF which was cleared on 7 April 2015. A claim was made under s.75 in May 2022. Mr S has said a claims management company made a claim earlier than this, but our investigator has been unable to find any evidence in support of this.

Mr S has raised a number of generic points about the timeshare industry and raised issues about other purchases, however in respect of this complaint he says that the product was misrepresented. It is difficult to identify what the actual alleged misrepresentation was for the purchase in May 2013. He has stated that at some point they were told that the purchase would allow them access to other holiday products supplied by third parties, but it seems that this may have been promised at the time of a previous purchase. He has said that they were unable to obtain any benefits from third parties.

Mr S says that in 2013 they were told that purchasing additional points would lead to being able to use those points for additional services such as air travel or excursions. I am not aware whether they were able to make use of the points for those services. Mr S also says that the points didn't deliver any reduction in the cost of their holidays and they could have booked direct for the same or less.

Mr S also says that at some point they were told that one or more purchases were investments and supplied an undated manuscript note. Finally, Mr S has explained that they were able to take 12 holidays using their timeshare purchases.

BPF says it received a claim in May 2022 which it rejected on the basis that the claims under s.75 and s.140A were made out of time. Mrs S brought her complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He said that he also considered the claim had been made out of time. Mr S didn't agree and said that a court case showed that a claim could be made later where there had been fraud or concealment. Our investigator disagreed and so the matter has been referred to me.

## **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.

Under the rules that govern how I assess complaints, I must take account of law and regulations, regulators' rules, guidance and standards, and codes of practice and good industry practice when I make my decision.

I also focus on what I think is material and relevant to reach a fair and reasonable outcome.

So, although I have read everything that has been supplied to me, I may not address every point that has been raised.

Was the claim under s. 75 of the CCA brought in time?

Mr S says that M misrepresented a number of points in relation to the timeshare agreement they purchased. So, he argued BPF is jointly liable for these misrepresentations under s. 75 of the CCA. But if BPF could show the s. 75 claim was brought outside of the time limits set out in the LA, it would be entitled to rely on the LA as a defence to answering the claim. I should make it clear, however, that I'm not deciding if any right Mrs S may have to bring these claims has expired under the LA - that's a matter for the courts. In this decision I'm considering if BPF acted fairly and reasonably in seeking to turn down Mrs S's claims on this basis.

A claim for misrepresentation against the supplier would be brought under s. 2(1) of the Misrepresentation Act 1980 ("MA"). It was held in *Green v Eadie & Ors* [2011] EWHC B24 (Ch) [2012] Ch 363 that a claim under s. 2(1) of the MA is an action founded on tort for the purposes of the LA; therefore, the limitation period expires six years from the date on which the cause of action accrued (section 2 of the LA).

Here, Mrs S brought a like claim against BPF under s. 75 of the CCA. The limitation period for the corresponding like claim would be the same as the underlying misrepresentation claim. As noted at para. 5.145 of *Goode: Consumer Credit Law and Practice* (Issue 68 (April 2022)) the creditor may adopt any defence which would be open to the supplier, including that of limitation:

"There is no difficulty in treating the debtor's rights under sub-s (1) as a "like claim" against the creditor. Since the creditor's liability mirrors the supplier's it follows that, to the extent that the supplier has successfully excluded or limited his liability, the creditor may shelter behind that exclusion or limitation."

Therefore, the limitation period for the s. 75 claim expires six years from the date on which the cause of action accrued.

The date on which a cause of action accrued is the point in time that everything needed to make a legal claim occurred. So, in Mrs S's case, that's when she could have brought a claim for misrepresentation against the supplier or the like claim against BPF. I think that was the date she entered into the agreement to buy the timeshare, so in May 2013. It was at that time that she entered into an agreement based, Mr S says, on the misrepresentations of M. She claims that she wouldn't have entered into the timeshare agreement if those misrepresentations hadn't been made. And it was on that day that she suffered a loss, as she took out the loan agreement with BPF.

It follows, therefore, that I think the cause of action accrued in May 2013, so Mrs S had six

years from that date to bring a claim. But she didn't to contact BPF about her claim until May 2022, which was outside of the time limits set out in the LA. So, I think BPF acted fairly in seeking to turn down Mrs S's misrepresentation claim on this basis.

I have noted that Mr S engaged the services of claims management companies and may have thought these companies would make a claim on his wife's behalf. However, I have not seen any evidence that a claim was made to BPF regarding the May 2013 purchase.

Was the claim under section 140A of the CCA made in time?

Mr S said that the relationship between Mrs S and BPF was unfair under s. 140A of the CCA for a number of reasons. Under s. 140A a court may make an order under section 140B in connection with a credit agreement if it decides that the relationship between the lender and the creditor arising out of the agreement is unfair.

Only a court has the power to make such a determination, but I think this is relevant law and I have taken it into account.

The LA applies to a claim under section 140A of the CCA too. It was held in *Patel v. Patel* [2009] EWHC 3264 (QB) that when considering section 140A of the CCA, the time for limitation purposes ran from the date that the credit agreement ended if it was not still running at the time the claim was made. I gather Mrs S's loan agreement was closed in May 2015.

As with an action under s. 75 of the CCA, the limitation period is six years, so Mrs S would have to bring an action within six years from the date of closure. So, she had until May 2021 to make her claim. As she made his claim after that point, I think she brought her claim too late. This means I also don't think BPF acted unfairly in seeking to decline a claim under section 140A on this basis. So, I don't think it needs to do anything further here.

## Section 32

Typically s.32 applies to fraudulent misrepresentation but it does extend to concealment. In cases where that has been alleged, it can extend the time the consumer has to raise a claim. However, it is more likely that if the consumer has raised a number of issues with the product (over and above commission) in their claim/complaint and those issues could have been discoverable earlier, we would typically say the complainant had discovered or ought to have been able to discover that something had gone wrong and if that was in excess of 6 years before claim, we would not find that s.32 extends time.

I have seen nothing that would allow me to conclude that there was fraud or concealment in regard to the May 2013 purchase and it follows I do not consider there are grounds for extending the time limits.

So while I have sympathy with Mr and Mrs S I do not consider I can uphold her complaint.

## My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 August 2023.

Ivor Graham

**Ombudsman**