

## **The complaint**

Mr and Mrs W complain 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 timeshare in November 2014. They also say that the credit agreement they entered into with BPF was unaffordable. Mr and Mrs W are represented by a professional representative ("PR").

## **What happened**

In November 2014 Mr and Mrs W purchased a holiday product from a company I will call S. It cost £49,950 and this was funded by a loan for £39,950 in Mr W's name and one for £10,000 in Mrs W's name. Both were with BPF and were repaid in June 2015. Mr and Mrs W have purchased a number of holiday products over the years and in August 2022 PR submitted a letter of claim to BPF for all of these purchases under s.75 CAA and s.140A CCA.

The claims are well known to both parties so I will not detail them here. In summary it claimed that the products had been misrepresented, there had been an unfair relationship and a proper assessment of their ability to repay the loans had not been carried out.

BPF responded and said that it had only financed the 2014 purchase. It said that the purchase price exceeded £30,000 and so s.75 didn't apply. As for s.140A it said the claim was made out of time.

PR brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He concluded the s.75 claim exceeded the statutory financial limits and the s.140A claim had been made out of time. Nor did he believe there was sufficient evidence to allow him to say the lending had been unaffordable.

PR didn't agree and said that S has ceased trading and Mr and Mrs W had six years from the date of insolvency to bring the claim.

## **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.

When doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account the:

"(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”

And when evidence is incomplete, inconclusive, incongruent or contradictory, I’ve made my decision on the balance of probabilities – which, in other words, means I’ve based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don’t think this complaint should be upheld. I would add that we have in effect two complaints, one made by Mr W and the other by Mrs W for their individual loans. However, the circumstances are identical with both being taken out and repaid at the same time and used for the same purpose. As such I will deal with them in this single decision.

### The S. 75 Claims for Misrepresentation

S. 75 of the CCA states that, when a debtor (Mr and Mrs W) under a debtor-creditor-supplier agreement has a claim of misrepresentation or breach of contract against the supplier that relates to a transaction financed by the agreement, the creditor (BPF) is equally and concurrently liable for that claim – enabling the debtor to make a ‘like claim’ against the creditor should they choose to.

As our investigator has pointed out that s.75 only covers purchases up to £30,000 in value and the cost of the product exceeds that. However s.75A covers purchases up to £60,260 in value where the supplier has become insolvent. That said, it only applies to claims for breach of contract. It does not cover misrepresentation.

### Time Limits for s.75 and s.140A

Although I have concluded that the claim under s.75 fails due to the cash price exceeding £30,000 it also falls foul of the legislation relating to time limits for claims.

Mr and Mrs W entered into the agreement to buy the product, as it was at that time they entered into an agreement based on alleged misrepresentations and suffered a loss. It follows that the cause of action accrued in November 2014 and they had until November 2020 to bring any claim. But no claim was made until August 2022, which was outside of the time limits set out in the LA. So BPF acted fairly in turning down the misrepresentation claim under s.75 CCA.

Only a court has the power to decide whether the relationships between Mr and Mrs W and BPF were unfair for the purpose of s.140A. But, as it’s relevant law, I do have to consider it if it applies to the credit agreement – which it does.

However, as a claim under Section 140A is “an action to recover any sum recoverable by virtue of any enactment” under Section 9 of the LA, I’ve considered that provision here.

The LA applies to a claim under s.140A CCA too and the time for limitation purposes starts to run from the date the credit agreement ends. It was confirmed 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.

Here Mr and Mrs W are asking for a refund of payments, so s.9 LA applies, meaning any claim had to be made within six years of June 2015. But as they did not do that, I think BPF acted fairly in turning down the s.140A CCA claim. PR has not addressed the relevance of

the LA, but has simply asserted that s.140A applies to the claims and that the date of the insolvency is when the clock starts running. As I have pointed out above I can see nothing that allows me to ignore the application of the LA.

As I think the s.140A claim was raised too late, I make no findings on the detail of the claims made by PR.

#### Affordability

PR says that the lender didn't perform adequate credit checks when approving the loan. However, when considering a complaint about unaffordable lending, a large consideration is whether the borrowing was likely to prove unaffordable in practice and whether the complainant has actually lost out due to any failings on the part of the lender.

So even if I was persuaded that BPF did not do appropriate checks (and I make no such finding), for me to say it needed to do something to put things right, I would need to see that the credit granted by them was likely to be unaffordable and that Mr and Mrs W suffered a loss as a result. I note they were both repaid within some seven months and I've not been provided with sufficient evidence to suggest they didn't have enough disposable income to sustainably afford repayments against this loan, and I don't therefore think it would be reasonable to suggest the lender was irresponsible when providing the credit.

#### **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 Mr W and Mrs W to accept or reject my decision before 5 December 2023.

Ivor Graham  
**Ombudsman**