

## **The complaint**

Mr D complains that he was mis-sold a timeshare product and the credit facility used to pay for it. The credit facility was provided by Clydesdale Financial Services Limited, which trades as Barclays Partner Finance and which I'll refer to as "BPF".

Mr D is represented by a claims management business, which I'll call "F". Where I refer to his submissions and arguments, I include those made on his behalf.

## **What happened**

Mr and Mrs D were existing members of Club Infiniti, a timeshare and holiday club business.

In February 2014 Mr and Mrs D attended a presentation while they were on holiday. Following the presentation, and as a result of it, they agreed to buy from Leisure Dimensions Limited, a company registered in Ireland, a further 60,000 membership points at a cost of £10,500. Mr D says they did so in order to have greater flexibility and because they were told that having more points would be an investment opportunity.

In order to fund the purchase, Mr D was offered and agreed to take out a £10,500 loan with BPF, repayable over ten years. Mr D repaid the loan in full, from savings, in September 2015.

In July 2021 Mr D complained to BPF. He said that the timeshare product had been misrepresented to him and that, because BPF had financed its purchase, he had a claim against it in the same way as he had a claim against the seller. He also said that no proper checks had been made to ensure that he could afford to repay what he had borrowed, and that the actions of the seller and BPF had created an unfair relationship.

BPF did not agree to meet Mr D's claims and did not uphold his complaint. Its main reason was the length of time that had passed since the timeshare sale and the provision of the credit facility.

Mr D referred the matter to this service. Our investigator, however, took broadly the same view as BPF had done and did not recommend that the complaint be upheld. Mr D did not accept the investigator's assessment and asked that an ombudsman review the case.

## **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.

### ***The complaint about the credit assessment***

Our own rules say however that we cannot generally consider a complaint unless it is referred to us within six years of the event complained of or, if later, within three years of the date on which the complainant knew, or ought reasonably to have known, that they had cause for complaint.

The event complained of in this case is the credit assessment that BPF carried out (or did not carry out) in February 2014. I think it likely that Mr D would have known fairly soon after that date if he was having difficulty making repayments. It is arguable therefore that Mr D had until February 2021 to refer this part of his complaint to us and that, because he didn't, we have no power to consider it.

Even if I were to take a different view on that, however (perhaps because Mr D would not have known the full extent of BPF's obligations), I have seen nothing to suggest that the facility wasn't affordable. On the contrary, Mr D has confirmed that he was, in fact, able to make the monthly payments. It follows that, even if BPF did not properly assess whether the loan was affordable, he has not suffered any loss as a consequence.

### ***Misrepresentation***

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

However, under the Limitation Act 1980 an action (that is, court action) based on misrepresentation cannot generally be brought after six years from the date on which the cause of action accrued. Any statements which might have induced Mr D into the timeshare contract were made on or before 25 February 2014; since he and Mrs D were already club members, it's possible that they relied on what they were told or their own experiences even before that. Mr D did not however raise any complaint with BPF until July 2021, more than seven years later. I think it very likely therefore that a court would conclude that any claim for misrepresentation was made outside the time limit in the Limitation Act.

I stress that it is not for me to decide whether any underlying claim is now out of time under the Limitation Act. Rather, I must decide whether the response of BPF to the claim under section 75 was reasonable. Given the real possibility that a court would say that the claims are time-barred, I think it was.

### ***Section 140A claims***

Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments. In deciding whether to make an order, a court can have regard to any connected agreement; in this case, that could include the agreement for the sale of the timeshare product.

The usual time limit for these types of claims under the Limitation Act is six years from the time the relationship between the parties ended. The loan was repaid in September 2015, which is less than six years before the complaint was made. I note however that Mr D has indicated that he thought from some time in 2015 that there were problems with the timeshare, so it is unclear why he didn't raise any issues until nearly six years later.

Be that as it may, Mr D's allegations are unsupported by any persuasive evidence, and I think it unlikely that a court would make an order under section 140B.

I have no power to make an order under section 140B, although I can make awards which might in some cases have a similar effect. I can, for example, require a lender to write off or reduce a loan balance. I do not believe however that there are any grounds for me to do so here. Nor is it for me to say whether a court would make an order if invited to do so. In the circumstances, however, I think that BPF's response to this part of the claim was reasonable.

**My final decision**

For these reasons, my final decision is that I do not require Clydesdale Financial Services Limited to do anything further to resolve Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 November 2023.

Mike Ingram  
**Ombudsman**