

The complaint

Mr S says that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, who I'll call BPF, unfairly declined his claims under the Consumer Credit Act 1974 (the 'CCA') in relation to a timeshare he was sold.

Mr S has been represented by a professional representative, who I'll call "PR" and he's submitted his claim on behalf of himself and his wife, but as Mr S is named on the credit agreement, and for convenience, I will refer only to him in this decision. I mean no disrespect to Mr S's wife or his representative when doing so.

What happened

I issued my provisional decision on this complaint in August of this year. An extract from that provisional decision is set out below.

Mr S purchased a timeshare on 31 May 2009. He financed the deal through a fixed sum loan with BPF.

On 6 November 2020 Mr S made a claim to BPF. He said that the supplier, who I'll call "C", were not permitted or authorised to arrange loans as prohibited by section 19 of the Financial Services and Markets Act 2000 ('FSMA') and that section 26 of the FSMA allowed for the recovery of money paid under an agreement entered into in prohibited circumstances. BPF thought Mr S was out of time to raise a claim. They explained that the Limitation Act 1980 allowed him only six years to do so.

PR escalated Mr S's claim to this Service in June 2021. They expanded on the claim at that point. There were a number of allegations and it's not practical to list them all here, but I have taken note of them. They said the nature of the timeshare had been misrepresented and that there had been an unfair relationship which enabled them to raise claims against BPF under sections of the Consumer Credit Act 1974 ("CCA").

Our investigator explained that the Limitations Act 1980 (LA) gave Mr S six years to make a claim and as he hadn't done so until 2020, he was out of time.

BPF didn't engage further and insisted Mr S's claim to them in November 2020 had been made out of time.

PR disagreed. They said the misrepresentations made by the supplier were fraudulent and that they only became aware of a cause to complain when they saw material online about timeshare mis-selling and when they saw coverage of a high profile case. They said the running period was therefore postponed under section 32 of the LA. They said that BPF should have known the supplier, who I'll call "C" didn't hold the correct authorisation to broker the finance agreement and that BPF had concealed that from them and section 32 of the LA should be applied to extend the period within which a claim could be made by Mr S. They said there was a general public policy reason for not allowing finance companies to absolve themselves of liability for their agents.

Mr S, through PR, therefore asked for a final decision from an ombudsman and the complaint has therefore been passed to me.

What I've provisionally 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.

I'm issuing a provisional decision here as it's been some time since our investigator issued a view on this complaint. I'm not currently inclined to uphold it and I'll explain why.

Mr S's complaint to BPF in November 2020 concerned whether the supplier had the relevant authority to permit them to broker the finance agreement. They needed to be licensed by the Office of Fair Trading at that time. PR have expanded the complaint since they referred it to this Service. We can't usually consider the merits of new complaints if they haven't been made to the business first. BPF haven't engaged with PR's more recent submissions and don't appear to have considered them. So, I've only considered the complaint point raised with BPF in Mr S's November 2020 claim.

The Limitation Act 1980 and section 140A of the CCA

Mr S argues that C wasn't authorised to arrange the credit agreement on BPF's behalf.

Section 140A looks at the fairness of the relationship between a debtor and a creditor arising out of the credit agreement (taken with any related agreement).

Section 56 of the CCA is also relevant to the claim under section 140A of the CCA as the pre-contractual acts or omissions of the broker will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship existed between Mr S and BPF.

If the broker wasn't authorised I think it's unlikely they'd be equipped to provide the necessary advice to Mr S, and it may therefore be that there was an unfairness in the relationship.

The LA applies to a claim under section 140A CCA. It was held in Patel v. Patel [2009] that, when considering s.140A 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 the limitation period is six years. That is because the claim Mr S wishes to make is for repayment of sums he has paid, which is an action for sums recoverable under statute, to which s.9 LA applies. That meant Mr S would have to bring an action within six years of the date the credit was repaid. BPF have explained that the account was closed in September 2009 and that meant that at the latest Mr S would have needed to raise his claim under s.140A by September 2015. As he didn't raise his claim until November 2020, and as I can't see a reason why the limitation period is likely to be postponed in keeping with the LA, I think he brought his claim too late – which, in my view, is likely to give BPF a complete defence to it.

The Limitation Act and section 19 of the Financial Services and Markets Act 2000 (FSMA)

Mr S says that if the broker wasn't authorised they were prohibited by section 19 of FSMA to arrange loans. Section 27 of FSMA makes allowances for recovery of money in those circumstances, but that is again subject to a six year time limit under the LA and I therefore think that claim was brought too late by Mr S and his representatives, for the reasons I've

already explained.

Section 32 of the LA

S32 relates to the extension of time for starting an action if fraud, mistake, or concealment are found (or could with reasonable diligence have been discovered).

*To conclude that there had been deliberate concealment under Section 32(1)(b) of the LA, there doesn't have to have been a free-standing contractual, tortious, or fiduciary duty to disclose a fact. It is sufficient if the non-disclosure was part of an unfair credit-debtor relationship as this was a breach of a relevant duty. That issue was discussed in *Canada Square Operations Ltd v Potter* [2021]. A purchaser doesn't have to show that the Supplier knew that concealment gave rise to a cause of action. It's enough that the concealment was unconscionable – which means that the Supplier concealed something and was reckless as to whether it had committed an actionable wrong.*

I'm not persuaded that Section 32 is likely to be engaged as I'm not persuaded I have been provided with sufficient information from Mr S to suggest the broker was unauthorised. I don't therefore, think a court would find there was a reason to extend the limitation period.

My provisional decision

For the reasons I've given above I am not expecting to uphold this complaint.

Further comments and/or evidence

Neither party provided any additional evidence or comments.

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.

I've not been provided with any additional information and my provision decision, therefore, becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I don't 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 13 November 2023.

Phillip McMahon
Ombudsman