

## **The complaint**

Mr P complains 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 holiday products in April 2010. The purchase was in Mr and Mrs P’s name, but the loan was taken out by Mr P so he is the eligible complainant. For simplicity, in this decision I will refer to him as the sole purchaser.

## **What happened**

In April 2010 Mr P purchased three timeshare weeks as an investment from a company I will call R at a cost of £10,961. A week later he bought a fourth one at a cost of £3,875. Mr P took out a loan with BPF for £14,836 to fund these purchases. Mr P has explained that these purchases were subsequently traded in for a new purchase in 2015.

In 2020 R ceased trading and in August 2022 Mr P submitted a claim under s.75 CCA to BPF. It rejected the claim on the basis that it had been made out of time. It said that any misrepresentation had occurred at the time of sale and so the six year time limit had expired. It also said that any claim under s.140 CCA failed as the loan had been settled in November 2010 and the claim under this legislation was out of time.

Mr P brought a complaint to this service where it was considered by one of our investigators who didn’t recommend it be upheld. She noted that the four purchases made in 2010 ceased to exist when they were traded in some five years later. BPF had told this service that it had provided redress against this later purchase as a gesture of goodwill. However our investigator concluded that the original 2010 contracts ceased to exist in 2015 and therefore the cessation of trade by R in 2020 did not affect the 2010 contracts.

Mr P didn’t agree and asked that the complaint be considered by an ombudsman.

## **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 will explain why.

## S. 75 Claims

S. 75 of the CCA states that, when a debtor (Mr P) 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.

It’s important to note that, as BPF was the lender rather than the supplier, under the Act a claim is limited to one for misrepresentation or breach of contract, rather than general unhappiness with what was available under the contract.

Mr P did not claim that the products had been misrepresented, but rather there had been a breach of contract when R ceased trading. BPF treated the claim as one of misrepresentation and took the view that the cause of action was in 2010 when the contracts were entered into. However, I believe the cause of action in this matter is the date at which R ceased to fulfil its part of the contracts. That means I consider the claim was made in time.

That said, I agree with our investigator that the claims fail on other grounds. The loan funded the purchases made in April 2010 and s.75 applies to the contracts entered into at that time. Those contracts ceased to exist in 2015 and it cannot be said that R’s ceasing to trade in 2020 had any effect on them.

The fact the contracts were traded in does not mean that the protection afforded by s.75 rolls over into the 2015 acquisition. The loan funded the 2010 contracts and I have seen nothing that indicates there was any breach of contract by R in relation to the 2010 contracts. Nor has Mr P indicated that they were misrepresented.

As such I do not consider Mr P had a valid claim under s.75.

## S.140A CCA

Only a court has the power to decide whether the relationships between Mr P 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.

It was held in *Patel v Patel* [2009] EWHC 3264 (QB) (‘*Patel v Patel*’) that the time for limitation purposes ran from the date the credit agreement ended if it wasn’t in place at the time the claim was made. The limitation period is six years and the claim was made outside this period.

Even if it had been made in time, I’m not persuaded that Mr P could be said to have a cause

of action in negligence against BPF anyway.

Mr P's alleged loss isn't related to damage to property or to him personally, which must mean it's purely financial. And that type of loss isn't usually recoverable in a claim of negligence unless there was some responsibility on the allegedly negligent party to protect a claimant against that type of harm.

In conclusion while I have sympathy with Mr P I do not consider BPF was wrong to refuse his claim even if it did so for different reasons. As I have mentioned BPF has told this service that it has provided redress in relation to the 2015 purchase, but that is not part of this complaint. Furthermore, I have not been given details of the redress and I have no comment to make on it.

### **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 P to accept or reject my decision before 21 August 2023.

Ivor Graham  
**Ombudsman**