

## The complaint

Mr B complained that Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("BPF"), unfairly turned down his claim under the Consumer Credit Act 1974 ("CCA").

## What happened

Mr B, along with his wife, bought a timeshare from a timeshare supplier in August 2010. The total cost of membership was £4,032, which was paid for by way of a loan from BPF. That loan was taken out in Mr B's sole name and paid off in February 2011.

In August 2018, Mr B (using a professional representative ("PR")) made a claim against BPF for problems he said he had had with the timeshare.<sup>1</sup> The letter of claim was titled "Section 140a Claim" and, in particular, it was alleged that the loan had been brokered by an unauthorised credit broker, meaning the loan agreement was unenforceable. PR also said the broker breached parts of the Financial Conduct Authority's ("FCA") Handbook (the CONC Rules) by not explaining all of the key features of the loan and applying undue pressure to take it out.

BPF responded to the claim, but said it had been brought too late under the provisions set out in the Limitation Act 1980 ("LA"). BPF also said that the entity that brokered the loan was the trading name of a business that held the right permissions at the time the loan was arranged. BPF also thought there was no evidence the broker breached any of the CONC Rules. Finally, BPF said that if Mr B was unhappy with the outcome it reached he could refer a complaint to our service.

PR referred a complaint to our service on Mr B's behalf. In addition to what had been said before, it was said that any commission being paid by BPF should also be considered under a s.140A CCA claim. It also said that BPF didn't properly assess Mr B's ability to repay the loan before it was granted.

One of our investigators considered the complaint and concluded that BPF had acted fairly in turning down the claim. He thought that the claims under s.140A CCA were made too late. He thought that, as Mr B lived in Scotland, a shorter limitation period to that set out in the LA applied and Mr B had five years from the date the loan was repaid to make a claim (see the Prescription and Limitation (Scotland) Act 1973 ("PLSA")). As that hadn't happened, the claim was made too late and BPF had a defence to it. He also thought the broker was a regulated credit broker at the time of sale.

PR responded to say it disagreed and it said the LA applied to the claim, giving a six year limitation period. It asked for the matter to be passed to an ombudsman for review, but before that happened it also supplied a 36 page document prepared by external counsel titled "*Generic submissions on behalf of complainants*". PR also said that the timeshare supplier's conduct was unconscionable and limitation shouldn't start to run until a consumer

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<sup>1</sup> Although the timeshare was in the names of Mr and Mrs B, as the loan was in Mr B's name only, he was the only person eligible to make the claim

knew or could have known about what went wrong.

Having considered all of the available evidence and arguments, I explained that I'd reached the same outcome as our investigator, but for different reasons. So I issued a provisional decision, setting out my thoughts, and invited both parties to provide anything further for me to consider before I issued a final decision. I said:

*"Under the rules that govern how I decide complaints, I must take account of law and regulations, regulators' rules, guidance and standards, and codes of practice and good industry practice.*

*I must 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 said and provided, I may not address every point that has been raised.*

#### The claim under s.140A CCA

*While only a court has the power to make a determination under s.140A CCA, as it is relevant law, I must consider it when deciding what is a fair and reasonable outcome.*

*A claim made under s.140A CCA is one to which a limitation period applies – in other words, a claim has to be made within a certain period of time after someone is first able to bring a claim. Here, Mr B says that things done the timeshare supplier led to an unfair debtor- creditor relationship. The limitation period starts to run from when that relationship ended, i.e. when Mr B paid off the loan in February 2011.*

*The BPF loan agreement also says it's governed by the law of the country where the borrower lived within the UK, so in Mr B's case that was the law of Scotland. Further, the timeshare supplier was based on Ireland and its membership terms say that Mr B's membership was governed by the laws of the Republic of Ireland. So I can't see that the law of England and Wales had any bearing on Mr B's claim. It follows, I agree with our investigator that the limitation period is likely to be five years under the PLSA, rather than the six years under the LA. However, I don't think it makes a difference here as a claim wasn't made to BPF until August 2018, which was more than six years in any event.*

#### Could limitation be extended?

*Both the PLSA and LA provide for extensions of the time limits in certain circumstances. Having considered the facts of this complaint, I don't think the time limits I set out could be extended under any of the provisions of either act. But even if I'm wrong about that, I don't think it makes a difference to this complaint for the reasons I'll explain.*

*PR provided a 36 page submission on the problems with the timeshare supplier's membership. It is, as it's described, a generic submission and in so far as it's relevant to the matters Mr B actually complained about, it doesn't deal with issues of limitation. So I don't think it assists me.*

*PR has also said that the timeshare supplier's conduct was unconscionable and limitation shouldn't start to run until a consumer knew or could have reasonably known about what they say went wrong. But it hasn't pointed to any specific sections of the relevant acts that they say extend time in the way required.*

*I've not been told when Mr B found out about his concerns with the authorisation of*

*the broker, the breach of the CONC Rules, that he'd been lent to irresponsibly or that BPF might have paid a commission, nor why he says he couldn't have found about these earlier. So without more information and arguments, I can't say the time would be extended. But, even if the limitation period was extended, I think Mr B's claim would fail.*

*Mr B says that he thinks BPF paid a commission to the timeshare supplier when the loan was granted and that could have created an unfair debtor-creditor relationship. From what I understand, if BPF paid any commission, it tended to be low and of less than 10%. I'm satisfied BPF didn't breach any duty in making such a payment, nor was it under any regulatory duty to disclose the amount of commission paid in these circumstances. Further, I don't think the levels of commission that are sometimes paid in this situation were sufficiently high to mean that the relationship was unfair under section 140A CCA.*

*The other matters that Mr B thought could give rise to an unfair debtor-creditor relationship can also give rise to complaints in their own right and outside of the scope of a s.140A CCA claim, so I've considered them individually.*

*Did the timeshare supplier and/or BPF breach CONC during the sale?*

*At the time the loan was granted, the FCA didn't regulate the granting of consumer credit loans, like the one Mr B took out. It follows, the FCA CONC Rules weren't relevant to Mr B's transaction, so I won't consider this further.*

*BPF's decision to lend*

*PR said BPF didn't properly assess Mr B's ability to repay the loan before it was granted. I'm able to consider a complaint about BPF's decision to lend to Mr B in August 2010. But in any complaint about lending there are a number of matters to consider. First, a lender had to undertake reasonable and proportionate checks to make sure a prospective borrower was able to repay any credit in a sustainable way. Secondly, if such checks were not carried out, it is necessary to determine what the right sort of checks would have shown. Finally, if the checks showed that the repayment of the borrowing was not sustainable, did the borrower lose out?*

*PR said that the right sort of checks didn't take place and that might have been the case. But I've not been provided with anything to show that the lending was not affordable for Mr B. I've seen nothing to suggest there were any affordability issues, such as missed payments or other financial difficulties at the time of the loan. Further, it looked like the loan was paid back in full within a few months of being taken out. So, as things stand, I'm not persuaded that the complaint should be upheld on that basis.*

*Was the timeshare company authorised to broker loans?*

*PR argues that the loan was unenforceable as it was arranged by a business that didn't have the right authorisations in place.*

*However, both BPF and our investigator, explained to PR that at the relevant time the timeshare provider held an OFT licence – the OFT being the body that regulated consumer credit. The name of the timeshare provider is on the face of the loan agreement, so I think the loan was properly brokered. Further, PR has been provided with the details of that entity, but has not explained why it disagrees with our investigator's conclusion on this point. So I think the evidence suggests that the loan*

*was properly arranged.*

*It follows, I don't think BPF needs to do anything further to answer Mr B's complaint."*

BPF responded to my provisional decision to say it had nothing further to add. PR didn't respond.

### **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.

As neither party has provided me anything further to consider, I see no reason to depart from my provisional findings.

### **My final decision**

For the reasons set out above, I don't uphold Mr B's complaint against Clydesdale Financial Services Limited, trading as Barclays Partner Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 September 2023.

Mark Hutchings  
**Ombudsman**