

The complaint

Mrs F complains, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') acted unfairly and unreasonably by being party to an unfair credit relationship with her under Section 140A of the CCA.

The credit agreement giving rise to Mrs F's complaint was in her sole name, so she is the only eligible complainant here. However, as the timeshare in question was in both Mr and Mrs F's names, I will refer to both of them where appropriate in this decision.

What happened

Mr and Mrs F had been members of a timeshare provided by a timeshare company (the 'Supplier') since April 2005 when they had purchased a trial membership of the Supplier's Vacation Club. They then became full members in 2006, and purchased Vacation Club Points ('Points') which they could exchange for holidays in the Supplier's resorts.

In August 2011, whilst on holiday, Mr and Mrs F attended a sales presentation by the Supplier. They purchased an additional 1,000 Points which meant their membership was 'upgraded' to 'Platinum'. They paid £11,800 for those additional Points, and the purchase was made using finance from BPF, taken in Mrs F's sole name. She entered into a Fixed Sum Loan Agreement (the 'Credit Agreement') for £11,800 with the total amount payable after interest (APR 17.7%) and a document fee being £31,845.60¹.

The purchase agreement (the 'Acquisition Agreement') dated 15 August 2011, was made between one of the timeshare provider's sales companies and Mr and Mrs F. The sales company, who had the right to promote and sell Points, was the Supplier for the purposes of the CCA. Under the Acquisition Agreement, Mr and Mrs F agreed to be bound by the club Rules and Project Regulations.

In December 2014 Mr and Mrs F sold their Platinum Membership by trading it in towards membership of another timeshare from a different supplier.

On 15 August 2017 Mr and Mrs F wrote a letter of complaint to BPF. In that letter they asked for a refund of what they had borrowed in and repaid since August 2011 due to unfair contract terms and misleading statements by the Supplier both prior to and since the purchase. They also requested the cancellation of the Acquisition Agreement. They went on to give reasons for the complaint, which included:

- They had previously had problems trying to book holidays with the Supplier, and were advised that the purchase of 1,000 additional points, which would give them Platinum Member status, would allow them to book holidays two years in advance. That, in their view, was a gross misrepresentation that they relied on as the main reason for the purchase.
- Since the purchase of the additional points, there had been no change in holiday availability, and as the purchase had had no effect or benefits, that was a

¹ This Credit Agreement was paid off in its entirety in April 2012.

misrepresentation.

On 5 October 2017 BPF sent Mrs F (as she was the sole party to the Credit Agreement) its final response to her complaint, which it rejected. In summary, it said:

- Mrs F was more than familiar with the Supplier's sales process when she and Mr F made their purchase of 1,000 points in August 2011, having made four purchases of Vacation Club Points in all.
- The Supplier's Compliance Officer had gone through all the contractual documentation and finance agreement prior to Mrs F signing. Its due diligence was carried out in full and all of the relevant regulations were followed.
- Mr and Mrs F were fully aware of the various levels of membership available having been full members since 2006.
- The Platinum Membership purchased provided additional benefits and allowed holidays to be booked three years in advance.
- Mr and Mrs F had not taken advantage of the advanced booking facility and had only ever booked one year in advance. They were nevertheless always offered holidays in line with their requests.
- Mr and Mrs F have taken a two-week August holiday each year since taking their Platinum Membership. This followed the same pattern of holidays they had taken previously.
- No concerns about the Platinum Membership had been raised by either Mr or Mrs F nor had there been any contact with the Supplier since they surrendered their membership in 2014.
- The reference made to 'Unfair Relationships' was generic and not specific to Mrs F.

Unhappy with this response, Mrs F referred her complaint to our Service where it was considered by two Investigators. But having considered everything that had been submitted, both Investigators thought Mrs F's complaint shouldn't be upheld.

Mrs F asked for her complaint to be reviewed by an Ombudsman, so it has come to me for a decision.

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.

And where I have found evidence is incomplete, inconclusive, incongruent or contradictory, I have made my decision on the balance of probabilities – what I think is more likely than not to have happened – given the available evidence and wider circumstances.

A misrepresentation is an untrue statement of existing fact, made by the supplier, that induces a consumer into entering a contract. So, in Mrs F's case, for me to say there had been a pre-contractual misrepresentation by the Supplier, I would have to be satisfied, on the balance of probabilities, that Mrs F was told something that was factually untrue, and that this induced her to make the purchase of the 1,000 points.

Mrs F said in her letter to BPF, and in her complaint to our Service, that there was a misrepresentation made during the sales process, which induced her (and Mr F) to purchase 1,000 additional points to upgrade their membership to Platinum. That misrepresentation

was that they would find the holidays they wanted easier to secure under the 'upgrade'. But Mrs F says this was untrue because there was no difference in availability.

But other than what was included in her letter of complaint, Mrs F has not provided any further evidence, either orally or in writing, of what she says she was told during the sales process which amounted to a false statement of fact in relation to the availability of holidays. What's more, the point of sale paperwork indicated that holidays were subject to availability. And as Mr and Mrs F were able to book holidays three years in advance as Platinum members, which was an improvement on what they had been able to do under their existing membership, I'm not persuaded that they were misled by the Supplier for the reason Mrs F suggests they were.

Overall therefore, having not seen any other reason to conclude that BPF was party to a credit relationship that unfair to Mrs F because of its acts and/or omissions in August 2011 along with those of the Supplier, I'm not persuaded it was.

Conclusion

Taking everything into account, I am satisfied that BPF did not act unfairly or unreasonably when it dealt with Mrs F's Section 75 claim, and I am not persuaded that BPF was party to a credit relationship with Mrs F that was unfair to her for the purposes of Section 140A.

My final decision

I do not uphold Mrs F'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 Mrs F to accept or reject my decision before 15 May 2024.

Chris Riggs
Ombudsman