

The complaint

Mr F complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') is liable to pay him compensation following a complaint made about a timeshare bought using credit provided by BPF.

The timeshare in question was purchased by both Mr and Mrs F, so I will refer to both where applicable to this decision. However, as the finance agreement associated with this purchase was in Mr F's sole name, he is the only eligible complainant in this case.

What happened

Mr and Mrs F were existing customers of a timeshare provider (the 'Supplier') having purchased a trial membership in October 2011.

On 27 February 2012, whilst on a holiday as part of their trial membership, Mr and Mrs F attended a sales presentation by the Supplier. As a result of this presentation they purchased membership of an asset-backed timeshare called the Fractional Property Owners Club ('FPOC') from the Supplier. They bought 1344 Fractional Points which cost £16,749 plus £898 in membership fees for the first year.

Under the terms of the FPOC, Mr and Mrs F could exchange their Fractional Points for two weeks of holidays every year. And at the end of the projected 19-year membership term, they also had a share in the net sales proceeds of a property tied to their membership (the 'Allocated Property'). As their interest in the Allocated Property was limited to a share in its net proceeds, they didn't have any preferential rights to stay in the Allocated Property or use it in any other way.

The purchase of the FPOC membership was made using finance from BPF, taken in Mr F's sole name. This finance consolidated a previous loan agreement taken out to purchase the trial membership. Mr F entered into a 15-year Fixed Sum Loan Agreement (the 'Credit Agreement') for £21,366 with the total amount payable after fees and interest (APR 17.6%) being £57,519. This FPOC purchase and the associated Credit Agreement with BPF are the subject of Mr F's complaint.

Mr and Mrs F traded in their first FPOC membership in May 2012 when they purchased a new FPOC membership from the Supplier, which they paid for using a loan from a different finance provider. That subsequent FPOC purchase and the associated loan agreement are the subject of a separate complaint and are not considered in this decision.

On 22 July 2019 Mr and Mrs F, via a professional representative, wrote to BPF to complain about:

1. Misrepresentations by the Supplier at the time of sale giving him a claim under Section 75 of the CCA.
2. BPF's participation in an unfair credit relationship under the Credit Agreement and related timeshare agreement for the purposes of Section 140A of the CCA.

In summary, Mr F's professional representative said the following:

Mr F's Complaint about the Supplier's Alleged Misrepresentations

- Mr and Mrs F were told by the Supplier that upgrading their trial membership would guarantee accommodation and availability when that wasn't true because they found that they were unable to book the holidays they wanted.
- Mr and Mrs F were told by the Supplier that its resorts were exclusive for its timeshare members when that was untrue.

Mr F's Complaint about his Credit Relationship with BPF being Unfair to Him

- The Supplier acted recklessly and did not apply due care towards Mr and Mrs F given their needs and financial circumstances.

BPF did not respond to Mr F's complaint, so his representative referred the complaint to our Service, where it was considered by an Investigator and rejected.

The Investigator thought that there was insufficient evidence to say that the credit relationship between Mr F and BPF was unfair to him. She also thought that, as Mr F did not make his claim under Section 75 CCA within six years of when the Credit Agreement was entered into, BPF would have a defence to the claim under the Limitation Act 1980 ('LA') – which, overall, meant that there wasn't anything BPF needed to do to put things right in this complaint.

Mr F did not agree and sent a comprehensive response which related to both the February 2012 FPOC purchase (to which this complaint relates) and the subsequent May 2012 FPOC purchase. He also said that he had provided a great deal of information to his professional representative to evidence his ongoing contact with the Supplier – which he thought would be submitted on his behalf by his representative as part of his complaint.

As far as Mr F's response to the Investigator's assessment is relevant to the February 2012 FPOC purchase and associated Credit Agreement, he said that:

- The FPOC membership was described by the Supplier as a product that provided 19 years of first-class holiday accommodation which could be booked as required. The investment element was an additional benefit.
- The Supplier's illustrations of the finance available to Mr F, which it provided during the sales presentation, made it clear that he would only have to pay an 8% interest rate. Although the Supplier explained that the actual rate applied to Mr F's credit agreement would be higher, it said it would give him £200 per month in the first year to cover the higher rate, and would rearrange the finance after one year to a lower rate. The Supplier did not do that.

As no agreement on the outcome of this complaint could be reached between Mr F and the Investigator the complaint was passed 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.

Mr F provided a comprehensive response to the Investigator's view, which I have considered in full. He also made mention of a substantial amount of evidence that he provided to his

professional representative when it was first engaged. However, that evidence was not submitted by the representative to either BPF as part of the initial complaint or on referral to our Service. So I have been unable to determine its relevance or evidential value.

Having considered all the evidence available to me, I have decided not to uphold this complaint. I know this will come as a disappointment to Mr F, but I hope he understands why.

Mr F's complaint is in two parts. Firstly, he made a claim under Section 75 CCA to BPF, who did not respond. Mr F's complaint to our Service is that BPF was not fair and reasonable in not accepting his claim. He has also said there were elements of the sale of the FPOC membership on 27 February 2012 that rendered his credit relationship with BPF unfair to him for the purposes of Section 140A CCA. Although I have considered all of Mr F's complaint points and evidence cumulatively, for ease I will deal with his Section 75 and 140A complaints separately.

Mr F's Complaint about the Supplier's Alleged Misrepresentations

As a general rule, creditors such as BPF can reasonably reject a claim, such as Mr F's, for misrepresentations by the supplier of goods or services (like the Supplier) if it is first informed about it after the claim is likely to be time-barred under the LA. This is because it wouldn't be fair to expect creditors to look into such claims so long after the liability arose, and after a limitation defence would be available in court. So it is relevant to consider whether Mr F's claim for misrepresentations by the Supplier was time-barred under the LA before he put it to BPF.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier.

The limitation period to make such a claim against BPF for alleged misrepresentations by the Supplier expires six years from the date on which Mr F had everything he needed to make such a claim.

As the letter of complaint to BPF makes clear, Mr F entered into the purchase of the FPOC membership on 27 February 2012 based on the alleged misrepresentations of the Supplier, which he says he and Mrs F relied on. And as the loan from BPF was used to help finance the purchase, it was when Mr F entered into the Credit Agreement that he suffered a loss – which means it was at that time that he had everything he needed to make a claim.

Mr F first notified BPF of his claim for alleged misrepresentations by the Supplier on 22 July 2019. As that was more than 6 years after he entered into the Credit Agreement and related timeshare agreement, I don't think it would have been unfair or unreasonable of BPF to reject Mr F's concerns about the Supplier's alleged misrepresentations. As a result, while BPF may not have responded to Mr F's claim, I don't think there's anything it needs to do to put things right here given the facts and circumstances of this complaint.

Mr F's Complaint about his Credit Relationship with BPF being Unfair to Him

The complaint letter made it clear that Mr F had concerns about the sale of his FPOC membership that, in his view, made his credit relationship with BPF unfair to him.

This aspect of Mr F's complaint relates, in the main, to what he says he and Mrs F were told by the Supplier during the sales process – which includes a number of alleged misrepresentations by the Supplier.

I have summarised Mr F's complaint points above, but for clarity, the Supplier's alleged misrepresentations were as follows:

- Mr and Mrs F were told by the Supplier that upgrading their trial membership would guarantee accommodation and availability when that wasn't true because they found that they were unable to book the holidays they wanted.
- Mr and Mrs F were told by the Supplier that its resorts were exclusive for its timeshare members when that was untrue.

As I have previously said, this complaint relates to the sale of the FPOC membership on 27 February 2012. That membership was relinquished when it was traded in for a new purchase on 20 June 2012, some four months after Mr and Mrs F bought it.

In the four-month period that Mr and Mrs F's first FPOC membership was active, they only took one holiday, and he did not and has not said that he was unhappy with the availability or exclusivity of that holiday. Instead, it seems to me that the problems Mr F says that he had when it came to the availability of holidays and the exclusivity of the Supplier's resorts concern the FPOC membership he and Mrs F purchased four months after the sale in question. And for that reason, I don't think there were any misrepresentations by the Supplier on 27 February 2012 that rendered Mr F's credit relationship with BPF under the Credit Agreement and related timeshare agreement unfair to him.

In response to the Investigator's view Mr F indicated that the FPOC membership was marketed to him and Mrs F as an investment.

Regulation 14(3) of the Timeshare Regulations (which are the regulations the Supplier had to comply with during the sale of Mr and Mrs F's first FPOC membership) prohibit the Supplier from marketing or selling membership of the FPOC as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

Mr F says that the Supplier told him that the FPOC membership would provide him with 19 years of first-class holiday accommodation before also saying:

"The additional 'benefit' as described by [the Supplier] was that the Fractional ownership package provided us with the added attraction of the full package being a good investment which could be sold on in the future."

I can see that Mr and Mrs F's share in the Allocated Property clearly constituted an investment in a share of the net sale proceeds of a property. But the fact that the FPOC membership included an investment element did not, in itself, transgress the prohibition in Regulation 14(3). That prohibition prohibits the *marketing and selling* of a timeshare contract as an investment. It does not prohibit the mere existence of an investment element in a timeshare contract or the marketing and selling of such a product. In other words, the Timeshare Regulations did not ban the sale of products such as the FPOC, they just regulated how such products were sold.

So, to conclude that the FPOC membership was likely to have been sold to Mr and Mrs F as an investment, and therefore in breach of Regulation 14(3), I would have to be persuaded that the Supplier led him and Mrs F to believe that FPOC membership offered them the prospect of a financial gain, and used that fact to induce them into the purchase. But as Mr F's own recollections of the sale say little to suggest that's how FPOC membership was positioned by the Supplier at the time of sale, I don't think it's likely it was.

In response to the Investigator's view Mr F also says that, during the sales presentation at the time of sale, the Supplier told him that it could arrange finance at an interest rate of 8% when that wasn't true.

However, the interest rate payable on Mr F's loan was clearly indicated on the Credit Agreement. And as Mr F hasn't elaborated on what was said at the time of sale, by whom and in what circumstances to persuade me that he was induced into the Credit Agreement on the back of a representation that was untrue, I'm not persuaded that this represents a reason to uphold this complaint.

Finally, in the letter of complaint, it was said that the Supplier acted recklessly and did not apply due care towards Mr and Mrs F given their needs and financial circumstances. But that was not and has not been expanded on or explained by Mr F in any way. So, I see no reason to uphold this complaint on this basis either.

Conclusion

Taking everything into account, while BPF may not have responded to Mr F's Section 75 claim, I don't think there's anything it needs to do to put things right here given the facts and circumstances of this complaint. I am also not persuaded that Mr F's credit relationship with BPF was unfair to him.

My final decision

I do not uphold Mr F's complaint about Clydesdale Financial Services Limited trading as Barclays Partner Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 June 2024.

Chris Riggs
Ombudsman