

## **The complaint**

Mrs P complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance (BPF), acted unfairly and unreasonably by refusing to pay her claim under Section 75 of the Consumer Credit Act 1974 (CCA) in relation to a loan she took out to pay for a timeshare membership.

A professional representative (PR) made the claim and complaint on Mrs P's behalf. I'll refer to both Mrs P and the PR throughout.

## **What happened**

Mrs P and her husband, Mr P, had a timeshare membership with a company which I'll call the Supplier. When on holiday at one of its resorts, they agreed to trade in their existing membership for an agreed sum and use it towards the cost of membership of an asset-backed timeshare, which I'll call the Fractional Club (FC).

Mrs P took out a loan with BPF to pay the balance of the purchase price. The loan was £11,399 for the FC membership, plus £12,299 in interest. The total amount of £23,698 was payable over 15 years.

The membership attracted other costs, such as an annual property maintenance and management charge, holiday exchange charges, and membership of a holiday exchange company.

After the first year of her new FC membership, Mrs P's management charge increased. She said the Supplier told her at the point of sale that the annual management charge wouldn't change. So, she thought the Supplier had made a misrepresentation. Mrs P asked BPF to refund the purchase price, plus interest, in line with its obligations under Section 75 of the CCA.

Mrs P also complained that the Supplier's resorts were in hilly locations. Since the purchase, she'd developed mobility difficulties and she relied on taxis to access its resorts.

BPF treated the Section 75 claim as a complaint and issued a final response to say there was nothing in the purchase contract to indicate the management charge would stay the same. Without evidence of misrepresentation by the Supplier, BPF didn't think it had any obligation under Section 75 to refund the purchase price or interest.

In respect of Mrs P's limited ability to access the hilly resorts, BPF sympathised with her situation. But it explained that it wasn't liable for any costs incurred as a direct result of a change in her mobility after the sale.

Mrs P's professional representative brought her complaint to us.

One of our investigators considered the complaint but didn't think it should be upheld. They said the evidence didn't support Mrs P's claim that the Supplier misrepresented the management charges. So, our investigator didn't think that BPF had unfairly refused to pay

compensation to Mrs P under Section 75.

The PR asked for further consideration of the matter, although they didn't point to anything in particular with which they disagreed.

Another of our investigators looked into the complaint and they reached the same conclusion as the first investigator.

The PR didn't agree. They provided a response asking us to consider Mrs P's claim with a relatively recent timeshare related court case in mind. The PR didn't link that court case to the circumstances of Mrs P's complaint, and its arguments were about allegations which hadn't been made to BPF.

The complaint was passed to me to decide.

### **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.

Having done so, I've decided not to uphold Mrs P's complaint. I understand this will come as a disappointment to her, but the evidence hasn't persuaded me that BPF did anything wrong here. I'll explain why.

To begin with, I'll explain my role. I must reach a decision based on the relevant law and regulator's rules, amongst other things, and what is likely to have happened in the circumstances based on the evidence available.

I'm not required to comment on everything that's been said. Instead, I'll comment on the key issues and evidence I've relied on to reach my decision.

Although the membership was a joint purchase by Mrs P and Mr P, the credit agreement is in Mrs P's name only. Therefore, only she is the eligible complainant in this matter.

### **Mrs P's Section 75 complaint**

When Mrs P referred her complaint to us, it was because she thought BPF unfairly refused to accept and pay her Section 75 claim in respect of the credit agreement for her FC membership.

Section 75 of the CCA is the relevant law in this case. It provides consumers with a right of recourse against the lender that provides the finance for the purchase of goods or services from a third-party supplier. Liability under Section 75 isn't based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by a supplier.

Mrs P's complaint is about BPF's handling of her Section 75 claim for misrepresentation by the Supplier at the time of sale.

Mrs P said the Supplier made a misrepresentation about the annual management charge when it told her at the time of sale that it wouldn't change. BPF said the timeshare agreement explains how the management charges would work and makes no reference to them remaining the same.

Mrs P was already a member of one of the Supplier's timeshare schemes before she bought the FC membership. Therefore, she likely would've been familiar with how the Supplier's

annual management charges worked. There's little to no detail or context to Mrs P's allegation that the Supplier told her the management charges wouldn't change, so I've looked at the documents the Supplier provided at the point of sale.

Point 4 of the Member's Declaration, which Mrs P signed as having read and understood, states:

*"We understand that currently the annual Management Charge is [amount given] for 2016 and that an invoice will be sent... and thereafter... each year... Management Charges will be set annually in line with the calculations set out in the Rules."*

In Part 3, Section 4 of the Information Statement, under the heading *Information On The Costs*, it states:

*"Charges will be budgeted annually and will be subject to increase as determined by the costs of managing..."*

Based on the evidence available, I'm not persuaded that there was an actionable misrepresentation. Therefore, I see no reason to conclude that BPF unfairly declined her Section 75 claim for a refund.

### **Resort locations**

Mrs P said she was unable to access the Supplier's hilly resorts easily.

I haven't seen anything in the evidence, nor has Mrs P claimed, that any assurances were made to her at the time of sale about the location of the Supplier resorts. And, as I've said, Mrs P had an existing membership, so she likely would've been familiar with the Supplier's resort locations. Mrs P hasn't said she struggled with the locations before she bought the FC membership and, in her complaint to BPF, she said the mobility limitations started after her purchase.

So, I'm not persuaded that BPF's decision to refuse to pay Mrs P's Section 75 claim was unfair or unreasonable for this reason either.

### **Further allegations**

I'll turn, now, to the further allegations raised by the PR in response to our most recent investigator's findings.

The PR asked me to take into consideration the circumstances in which Mrs P entered into the FC membership in relation to the recent Judicial Review. The PR went on to list the matters covered in the Judicial Review.

Mrs P's original complaint to BPF, and which she referred to us, was that the Supplier told her the management charge wouldn't change. The PR's generic allegation regarding Section 140A and Section 56 of the CCA doesn't, therefore, fall within the scope of Mrs P's original complaint that BPF turned down her Section 75 claim.

### **Conclusion**

In conclusion, based on the evidence available, I'm not persuaded that BPF unfairly or unreasonably refused to pay Mrs P's Section 75 claim.

**My final decision**

For the reasons I've given, my final decision is that I don't uphold Mrs P'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 P to accept or reject my decision before 13 May 2024.

Debra Vaughan  
**Ombudsman**