

The complaint

Mr T complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') provided him finance which had been brokered by an unauthorised credit intermediary.

Although the purchase was made in the names of Mr and Mrs T, as the credit agreement was in Mr T's sole name, he is the only eligible complainant here.

What happened

On 25 October 2013 Mr and Mrs T purchased a timeshare membership from a timeshare company (the 'Supplier'). After trading in their existing membership Mr and Mrs T ended up paying £15,120 for their new purchase. This was paid for by Mr T taking a fixed sum loan agreement from BPF, in his sole name, for £15,120 (the 'Credit Agreement'). This loan agreement was brokered at the time of the sale.

On 3 April 2018, Mr T, via a professional representative (the 'PR'), complained to BPF that the Credit Agreement had been brokered by an unauthorised credit intermediary, meaning the loan was unenforceable, and under Section 26 (2) of the Financial Services and Markets Act 2000 (the 'FSMA') Mr T was entitled to recover any money paid by him under the loan agreement.

BPF did not respond to this complaint, so on 23 August 2018, the PR referred Mr T's complaint to our Service. His complaint was as follows:

"I was provided offered [sic] a loan agreement with BPF through an unauthorized credit intermediary. I would like to raise a complaint against BPF because according to [FSMA] this makes the agreement unenforceable (under Section 26.1) and according to Section 26 (2) "the other party is entitled to recover any money paid by him under the agreement; and compensation for any loss sustained by him as a result of having parted with it." I sent a complaint to BPF on 05/04/2018, which was received on 08/04/2018, however until present I haven't received any response."

When contacted about this complaint by our Service's Investigator, BPF said that in 2016 Mr T had made a claim under Section 75 of the Consumer Credit Act 1974 (the 'CCA') to it about the sale of this timeshare, and complained that BPF's decision to lend to Mr T at the time was irresponsible due to his age. It had treated this as a complaint and had rejected it on all grounds in a final response letter dated 13 July 2016. Mr T had then referred that complaint to our Service and an Ombudsman made a final decision that Mr T's complaint should not be upheld.

In respect of the authorisation of the credit intermediary used to broker the Credit agreement, BPF told our Service that the credit was brokered by the Supplier under a trading name, and the Supplier was authorised at the time of sale by the Office of Fair Trading (the 'OFT').

On 15 December 2021 the PR sent some further information to our Investigator, and said that Mr T had been caused detriment by the sales representative who was not authorised to carry out regulated activities. The PR also said that:

- Mr T had no recollection of any affordability check being carried out, and that lending money without properly checking affordability is irresponsible lending.
- The Supplier had subjected Mr T to high pressure selling and had used sales practices which were psychologically manipulative, used misleading information and had unfairly exploited Mr T due to his age and health condition.
- BPF had breached the Financial Conduct Authority's (the 'FCA') Consumer Credit Sourcebook ('CONC') by targeting Mr T with a credit agreement which was unsuitable for him by reasons of age and health, and where Mr T was subjected to high-pressure selling, aggressive or oppressive behaviour or unfair coercion.
- The loan should not have been given to Mr T due to his age (he was 80) because the loan agreement was for 10 years.
- The Supplier may have altered the loan application document to make Mr T appear younger than he was in order for BPF to grant the loan.
- Due to Mr and Mrs T's poor health at the time, they were unable to read the documents properly.

Mr T's complaint was assessed by the Investigator who didn't think it ought to be upheld. He thought that the credit intermediary named on the Credit Agreement was a trading name of the Supplier, who was licenced by the OFT at the time of the sale. And in any event, even if the broker had not been authorised, he thought there was no provision in the legislation which was applicable at the time of the sale for Mr T to reclaim monies paid under the agreement.

As regards the complaint points that PR had raised on Mr T's behalf on 15 December 2021, he said that these had already been dealt with by BPF in 2016, and had also been the subject of an Ombudsman's final decision.

The PR did not agree. It said that the trading name used by the Supplier had not been registered with either the OFT or the FCA, so it was not an authorised trading name, and the sales representatives were not employees of the Supplier. It also maintained that the Supplier had possibly altered Mr T's credit application to make him appear younger than he was in order for BPF to accept it, and it repeated its points around the breaches of CONC which it said had been unfair.

But in addition, the PR said that an 'unfair relationship' complaint had not been raised in the claim in 2016, so our Service was able to consider it in this second complaint. It said that the upgrade to Mr and Mrs T's timeshare ownership had created an unfair relationship pursuant to Section 140A of the CCA because the timeshare ownership was sold as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

As no agreement could be reached between Mr T and the Investigator, the matter has come to me for a final decision.

As the Investigator said, there are certain elements of Mr T's complaint which have been dealt with by BPF and our Service in 2016. These relate to his complaints of irresponsible lending. Also, Mr T is now alleging that there were elements of the Supplier's sales process which has led to a credit relationship with BPF which is unfair to him, under Section 140 of

the CCA. I will deal with both of these aspects of Mr T's complaint in a separate jurisdiction decision.

My decision here is regarding the complaint Mr T made to BPF on 3 April 2018 and referred to our Service on 23 August 2018 - that the credit broker for his Credit Agreement was unauthorised.

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 having done that, I agree with the investigator, for broadly the same reasons. I do not think this complaint ought to be upheld.

At the time the Credit Agreement was brokered, the brokering of such credit agreements was regulated by the OFT. It is unclear from the evidence provided whether the Supplier brokered the agreement itself, or whether this was done by an agent working on behalf of the Supplier. But I can see that the intermediary named on the Credit Agreement was a trading name of the Supplier, and I am satisfied that the Supplier was correctly licenced by the OFT to broker the credit agreement which is the subject of Mr T's complaint. I also think it is inherently unlikely that the Supplier, being correctly authorised, would have used an unauthorised entity to broker the agreement on its behalf.

But, as the Investigator said, there is no provision in the regulatory regime at the time which would afford someone in Mr T's position redress anyway. So, even if I were to find that the named credit intermediary was not properly licenced to broker credit in October 2013 (and I make no such finding), or that the trading name was not properly registered with the OFT, I would not be able to tell BPF to pay Mr T any compensation in any case.

So, I am satisfied that there is nothing that I could fairly and reasonably direct BPF to do here in relation to the Credit Agreement.

My final decision

My final decision is that I do not require Clydesdale Financial Services Limited trading as Barclays Partner Finance to do anything more in respect of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 11 September 2024.

Chris Riggs
Ombudsman