

The complaint

Mr K's complaint arises from a series of purchases of timeshare interests which were financed, in whole or in part, with credit from Clydesdale Financial Services Limited (which trades as Barclays Partner Finance, and which I'll call "BPF"). He says that the lending was not affordable and that it created an unfair relationship (or a series of unfair relationships) within the meaning of section 140A of the Consumer Credit Act 1974.

Mr K has been represented by a claims management business, which I'll refer to as "C".

What happened

From around 2007 Mr and Mrs K have bought and sold a number of timeshare interests from at least two different timeshare businesses. Some or all of those purchases have been financed, either wholly or in part, by credit facilities made or offered to Mr K by BPF.

In early 2021 C submitted a claim in respect of the purchases and lending facilities to BPF on behalf of both Mr K and his wife – who appears to have taken out a loan in respect of at least one purchase. The claim was broadly worded and generic, in that it did not specify what issues arose from which of the several purchases and loans made over a period of at least six years.

BPF was unable to resolve Mr K's concerns to his satisfaction, and the matter was referred to this service. The complaint form referred only to issues of affordability and section 140A of the Consumer Credit Act. C also provided a bundle of just over 100 documents, but with no real explanation of how those documents were linked to any particular aspect of Mr K's complaint.

It was later established that Mr K's complaint arose from the provision of five loans or other credit facilities in his name. Each was provided by BPF. They were:

- a £25,809 "buy now pay later" facility provided in February 2007 under an account number ending in 6241;
- a £16,270.50 facility provided in February 2008 under an account number ending in 1536 (provided at the same time as an identical loan to Mrs K);
- a £9,450 facility provided in May 2008 under an account number ending in 9296;
- a facility made available in September 2009 under an account number ending in 9309; and
- running credit with a £30,000 limit in 2013.

The May 2008 loan appears to have been made in connection with a purchase from Diamond Resorts. There is no information about the purchase linked to the 2013 facility. All the other loans were made in connection with dealings with Resort Properties / Silverpoint / Club Paradiso / The Beverley Hills Heights Club / Hollywood Mirage – all of which are linked.

The initial, February 2007, loan was used to fund the purchase of nine timeshare properties. There is evidence in the documents submitted on behalf of Mr K that at least five of those interests had been resold by around May 2008.

The February 2008 loans were used to buy a timeshare unit (referred to as ISLA 6008) at Club Paradiso. That club ceased trading in 2020. As a consequence, BPF made an offer to refund sums paid under the loan agreement, which Mr K has accepted. There is no remaining complaint about that loan.

In the course of our investigation, C said that it was still in negotiations with BPF about the May 2008 loan, which concerned a different timeshare provider from the other loans. Mr K did not therefore want this service to consider that loan at this stage.

Our investigator did not recommend that the complaint should be upheld in respect of the remaining loans. C did not accept that recommendation and asked that an ombudsman review the case.

I did that and issued a provisional decision in which I said:

As may be apparent from the background set out above, the exact nature of Mr K's complaint here is far from clear. Other than saying that the loan (singular) was not affordable and that it created an unfair relationship, he has not explained what he thinks BPF (or the timeshare sellers) did wrong.

Unlike a court, this service has an inquisitorial remit. That means we will ask questions to try to establish the nature and scope of a complaint; we are not limited by formal submissions made by the parties. Nor are we bound by the same rules of evidence as a court would be. Mr K does not have to prove his claim in the same way he would in court; we can seek evidence from the parties or other sources if necessary.

Nevertheless, I think that Mr K (and, perhaps more importantly, those advising him) could – and should – have done very much more to identify and set out the facts behind the complaint before submitting it. It is generally not enough simply to submit a bundle of paperwork covering several purchases and loans without some further commentary.

I turn then to the specific loans mentioned.

As I have indicated, BPF and Mr K have agreed a resolution in respect of the February 2008 loan, and C has said that I should not make any decision in respect of the May 2008 loan. I therefore make no further comment on them.

The first loan was made in February 2007. There is very little information about it, other than it was made under a "buy now pay later" arrangement. It is not clear whether any payments were made. What is clear however is that some or all of the timeshare interests connected with it were sold within little more than a year and that Mr and Mrs K bought their Club Paradiso timeshare a year later. I would need Mr K to provide rather more information about those matters, and the nature of his complaint, before I could consider this aspect any further.

Depending on the nature of any complaint, it is in any event very likely that any claim now brought in respect of events in February 2007 would now be made outside the relevant time limits in our own rules or the time limits in the Limitation Act 1980 – and possibly both.

I do not believe the September 2009 loan was ever drawn down. There is no evidence of any payments ever having been made. The documents do however include a letter from Mr

K to the seller written in early October 2009 and saying that he and Mrs K want to cancel their September 2009 agreement and revert to the Club Paradiso membership they already had. That letter was written within the 14-day cancellation period which applied to both the proposed timeshare purchase and the loan. I think it likely therefore that the cancellation was implemented.

The final facility was the running credit facility made available in 2013. I have not been provided with any information about any linked purchase or any specific complaint about it or the facility. I would therefore make the same observations as I made about the 2007 loan – including those in connection with time limits.

I concluded that I was unlikely to uphold Mr K's complaint and gave both parties until 30 January 2024 to respond with any further evidence and arguments they wanted me to consider before I issued a final decision. BPF said it had nothing to add. Mr K has not responded to my provisional 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.

As I have been provided with no further information to consider – despite the clear indications in my provisional decision that Mr K needed to provide much more detail about his complaint – I do not believe there is any reason for me to reach a different conclusion. In saying that, I stress that I have reviewed the case file afresh before issuing this final decision.

My final decision

For these reasons, my final decision is that I do not uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 March 2024.

Mike Ingram
Ombudsman