

## **The complaint**

Mrs K's complaint is that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') acted unfairly and unreasonably when deciding against paying her claim under Section 75 of the Consumer Credit Act 1974 (the 'CCA') and turning down her complaint that it was party to an unfair debtor-creditor relationship as defined by Section 140A of the CCA.

The complaint is only in Mrs K's name as only she was named on the Credit Agreement. But, I will refer to both Mrs and Mr K throughout this decision as the timeshare in question was in both of their names.

## **What happened**

Mrs and Mr K purchased membership of an asset-backed timeshare called the Fractional Property Owners Club from a timeshare provider (the 'Supplier') on 4 October 2011 (the 'Time of Sale').

Mrs and Mr K paid for their membership by taking finance from BPF in Mrs K's name. She entered into a 15-year loan for £10,119 (the 'Credit Agreement').

The Credit Agreement, and Mrs K's associated credit relationship with BPF, ended on 11 June 2012.

Mrs and Mr K wrote to BPF via a representative ('SW') on 11 November 2019 to complain. They said they were making a Section 75 claim and also said they felt there was an unfair credit relationship. They said the following misrepresentations were made at the Time of Sale:

- The fractional property ownership scheme had a guaranteed end date, specifically after 19 years, after which Mrs and Mr K would have no further legal liability to [the Supplier] under or in respect of the scheme. But this was untrue because it wasn't a true description of the working and effect of the scheme or of the way their liability to pay management charges under the scheme arises. And, while the sales process begins on the sale date, there is no guarantee any sale will result at all and Mrs and Mr K's liability to pay the management fees continues for an indefinite and unspecified period.
- The membership meant that Mrs and Mr K were buying an interest in a specific parcel of real property, but this wasn't true because they didn't obtain such an interest, only speculative rights in respect of the proceeds of sale of a property which might, or might not, be sold at an unknown price at an unknown time in the future.
- The scheme was an investment, as the value of the property was bound to go up. But this was untrue for the same reason as above.
- If they did not enter into the agreement, their children would inherit the ongoing liability to pay management charges in respect of their previous non-fractional membership. But this wasn't true as Mrs and Mr K were free to leave their liability in respect of that membership to whomever they wished, and even if it were to pass to their children, their children would have been entitled to disclaim any such liabilities.

They said an unfair credit relationship exists because:

- There was a lack of availability and Mrs and Mr K have been unable to book holidays where and when they wanted.
- There was a lack of exclusivity – they were sold the concept of an exclusive members-only club but have subsequently discovered non-members can also book holidays at the same resorts, often for less than Mrs and Mr K have been paying for annual management fees.
- The duration of the scheme and the obligation to pay management charges for the duration of the scheme are unfair terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR')
- The sales process was misleading and involved aggressive sales practices which breached the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations')
- The rate of interest on the loan was significantly higher than other lenders.
- At no stage was any proper assessment done to assess Mrs K's creditworthiness before they entered into the agreement.
- No adequate or transparent explanation was given to Mrs K as to the features of the credit agreement which may have made the credit unsuitable for her or have a significant adverse effect which she would be unlikely to foresee, especially given the length of the term, high interest and total charge for the credit.

As they hadn't received any response from BPF, Mrs K's representative then referred her complaint to the Financial Ombudsman Service on 10 January 2020.

The matter was considered by an Investigator, who issued their findings on 28 March 2024. In these findings, they concluded that while Mrs K's Section 75 claim was within our Service's jurisdiction to consider, they felt BPF likely had a valid defence to such a claim under the Limitation Act 1980 (the 'LA'). The Investigator also said that Mrs K's complaint regarding an unfair credit relationship had been made too late under the time limits for bringing a complaint under the Financial Conduct Authority (FCA) DISP rules. So, our Service could not consider that aspect of the complaint.

SW disagreed and said they wanted the matter to be reviewed by an Ombudsman. They provided further comments, but only in relation to the product being sold at the Time of Sale as an investment and why that meant, in their view, the complaint should be upheld.

As agreement on the outcome could not be reached, the complaint was referred to me to make a decision.

This decision only considers the merits of Mrs K's complaint about the way BPF handled her claim under Section 75 of the CCA. I have dealt with whether our Service has jurisdiction to consider Mrs K's complaint, that the credit relationship between herself and BPF was unfair to her under Section 140A of the CCA, in a separate 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.

In this part of Mrs K's complaint, she is alleging that BPF was unfair and unreasonable in refusing to allow her claim under Section 75 of the CCA. Her complaint is that BPF ought to have allowed it as there were misrepresentations made by the Supplier at the Time of Sale, and these misrepresentations induced her (and Mr K) into making the purchase.

The Investigator in this case felt it would be reasonable for BPF to reject this claim as they would have a defence to it under the LA.

Creditors can reasonably reject Section 75 claims that they're first informed about after the claim has become time-barred under the LA. The reason being, that 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.

Having considered everything, I think Mrs K's claim for misrepresentation was likely to have been made too late under the relevant provisions of the LA, which means it would have been fair for BPF to have turned down a Section 75 claim for this reason.

A claim under Section 75 is a 'like' claim against the creditor. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued, as per Section 2 of the LA.

But a claim like this one under Section 75 is also "*an action to recover any sum by virtue of any enactment*" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mrs and Mr K entered into the membership at that time based on the alleged misrepresentations by the Supplier, which Mrs K says they relied on. And, as the loan from BPF was used to finance this membership, it was when Mrs K entered into the Credit Agreement that she suffered a loss.

Mrs K first notified BPF of her Section 75 claim on 11 November 2019. BPF didn't respond to her claim, however since her claim was made more than six years after the Time of Sale, I don't think it would be unfair or unreasonable for BPF to reject Mrs K's concerns about the Supplier's alleged misrepresentations at the Time of Sale.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 1 August 2024.

Fiona Mallinson  
**Ombudsman**