

The complaint

Mrs B complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') rejected her claim under s.75 Consumer Credit Act 1974 (CCA).

What happened

On 8 April 2017 Mrs B, along with her husband purchased a three year trial holiday package with a company I will call C. It cost £3,995 and this was funded by a loan from BPF in Mrs B's name. Given the account was in her name she is the eligible complainant and for simplicity, in this decision I refer to her as the sole owner. The package offered her five holiday weeks to use at C's resorts plus a complementary week. She was also entitled to access the resorts of a third party I will call X.

She used four of the weeks she was entitled to and tried to arrange a two week holiday with X to celebrate her wedding anniversary. X was unable to provide what she was seeking and she decided to accept two separate weeks in alternative destinations. Mrs D says these were not what she had been expecting.

These two weeks were to be taken in April 2020, but X cancelled them due to the Covid restrictions. C extended the trial membership by six months to 14 October 2020. When Mrs B enquired about booking replacement holidays C explained that as Mrs B had 'banked' weeks with X they could not be 'unbanked'. As such she was required to seek accommodation with X, but it did not offer an extension and as no suitable accommodation could be sourced before the three period ended Mrs B lost two weeks' holiday.

She complained to C and X and after she did not receive a positive response she made a claim under s.75 CCA to BPF. It rejected the claim and said it had spoken to X which had said there had been availability, but not at times to suit her and her family. It also said that it could not control travel restrictions during the covid pandemic.

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.

When deciding what is a fair and reasonable outcome to complaints, I am required by DISP 3.6.4 R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

"(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."

I have every sympathy with Mrs B and her husband who have lost out on two weeks' holidays, but I do not consider I can uphold her complaint. I will explain why.

Sections 56 and 75 of the Consumer Credit Act

Under s. 56 of the Consumer Credit Act 1974 statements made by a broker in connection with a consumer loan are to be taken as made as agent for the lender.

In addition, one effect of s. 75(1) of the Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions include:

- that the lending financed the contract giving rise to the claim; and
- that the lending was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.

Claims apply to either misrepresentation or breach of contract. I will consider each separately.

Misrepresentation

Misrepresentation is, in very broad terms, a statement of law or of existing fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

I have seen nothing to show that there was any misrepresentation by C at the time of the sale. The documentation sets out the terms and conditions of the offer. Mrs B was entitled to five weeks' holiday plus a bonus week to be taken within three years of the agreement. How and where were also explained and she was able to make use of four of the available six weeks. I do not consider the product was misrepresented at the point of sale.

Breach of Contract

A breach of contract occurs whenever a party who entered a contract fails to perform their promised obligations.

I have reviewed the contract which is between C and Mr and Mrs B and I cannot see that C has failed to perform its promised obligations. In short it offered six weeks' holidays to be taken within a three year period. It offered no guarantee about the availability of specific accommodations or resorts. This is what it provided for the four weeks' holiday which Mrs B took. It did not address the possibility of any exceptional circumstances.

As far as the relationship with X is concerned the Trial Membership Agreement Conditions state:

"In Trial Membership the arrangements are direct for the individual member and in that case Destinations Trial Membership has signed an agreement with X by virtue of which all new Trial Member are provided with a three years membership of their exchange Scheme. This means if you cannot obtain a reservation which suits you at one of the Destination resorts, you will be able to exchange your occupancy rights for holiday accommodation at one of 3,000 resorts world-wide which are affiliated to X. "It goes on to state that "X is an independently owned and operated service company. C is neither an agent for nor a joint venture with X."

Mrs B exchanged her occupancy rights with C for access to accommodation with X. I cannot see that there was any breach of contract as far as C was concerned since this was what was included in the contract. Once she had made the exchange X was responsible for providing accommodation.

Mrs B made the bookings and due to covid these holidays could not be taken. While it may have been helpful for X to have offered an extension beyond the end of three years it was not obliged to do so and in any event C had no control over the actions of X. Neither C nor X was obliged to offer an extension to the contract or extend availability and so I cannot see that any breach has arisen.

Mrs B's contract was with C and it honoured that contract. BPF is only obliged to operate within the law as set out in s.75 and as there has been no breach of contract or misrepresentation I cannot say it was wrong to refuse the claim. The only route I can see to meet Mrs B's wishes would be if one of the parties offered a gesture of goodwill, but I cannot require BPF to take any further action.

My final decision

My final decision is that I do not uphold this complaint.

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

Ivor Graham
Ombudsman