

The complaint

Mr D has complained about the sale of a timeshare paid for using a loan provided by Clydesdale Financial Services Limited (“Clydesdale”).

What happened

In August 2008, Mr D purchased a timeshare membership (“the Timeshare”) from a timeshare provider. This purchase was funded with a loan of £9,562 provided by Clydesdale.

In April 2022, Mr D used a professional representative (“PR”) to make a complaint to Clydesdale. It said that the timeshare had been misrepresented, there had been a breach of contract and an unfair relationship. It was rejected as being made too late and the matter was referred to this service where one of our investigators confirmed the claim had been made out of time.

PR submitted a separate complaint that the credit intermediary had been unauthorised. It said the Supplier was not authorised by the Financial Conduct Authority (“FCA”) to broker loans and so Clydesdale breached s.19 of the Financial Services and Markets Act 2000 (“FSMA”) when it allowed the loan to be brokered by an unauthorised intermediary.

PR said that, under ss.26 and 27 FSMA, the loan was unenforceable against Mr D and he was entitled to recover what he had paid under the agreement. Clydesdale rejected this and supplied confirmation that that the time of sale the credit intermediary had been authorised in the UK.

PR referred Mr D’s complaint to our service and it was considered by one of our investigators who didn’t recommend it be upheld. He reviewed all the documentation provided and he noted the credit agreement and statements named the retailer as the Anfi Group, the purchase agreement says the promotor is Anfi Sales SL and the management company is Anfi Resorts SL.

He thought the Anfi Group reference on the credit agreement and statements covered all the companies that were part of the group, including Anfi Sales SL and Anfi Resorts SL. He said the contract lists the promotor as Anfi Sales SL, so he thought they would have likely acted as the credit broker in this transaction.

Anfi Sales Sociedad Limitada held a Consumer Credit Licence at the time of sale and he concluded it was regulated at the time of this sale.

PR didn’t agree and said that our investigator was wrong to treat the credit intermediary as being Anfi Sales Sociedad Limitada when the documentation did not specifically refer to it. The regulated loan agreement referred to the Anfi Group and this was not a regulated credit intermediary. If the bank had made a mistake in referring to the Anfi Group it must accept the consequences. It was legally obliged to ensure the information entered on the agreement was correct. Mr D had suffered detriment and the bank was obliged to remedy that.

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."

It is worth exploring what a group of companies is. A group of companies is an economic entity formed of a set of companies which are either companies controlled by the same company, or the controlling company itself. Currently the Anfi Group has seven companies though I cannot say what the situation was at the time of sale.

There are two companies mentioned in the documentation I have seen for Mr D's purchase. Anfi Sales S.L's objects are the promotion and sale of timesharing in tourist complexes. Anfi Resorts S.L's object is the management of tourist complexes in Anfi del Mar.

The Anfi Group is not a company, but a collective name for the group of Anfi companies. I note PR distinguishes between Anfi Sales Sociedad Limitada and Anfi Sales SL. The latter is a standard abbreviation for the former. This is similar to X Limited being referred to as X Ltd in the UK. So, I think it is quite clear that Anfi Sales SL is an accepted name for Anfi Sales Sociedad Limitada. This company was a regulated Credit Intermediary in the UK between 16 June 2006 and 5 December 2011. This covers the time the agreement was signed.

The loan document refers to the Anfi Group, but as I have explained this is not an individual company, but a collective name. I believe the only company within the group which sold the property which Mr D bought was Anfi Sales S.L and it is reasonable to conclude that this was the authorised credit intermediary.

I have noted the comments on the impacts of errors in credit agreements and if PR considers it to be defective such that it is unenforceable it would be a matter for the courts to decide.

I have also considered whether there is any other reason why Mr D's loan should be set aside, or compensation paid, due to the credit intermediary allegedly not being authorised by the FCA. However, I cannot see any other reason why it would be fair for me to direct that to happen, so I do not propose to make any award for this reason.

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 Mr D to accept or reject my decision before 27 September 2024.

Ivor Graham
Ombudsman