

## **The complaint**

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

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

## **What happened**

Mr and Mrs G purchased membership of an asset-backed timeshare called the Fractional Destinations Club from a timeshare provider (the 'Supplier') on 5 March 2012 (the 'Time of Sale 1').

Mr and Mrs G paid for their membership by taking finance from BPF in Mr G's name. He entered into a 15-year loan for £13,694 ('Credit Agreement 1').

This Credit Agreement 1, and Mr G's associated credit relationship with BPF, ended on 21 December 2012.

Mr and Mrs G also made a second purchase on 22 October 2012 (the 'Time of Sale 2'). They again paid for this membership by taking finance from BPF in Mr G's name. This was also a 15-year loan for £7,963 ('Credit Agreement 2').

Credit Agreement 2, and Mr G's associated credit relationship with BPF ended on 11 February 2015.

Mr and Mrs G wrote to BPF via a representative ('MC') on 26 April 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(s) of Sale:

- Mr and Mrs G were told that they would be guaranteed to exit the fractional membership after a finite number of years. But this wasn't true as it can only be brought to an end if a purchaser is found.
- They were advised they were guaranteed to make a considerable profit from the agreement, once the property is sold. But again, there is no guarantee the property will be sold and so there is no guarantee they will make a profit.
- Mr and Mrs G believed they were buying into an 'exclusive' membership. But this is untrue as almost all of the properties can be accessed and booked by non-members.

They also said:

- There are clauses in the management agreement which means Mr and Mrs G's interest in the timeshare will continue for another 15 years unchecked and potentially in perpetuity.
- Mr and Mrs G have no control of the sums incurred by and/or charged under the

contract. And the effect of these clauses were no explained to them fully or at all at the Time(s) of Sale.

- These clauses constitute unfair terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').

They said an unfair credit relationship exists because:

- The sale(s) were pressured.
- Undisclosed commission was paid to the Supplier.
- The fractional points scheme arises out of selling to customers who have already purchased timeshare products.
- Mr and Mrs G were told that purchasing the product was the only way in which they could dispose of their membership.
- Mr and Mrs G were told at the Time(s) of Sale that they and/or their children/family would be tied into financial obligations for a considerable period if they did not purchase the product.
- The product is not worth the amount paid for it.
- Mr and Mrs G's financial means were limited, and they could only afford the product with the aid of finance.
- No choices as to finance were presented to Mr and Mrs G.
- An appropriate credit assessment was not undertaken.

As they hadn't received any response from BPF, Mr G then referred his complaint to the Financial Ombudsman Service on 26 September 2019.

On 20 December 2023, BPF made an offer to Mr G to settle his complaint regarding the second purchase and Credit Agreement 2. This was accepted by Mr G's representative on 21 December 2023, resolving that part of the complaint.

The remaining complaint about the Time of Sale 1 was assessed by an Investigator who issued their findings on 27 March 2023. Having considered the information on file, they rejected the complaint about Mr G's Section 75 claim as they felt it had been made too late, taking into account the Limitation Act 1980. The Investigator also said that his 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.

MC disagreed and confirmed Mr and Mrs G wanted the matter to be reviewed by an Ombudsman. They didn't provide any further comments or information at this stage.

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 Mr G's complaint about the way BPF handled his claim under Section 75 of the CCA. I have dealt with whether our Service has jurisdiction to consider Mr G's complaint that the credit relationship between himself and BPF was unfair to him 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.

As I've explained above, Mr G's complaint about the Time of Sale 2 has been resolved. This decision therefore only addresses the complaint about the Time of Sale 1.

In this part of Mr G's complaint, he is alleging that BPF was unfair and unreasonable in refusing to allow his claim under Section 75 of the CCA. He says BPF ought to have allowed it as there were misrepresentations made by the Supplier at the Time of Sale 1, and these misrepresentations induced him 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 Limitation Act 1980 (the 'LA').

Creditors can reasonably reject Section 75 claims that they're first informed about after the claim has become time-barred under the Limitation Act 1980. 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 Mr G's claim for misrepresentation was likely to have been made too late under the relevant provisions of the Limitation Act 1980, 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 Limitation Act.

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 Limitation Act. 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 1. I say this because Mr and Mrs G entered into the membership at that time based on the alleged misrepresentations by the Supplier, which Mr G says they relied on. And, as the loan from BPF was used to finance this membership, it was when Mr G entered into the Credit Agreement 1 that he suffered a loss.

Mr G first notified BPF of his Section 75 claim on 26 April 2019. Since this was more than six years after the Time of Sale 1, I don't think it would be unfair or unreasonable of BPF to reject Mr G's concerns about the Supplier's alleged misrepresentations at the Time of Sale 1.

### **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 Mr G to accept or reject my decision before 30 July 2024.

Fiona Mallinson  
**Ombudsman**