

The complaint

Mr G complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') is liable to pay him additional compensation following a complaint made about a timeshare bought using credit provided by BPF.

What happened

In 2008 Mr G was the owner of a two-week timeshare. As a result of a sales presentation he attended on 24 September 2008, he bought a new timeshare from a provider (the 'Supplier') and traded in his existing timeshare towards this purchase.

The purchase price of Mr G's new timeshare from the Supplier was £23,800 and the price agreed for each of his trade-in weeks was £2,500, making £5,000 in total. He paid for the remaining balance of the purchase by taking finance from BPF for £18,800.

There was a delay in the transfer of Mr G's original timeshare, and he attempted to resolve that with the Supplier but was unable to do so. So, he complained to BPF about that in April 2009.

Due to the passage of time Mr G's complaint letter is no longer available, but it seems that his complaint to BPF was, in essence, that the Supplier had breached the terms of the sales contract as his existing timeshare hadn't been traded in as agreed, and he had been told his monthly payments towards the finance agreement would be £132 when that was untrue.

On 1 June 2009 BPF sent Mr G its final response to his complaint. It said the delay in transferring his existing timeshare occurred due to paperwork not being completed by the original timeshare provider rather than the Supplier, which had now been requested. It also said his monthly repayment was as documented in the finance agreement he signed, and there was no evidence he was told it would be £132 per month.

The deed of transfer relating to Mr G's original two-week timeshare that he traded in at the time of sale was signed on 8 June 2009.

On 27 June 2009 the outstanding finance was cleared by Mr G with a lump sum payment and the balance on his credit account was reduced to nil.

On 20 March 2021 Mr G made a new complaint to BPF. He said, in summary:

- The finance agreement associated with the September 2008 purchase was brokered by an unlicensed broker, so it was unenforceable.
- No appropriate affordability checks were completed. The lending by BPF was irresponsible and unaffordable.
- The Supplier made untrue and fraudulent statements in order to induce him into the purchase and profit from the sale.
- He was pressured into making the purchase, and he was given no time to read the associated documentation prior to signing.

On 17 August 2022 BPF sent its response to Mr G's most recent complaint. It said that it had come to light that the Supplier didn't always meet the standards it expected for BPF customers. As a result, it said it would refund all interest, fees and charges and all loan repayments made by Mr G, plus interest of 8% simple per year. It also said it would cancel the loan agreement and remove any entries at credit reference agencies relating to the loan.

BPF also said that its aim was to reimburse Mr G for any losses incurred in relation to the loan and timeshare, so if Mr G felt the redress offered didn't cover all his losses and wanted to make an additional loss claim he could do so, and it provided a form for Mr G to fill in if necessary.

On 3 October 2022 Mr G submitted the completed Additional Loss form and claimed for the £5,000 value attached to his existing timeshare, which he traded in at the time of sale. On 24 August 2023 BPF rejected Mr G's additional loss claim saying the evidence didn't indicate that his original timeshare was traded in as part of the new purchase. But it did offer Mr G an additional £371.37 compensation, which included £300 for the distress and inconvenience he'd suffered.

Unhappy with this outcome Mr G referred his complaint to our Service where it was considered by an Investigator.

The Investigator thought that Mr G's complaint shouldn't be upheld because he hadn't seen enough evidence to make him think Mr G had been misled into purchasing the timeshare, nor that the lending in question had been unaffordable for him. He also explained that, at the time the loan was brokered, such credit broking was regulated by the Office of Fair Trading ('OFT') so Section 149 of the Consumer Credit Act 1974 ('CCA') applied to the loan. And even if he thought the Supplier was not correctly licenced at the time, there was no provision under the legislation that entitled Mr G to claim back what he paid under the agreement.

What's more, our Investigator thought that BPF had paid redress in line with what he would have expected it to have done in the circumstances, so had reached a fair outcome.

Mr G did not agree with this and provided more evidence to demonstrate that he had traded in his original timeshare as part payment for the one he bought from the Supplier, and that BPF ought to have also refunded the £5,000 value his original timeshare was given as a trade-in. He said that he was not complaining about the purchase in September 2008. All he was complaining about was that BPF had not accepted that it should refund the £5,000 value put on his original timeshare. He said that other complainants, in a similar situation, had received full refunds and he felt that BPF were unfair in refusing to allow his additional loss claim.

Mr G also provided further evidence in relation to his personal and employment circumstances at the time the finance was provided, which he said supported his complaint that the finance was never affordable for him and should not have been provided by BPF.

The Investigator considered all the additional information Mr G provided, along with everything that was previously submitted. And having done so he thought there were elements of Mr G's case that our Service was unable to look at according to the rules under which we operate.

The Investigator thought the complaints that Mr G made to BPF in April 2009 could not be considered by our Service as they hadn't been referred to our Service within six months of BPF's final response to him, which was dated 1 June 2009.

The Investigator then summarised what he thought about Mr G's remaining complaints. He said that Mr G's complaint to BPF in March 2021 was in effect three-fold:

- That his credit relationship with BPF was unfair to him under Section 140A CCA.
- BPF had acted unfairly and unreasonably by refusing to pay his misrepresentation claim under Section 75 CCA; and
- The broker who arranged the finance was unlicensed to do so – rendering the relevant credit agreement unenforceable.

In respect of Mr G's complaint about BPF's handling of his Section 75 claim for alleged misrepresentations by the Supplier, our Investigator thought that BPF would have a defence to the claim in court under the Limitation Act 1980 (the 'LA') and so didn't act unfairly or unreasonably by refusing to pay the claim.

In respect of Mr G's complaint about his credit relationship with BPF being unfair to him under Section 140A CCA, our Investigator thought Mr G had made his complaint too late according to the rules under which we operate. He thought Mr G had made his complaint to BPF more than six years after the credit relationship ended (in 2009 when the finance was paid off), and more than three years after he ought reasonably to have been aware he had cause to complain to BPF. And as he didn't think there were any exceptional circumstances which had caused the delay, he didn't think our Service was able to consider this aspect of Mr G's complaint.

And in respect of Mr G's complaint that the broker of the finance was not licenced to broker the credit agreement, our Investigator maintained that, even if the broker wasn't properly licenced, Mr G wasn't entitled to any remedy under the regulatory regime at the time.

Mr G did not accept the Investigator's assessment, and as no agreement could be reached between him and the Investigator on the outcome of his complaint, it has come to me for a decision.

I issued a Provisional Decision ('PD') on 12 June 2024 in which I provisionally found that:

1. Mr G's complaint about BPF's alleged participation in a credit relationship that was unfair to him wasn't in the Financial Ombudsman Service's jurisdiction because it wasn't made in time under the time limits set out in Rule 2.8.2 R (2) of the Financial Conduct Authority's (the 'FCA') Dispute Resolution Rules ('DISP').
2. Mr G's complaint about BPF's decision to reject his concerns about the Supplier's alleged misrepresentations, and their decision to reject his additional loss claim was made in time under DISP 2.8.2 R (2), but BPF didn't act unfairly or unreasonably by coming to the decision it did.

3. Mr G's concern about the licensing of the broker who arranged his credit did not merit any additional reward.

BPF had nothing to add in response to my PD. Mr G called the Investigator and set out how he continued to feel that he had been treated unfairly, and that a fraud had taken place in the original sale. In addition he maintained that BPF ought to have allowed his additional loss claim for the timeshare he traded in, and others in a similar position to him had been recompensed fully.

My PD dealt with both the Financial Ombudsman Service's jurisdiction to deal with Mr G's complaint, and the merits of those parts of his complaint that I thought were in jurisdiction. But as decisions on jurisdiction aren't usually published, I have dealt with the matters which I have decided are not in our Service's jurisdiction separately.

In this decision I am setting out my final thoughts on the merits of Mr G's complaints about BPF's handling of his concerns about the Supplier's alleged misrepresentations, whether BPF ought to have paid his additional loss claim, and also his concerns about the licensing of the credit broker.

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.

Some of the concerns Mr G has about the sale of his timeshare in September 2008 can only be considered by the Financial Ombudsman Service with certain provisions of the CCA in mind. That is why it is necessary to refer, at times, to Section 75 of the CCA in this decision.

To be clear, I have not considered the complaint that Mr G made to BPF in April 2009 as it does not form any part of the complaint he made to BPF in March 2021, which he subsequently referred to our Service. I included it in the background section of this decision for reference only. Instead, this decision focuses on Mr G's concerns about:

- The Supplier's alleged misrepresentations, and BPF's handling of Mr G's Section 75 claim in relation to those alleged misrepresentations.
- The status of the credit broker and the implications of this on the credit agreement.

I have listened to Mr G's call with the Investigator, and I have taken into account everything he has said, along with everything previously submitted. But, for the reasons I gave in my PD, I do not think BPF needs to do anything more than it already has in relation to either Mr G's claim under Section 75 of the CCA, or his complaint that the Credit Broker was unlicensed.

For clarity I will deal with each of these matters in turn.

Mr G's claim under Section 75

The LA imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we'd usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier. The limitation period to make such a claim

against BPF for alleged misrepresentations by the Supplier expires six years from the date on which Mr G had everything he needed to make such a claim.

As the letter of complaint to BPF makes clear, Mr G entered into the purchase of the timeshare on 24 September 2009 based on the alleged misrepresentations of the Supplier, which he says he relied on. And as the credit arrangement from BPF was used to help finance the purchase, it was when Mr G entered into the Credit Agreement that he suffered a loss – which means it was at that time that he had everything he needed to make a claim.

Mr G first notified BPF of his claim for alleged misrepresentations by the Supplier on 20 March 2021. As that was more than 6 years after he entered into the Credit Agreement and related timeshare agreement, I don't think it would have been unfair or unreasonable of BPF to reject Mr G's concerns about the Supplier's alleged misrepresentations.

As a result, while BPF may have refunded all the loan repayments Mr G made, along with the interest and charges he incurred as a result of the lending, I don't think there's anything more that it needs to do to put things right here given the facts and circumstances of this complaint.

Mr G's complaint that the credit broker was unlicensed

At the time the finance agreement was brokered by the Supplier, the brokering of such credit agreements was regulated by the OFT. It is unclear from the evidence provided whether the Supplier was correctly licensed by the OFT to broker the credit agreement which is the subject of Mr G's complaint. But, as the Investigator said, there is no provision in the regulatory regime at the time which would afford someone in Mr G's position redress anyway.

So even if I were to find that the Supplier was not properly licensed to broker credit in September 2008 (and I make no such finding) I would not be able to tell BPF to pay Mr G any compensation here. And even if I could, any redress would only extend to the amount of finance provided, which, as I've said, has already been repaid in full by BPF.

So, I remain satisfied that there is nothing, over and above what BPF has already offered, that I could fairly and reasonably direct it to do here in relation to the finance agreement.

Conclusion

I am satisfied that BPF did not act unfairly or unreasonably when it declined to accept Mr G's additional loss claim under Section 75 of the CCA.

In addition, I do not currently think it would be fair or reasonable for me to direct BPF to do anything more than it has already done to settle Mr G's complaint.

My final decision

I do not require Clydesdale Financial Services Limited trading as Barclays Partner Finance to do anything further in respect of Mr G's March 2021 complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 31 July 2024.

Chris Riggs
Ombudsman