

The complaint

Mr D has complained that Clydesdale Financial Services Limited, trading as Barclays Partner Finance (“BPF”) unfairly turned down his claims made under the Consumer Credit Act 1974 (“CCA”).

What happened

In June 2008, Mr and Mrs D bought timeshare membership from a timeshare provider (“the Supplier”). Under this, they were able to stay for a week in five different apartments every year, so five weeks in total. The apartments were in three different resorts, three in a resort called “BHC”, one in a resort called “CP” and one in a resort called “HMC”. The membership cost £30,292 and was paid for by Mr D and Mrs D each taking a loan with BPF. In this decision, I will only be considering the loan in Mr D’s name, which was settled in July 2010.¹

In 2019, Mr D complained to BPF using the help of a professional representative (“PR”) about the loan and membership. PR said that the membership was presented to Mr and Mrs D as an investment that could be resold later at a profit. But, when they tried to sell them, they didn’t sell as expected. PR alleged that this was a misrepresentation that BPF were responsible for under s.75 CCA. PR also said there was an unfair debtor-creditor relationship under s.140A CCA due to the way the membership was sold.

In 2020, Mr D contacted BPF as he found out that the Supplier had gone into liquidation that year. He said that as BPF had lent him the money to by the membership, it was jointly liable to compensate him for what went wrong.

In May 2022, BPF upheld Mr D’s claim in part and made an offer to settle it. It said that any claim for misrepresentation made under s.75 CCA or arising out an unfair debtor-creditor relationship under s.140A CCA had been made too late. That meant BPF had a defence to the claim under the provisions of the Limitation Act 1980 (“LA”). But BPF said there was a breach of contract claim that it was jointly liable for. It said that the Supplier had become insolvent and one of the resorts (CP) had closed. So it offered a refund of £2,286.55 for that part of the claim. BPF said that the other resorts (BHC and HMC) were still operating, so it didn’t accept there was a breach of contract in relation to those aspects of the membership.

Mr D wasn’t happy with the amount that BPF had offered, so he referred a complaint to our service – he did so without the assistance of PR. He said that the total level of loss was significantly more than what was offered and asked for the full contract value to be returned.

One of our investigators considered everything and thought that due to the time that had passed since the purchase and from when the loan had been paid off, the only claim that BPF needed to consider was for a breach of contract. And he thought its offer for that claim was fair. But Mr D disagreed and asked for complaint to be reconsidered by an ombudsman.

¹ I am aware that Mr and Mrs D made other purchases from the Supplier and used BPF loans to pay for them. Some of those purchases have also been complained about, but in this decision I’m only looking at the July 2008 loan take out in Mr D’s name. That means I will refer to him throughout this 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.

Mr D took out a loan from BPF to pay for his membership. Because of the way that loan was arranged, he has certain protections under the CCA. In particular, there is a regime of connected lender liability under sections 56, 75, 75A and 140A CCA that, in summary, gives consumers, such as Mr D, rights of recovery and recourse against lenders, such as BPF, that provide finances to purchase goods or services from businesses, such as the Supplier, for when things go wrong. But these provisions only operate in certain circumstances and, as they give rise to legal claims, such claims have to be made within certain time periods. So I've thought about what that means for Mr D.

Mr D made claims under s.75 CCA for misrepresentation and s.140A CCA for there being an unfair debtor-creditor relationship. BPF explained that these claims were made too late under the provisions of the LA and I agree that BPF has a defence to any claims for that reason.

A claim for misrepresentation must be brought within six years of when someone lost out as a result of that misrepresentation. Here, that would be from the date Mr D took out his loan, as it was on that day he took out a liability based on the alleged misrepresentations of the Supplier. But PR first raised this to BPF in 2019, which was eleven years after the loan was taken out, so I think BPF acted fairly in saying it was made too late.

A claim that there was an unfair debtor-creditor relationship has to be made within six years of when that relationship ended. So, in this case, that was when Mr D's loan came to an end in July 2010. But, again, PR first raised this in 2019, which was nine years after the loan was paid off, so I think BPF acted fairly in saying it was made too late.

But the Supplier became insolvent in 2019 and Mr D raised a claim about this to BPF in 2020. He said he'd lost out as a result as he couldn't use the membership in the way he'd been able to before the Supplier's insolvency, which was a breach of contract. Again, there are time limits in place in which a claim has to be brought, but Mr D raised this within a year, so I think it was within the time limits that apply.

I don't think it's in dispute that Mr D lost the ability to stay at the apartments that his CP membership entitled him to. Our investigator said that any entitlement to stay at apartments at BHC and HMC hadn't been lost by the Supplier's insolvency and I've not seen any evidence to contradict that, nor has Mr D disagreed with that part of the investigator's view. So I think Mr D only lost the chance to stay at CP apartments (as well as exchanging that entitlement to stay at other resorts elsewhere). And it's for that loss that BPF offered to pay compensation.²

I've looked at the purchase agreement from June 2008 and it lists five properties of which Mr and Mrs D were buying usage. At BHC there was a two bedroom apartment and then two studio apartments, sleeping six and four respectively. The HMC apartment is described as a three bed 'DLX' that slept eight people and the CP apartment is a 'city' apartment that slept two. The total price for these rights was £30,292 and there isn't any breakdown of that, attributing part of the price to each of the apartments. For Mr and Mrs D to use their accommodation rights, they also had to pay a certain amount every year as a maintenance

² I think BPF offered to pay compensation under the provisions of s.75 CCA, but as the purchase price was over £30,000, I think it was actually s.75A CCA that applied in this case. But as it doesn't make a difference to the outcome of this complaint, I won't comment on it further.

fee.

BPF has made an offer to Mr D to pay compensation for the loss of his CP rights. BPF has attributed one fifth of the agreement price to the CP accommodation, it being one of the five weeks bought. It's then worked out an annual cost of the membership, based on dividing up the total cost over the time the agreement was set to run, from when Mr D took it out to when the membership ended in December 2049. And then BPF has offered to pay to Mr D the amount for the 'unused' period from the date of the Supplier's liquidation in June 2019, as well as adding 8% per annum simple interest on that amount from the date of liquidation. BPF has also split the compensation between Mr and Mrs D, as there were two loans to pay for the agreement. On the face of it, I think that is a fair way to work out compensation.

Mr D says that the CP part of the membership was actually worth more. He has explained that the CP resort was in luxury apartments and he has provided photographs showing the accommodation. He also explained that it could be used any week of the year and also provided accommodation worldwide. Finally, Mr D has said that in reality, the CP part of the membership was the only part of value purchased and the other four were effectively free or of little value.

I've thought about that and considered the evidence provided. I agree that the pictures of the accommodation do look 'luxurious' and the accommodation appears to be of a good quality. But I don't think it would be fair to tell BPF to do anything differently. That is because in the actual purchase agreement, the different weeks haven't been given different purchase prices. Further, although the CP accommodation might have been of a higher standard, it was also the smallest of the apartments listed in the agreement. So, for example, the HMC apartment slept four times the number of people as the CP apartment and, without knowing more, it's difficult to say the CP apartment was worth more or less than the HMC one. Finally, I'm aware that Mr and Mrs D placed the CP membership for sale in 2017 for more than they paid for it. But I've not seen any evidence that anyone ever expressed an interest or desire to buy it for that amount, so I can't say CP part of the membership was 'worth' the amount for which it was marketed.

Based on the evidence available, I think BPF's method of working out compensation is both pragmatic and fair in all the circumstances. If Mr D wishes to accept this offer, I think BPF needs to update its calculation of 8% simple interest to the date it is paid.

My final decision

For the reasons set out above, I think Clydesdale Financial Services Limited, trading as Barclays Partner Finance's offer is fair and I direct it to update and pay its offer to Mr D.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 August 2023.

Mark Hutchings
Ombudsman