

The complaint

In 2009 Mr D and his wife bought timeshare products and holiday club memberships with the help of finance provided by Clydesdale Financial Services Limited (which I'll call "BPF").

Mr D says that he was misled about what he was buying. In addition, the company which managed the holiday club is in liquidation, and so he says there has been a breach of contract on the part of the seller.

Because BPF financed the purchase of the club membership, Mr L says he has a claim against it in the same way as he has a claim against the seller. His main complaint is that BPF has not agreed to meet that claim.

Mr D has been represented by a claims management business, so where I refer to his arguments and submissions, I include those made on his behalf.

What happened

On 31 March 2009 Mr and Mrs D bought timeshare interests in two properties at the Palm Beach Club from Resort Properties Limited at a cost of £30,000. The purchase was funded in part with a loan from BPF in Mr D's name.

The loan was repaid in or about September 2010.

In 2011 Mr and Mrs D traded in their timeshare interests for two different properties. This required a further payment and a further loan of £11,525 from BPF – this time in joint names.

In or around October 2020 the company which had sold the timeshare units in 2011 was placed into liquidation. Mr and Mrs D were told that they would no longer be able to use their timeshare units or any of the club facilities. Because the purchase of those units had been financed in part by BPF, Mr and Mrs D made a claim against it and referred the matter to this service. BPF accepted that it was likely there had been a breach of contract and that, under section 75 of the Consumer Credit Act 1974, Mr and Mrs D could bring a claim in respect of that breach against it.

BPF and Mr and Mrs D agreed to settle the claim in respect of the 2011 sale. BPF refunded all payments made under the 2011 loan agreement, along with the deposit paid to the seller, management fees for years in which the timeshares had not been used, and interest at 8% a year.

Mr D also referred this complaint to us, and one of our investigators considered what had happened, but did not recommend that the complaint be upheld. Mr D asked that an ombudsman review the case.

I did that and issued a provisional decision. I noted that this complaint and my decision concerned the 2009 loan and sale, not the 2011 transactions. I continued:

Sections 56 and 75 of the Consumer Credit Act 1974

Under section 56 of the Consumer Credit Act 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 section 75 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.*

It is not clear in this case whether the necessary relationships were in place for section 75 to apply, mainly because the copy of the loan agreement is illegible. BPF has not challenged that, however, so I have considered what the position might be if Mr D were to bring a claim against the seller.

Misrepresentation

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

However, under the Limitation Act 1980 an action (that is, court action) based on misrepresentation cannot generally be brought after six years from the date on which the cause of action accrued. Any statements which might have induced Mr D into the 2009 timeshare contract were made on or before 31 March 2009. Mr D did not however raise any complaint with BPF for more than ten years. I think it very likely therefore that a court would conclude that any claim for misrepresentation was made outside the time limit in the Limitation Act.

I stress that it is not for me to decide whether any underlying claim is now out of time under the Limitation Act. Rather, I must decide whether the response of BPF to the misrepresentation claim under section 75 was reasonable. Given the real possibility that a court would say that the claims are time-barred, I think it was.

Breach of contract

Mr D says that the services linked to the timeshare sales are no longer being provided. I accept that is the case. It does not follow however that there was a breach of the 2009 timeshare contract. That would only be the case if Mr D had retained the timeshare units he bought at that time.

Mr D did not retain those units. He exchanged them in 2011 for two different units, financed with different loan arrangements. He and Mrs D made a claim against BPF in respect of that contract. That claim was successful, in the sense that BPF agreed to refund payments made and to write off any loan balance. By the time of the liquidations, however, the 2009 contract had come to an end; it follows that the closure of the holiday club cannot have been a breach of that contract.

I make no comment on the 2011 contract. It has been the subject of a separate complaint.

Section 140A claims

Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the

parties and refunding payments. In deciding whether to make an order, a court can have regard to any connected agreement; in this case, that could include the agreement for the sale of the timeshare product.

The usual time limit for these types of claims under the Limitation Act is six years from the time the relationship between the parties ended. The 2009 loan was repaid in September 2010, some ten years before any claim was made.

I have no power to make an order under section 140B, and it is not for me to say whether a court would make an order if invited to do so. I can however make awards which might in some cases have a similar effect; I can for example require lenders to refund loan payments and reduce or write off loan balances. I do not believe it would be appropriate to do that here, however. In the circumstances, I think that BPF's response to this part of the claim was reasonable.

Mr D has not responded to my provisional decision, and the time limit I indicated for doing so has now expired. BPF said it agreed with my findings, but noted as well that it had contacted Mr D to offer him a review of his purchase experience - part of a wider programme.

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 neither party has provided any further evidence or arguments, I don't believe there is any reason for me to depart from my provisional findings. In saying that, I stress that I have reviewed the complaint in full before reaching this final decision.

My final decision

For these reasons, my final decision is that I do not uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 December 2023.

Mike Ingram
Ombudsman