

## The complaint

Mr M complains that Clydesdale Financial Services Limited - trading as Barclays Partner Finance (BPF) unfairly rejected his claim under the Consumer Credit Act 1974 ("CCA") in relation to a timeshare product he says was funded by a loan from BPF.

## What happened

In or around November 2017, having attended a meeting, Mr M agreed to purchase a timeshare product from a supplier who I'll refer to as "A". The cost of the product purchased was £15,155 which Mr M says was funded under a fixed-sum loan agreement provided by BPF.

In or around August 2022, Mr M submitted a claim to BPF under the CCA. He thought A had misrepresented various features and benefits of the timeshare product he purchased in 2017. And under the CCA, BPF were jointly and severally liable for those misrepresentations.

Initially, BPF weren't able to find any record of Mr M's loan with them and asked him to provide further information to assist them investigating his claim further. So, Mr M provided evidence of the loan agreement he'd signed. But having considered this, BPF said their records indicated that the loan had never been taken up, so hadn't been provided and no repayments had been made.

Unhappy with BPF's response, Mr M referred his complaint to this service. Having considered what Mr M said together with the information available, our investigator didn't think this service was able to consider Mr M's complaint. They didn't think Mr M was an eligible complainant under the rules set out in DISP<sup>1</sup> 2.7 as the loan wasn't taken and Mr M wasn't able to provide evidence that it was.

Mr M didn't agree with our investigator's findings and asked that his complaint be referred to an ombudsman for a final decision. In particular, he thought that even if it was found that he wasn't a customer of BPF, he was "*at the very least*" a potential customer. Under the DISP rules, he thought this made him an eligible complainant.

As an informal resolution couldn't be reached, Mr M's complaint has been passed to me to consider further. Having done so, I issued a provisional decision on 2 August 2023 giving Mr M and BPF the opportunity to comment or provide further evidence and information before I issue a final decision.

Having considered all the facts and information, I decided that Mr M's complaint was one this service could consider. In particular, because I thought his complaint met the two-part eligibility test set out in DISP 2.7. That being that Mr M was a consumer who was a potential customer of BPF.

So, I went on to consider the merits of Mr M's complaint further. Having done so, I issued a provisional decision on 2 August 2023 giving Mr M and BPF the opportunity to comment or provide further evidence and information before I issue a final decision.

In my provisional decision, I said:

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<sup>1</sup> The Dispute Resolution Sourcebook from the Financial Conduct Authority's Handbook of Rules and Guidance (DISP)

### Relevant considerations

It's important to recognise that the complaint and the claim are two different things. The complaint referred to this service specifically relates to whether I believe BPF's treatment of Mr M's claim was fair and reasonable given all the evidence and information available to me. This service isn't afforded powers to determine any legal claim itself. That is the role of the courts.

Section 75 of the CCA ("S75") provides consumers with protection for goods or services bought using credit. Mr M says he paid for the timeshare product under a restricted use fixed sum loan agreement with BPF. So, if that's proven to be the case, it means Mr M is afforded the protection offered to borrowers like him under those provisions. As a result, I've taken this section, together with other parts of the CCA, into account when deciding what's fair in the circumstances of this complaint

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

### Does Mr M have a valid claim under the CCA?

S75(1) says, *"If the debtor [here that's Mr M] under a debtor-creditor supplier agreement falling under section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier [here that's A] in respect of misrepresentation or breach of contract, he shall have a like claim against the creditor [here that's BPF], who, with the supplier, shall accordingly be jointly and severally liable to the debtor"*.

Section 12 of the CCA says, *"A debtor-creditor-supplier agreement is a regulated consumer credit agreement being – (b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements [...]"*.

Section 11(1) of the CCA says, *"A restricted-use credit agreement is a regulated consumer credit agreement – (b) to finance a transaction between the debtor and a person (the "supplier") other than the creditor"*.

Mr M signed a Membership Application Agreement with A which was dated 8 November 2017. On the same date, Mr M signed a Fixed-sum loan agreement for £15,155 with BPF. The loan agreement confirms it's to help pay for a Club Membership with A with a cash price of £15,155. So, far, this suggests the necessary debtor-creditor-supplier relationship exists to allow a valid claim to be made under S75.

However, BPF have told this service that the loan was never taken up. To support this, I've seen a copy of BPF's own records. This provides all the necessary details to satisfy me that the record does relate to the loan Mr M refers to. But it also shows a status of *"Proposal/Not Taken Up"*.

Our investigator asked Mr M to provide any further evidence available to support his assertion the loan was drawn and was used to fund the timeshare product he purchased. Mr M has provided copies of documentation from the time which does appear to support that he'd applied for the loan and that BPF had agreed to provide it to him. But importantly, there's no evidence the loan was actually drawn with proceeds paid to A. Or that Mr M subsequently repaid a loan with BPF.

Mr M says he “*would have thought the loan was active immediately*”. In other words when he signed the agreements on 8 November 2017. However, Part 6, section 25(3) of The Timeshare Holiday Products, Resale and Exchange Contracts Regulations 2010 (“the TRs”) says, “*No person may accept any consideration from the consumer before the end of the withdrawal period in relation to the [purchase] contract*”. This means A aren’t able to accept any payment, either from Mr M or BPF until that withdrawal period expires.

Although I haven’t seen the full purchase agreement, I am familiar with many of the documents associated with timeshare products sold and supplied by A. Ordinarily they include a 14-day cooling-off (withdrawal) period, during which Mr M would be permitted to cancel the agreement for any reason. It appears Mr M was aware of this withdrawal period as he refers to it in his complaint referral to this service. On this basis, it’s reasonable to conclude that the loan wouldn’t have been drawn before the withdrawal period had expired.

Mr M says, “*to avoid paying all this interest [...], we raised the money by using our rainy day fund [...] and made payment on 23 November [2017] to pay off the loan*”. Mr M has told our investigator that he made two lump sum payments direct to A to do this. On the basis BPF have provided evidence that the loan was never taken up, it appears it was this money that was used to complete the purchase – not the loan money. It appears A didn’t call for the funds from BPF having received payment from Mr M direct. And because of that, it appears there wasn’t a valid debtor-creditor-supplier agreement as described in Section 12 of the CCA. Therefore, it also suggests the necessary arrangement doesn’t exist to enable a claim under S75.

### Summary

I want to reassure Mr M that I’ve carefully considered everything he’s said and provided. While it’s clear he applied for a loan from BPF and they, in turn, agreed to provide that loan, in the absence of any further evidence to support his assertion that the purchase was ultimately funded by BPF, I can’t reasonably say that it was.

Understandably, I think Mr M assumed the loan would still be drawn – despite him sending funds to A. However, unless A requested the funds from BPF, it’s unlikely the loan would’ve been set up. And while I think that’s what happened here, I can’t reasonably hold BPF responsible for that. So, while I do realise he’ll be very disappointed, I can’t say that BPF’s handling of his claim was unfair or unreasonable. Because of that, I don’t currently intend to ask them to do anything more.

### **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.

BPF have confirmed they have nothing further to add to my provisional findings. But Mr M didn’t agree. He made further comments which he believes supports his view that the loan with BPF was drawn. And as a consequence, he believes he has a valid claim under the CCA.

In particular Mr M said:

- “*I don’t know why the points that I considered salient have been dismissed...*”.

As I said in my provisional decision, I’ve considered all the available evidence and arguments. So, I would assure Mr M that I haven’t dismissed anything he’s said.

- “*our ownership started on 8 November 2017*”

I agree that the contract was completed and signed on that date. However, under Part 5 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the “TRs”), Mr M may withdraw from the purchase contract within 14 days of conclusion of that contract. And as I said in my provisional decision, A weren’t permitted to accept any payment during that period. So, I don’t think this argument helps Mr M’s case here.

- *“the purchase was funded by the loan agreement [...] evidenced by the [BPF] pre-contract information date 8 November 2017”. Mr M later added, “If the 14 day period [...] is relevant then surely this should have been stated in the loan contract”*

Although the purchase and loan agreements are related, they are still separate contracts. So, I wouldn’t expect the loan agreement to refer to any of the specific terms within the purchase agreement. However, under section 66A of the CCA, Mr M is afforded a period of 14 days in which he can withdraw from the loan agreement. Unfortunately, I’ve only seen the front page of the loan agreement here. However, similar agreements do normally include the consumer’s withdrawal rights within the associated terms and conditions.

While I acknowledge Mr M says he didn’t change his mind about the loan, he has said he wanted to avoid paying all the interest. And he made payments to A to achieve that. I believe the evidence shows the loan was never taken up and drawn. So, I don’t agree the purchase was funded by the loan agreement. Despite this being Mr M’s original intention.

- *“Because the loan had been approved and I received the timeshare [...] I owed the money to BPF”*

As I’ve already said in my provisional decision. There’s no evidence the loan was drawn. On balance, it appears likely A used the funds sent by Mr M on 23 November 2017 to complete the purchase, rather than requesting funds from BPF.

- *“it’s funny to me that [BPF] only acknowledged the loan when I provided the paperwork...”*

I don’t think it unreasonable that BPF weren’t able to find records for a loan that wasn’t drawn. It was only when Mr M provided copies of the documentation they were able to identify that the loan hadn’t been taken up.

- *Are you able to explain the role of [A] as a representative of BPF?”*

A acted in the capacity of credit intermediary when they introduced Mr M to BPF. BPF wouldn’t have known if Mr M had proceeded with the purchase after expiry of the cooling off period. So, I think A would’ve had to request funds from them before the loan could be drawn. I don’t think they did that here as it seems they received funds from Mr M before the loan was drawn. So, it seems reasonable A wouldn’t then request the loan funds from BPF just to repay them again.

Mr M has also provided reasons which suggest that BPF’s decision to provide the loan may have been irresponsible given his financial circumstances at the time. But because the evidence shows that the loan wasn’t drawn, even if I was to find that BPF’s decision was irresponsible – and I make no such finding – given the loan wasn’t drawn, I can’t see that Mr M suffered loss as a consequence.

### Summary

Again, I want to assure Mr M that I’ve considered everything he’s said and provided. Even if I haven’t specifically commented on or referenced it in the body of my decision.

On balance, I believe it’s more likely than not the loan wasn’t drawn. I say that because the evidence supports that conclusion. And I’ve not been provided with anything that shows the loan was drawn. Or that the funds Mr M sent to A on 23 November 2017 were used to repay a loan from BPF rather than to complete the purchase agreed. And because of that, I don’t think Mr M is an eligible claimant under the CCA.

I appreciate his disappointment, but I won't be asking BPF to do anything more here.

**My final decision**

For the reasons set out above, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 September 2023.

Dave Morgan  
**Ombudsman**