

The Complaint

Mrs C says that Clydesdale Financial Services Limited (trading as Barclays Partner Finance) ('BPF') didn't fairly or reasonably deal with claims she made under Sections 75 and 140A of the Consumer Credit Act 1974 (the 'CCA') in relation to the purchase of a timeshare using finance from BPF. She also says that the credit agreement she entered into with BPF was arranged by a broker that wasn't authorised to do so.

Background to the Complaint

Unhappy with the purchase in question, Mrs C – using a professional representative ('PR') – wrote to BPF in 2021 to complain. I haven't seen a copy of that letter. But it appears to have included claims under Section 75 of the CCA for misrepresentation and a breach of contract along with a claim under Section 140A for an unfair debtor-creditor relationship (the 'Letter of Claim').

On 18 May 2021, having treated some of the claims as complaints, BPF issued Mrs C with a final response ('FRL') rejecting them. PR disagreed with BPF's response and wrote back to it to explain why. And it was in and amongst the contents of PR's letter that a new complaint was made about how the credit agreement entered into by Mrs C was arranged.

On review of the complaint, BPF realised that it hadn't investigated and responded to Mrs C's Section 75 claim for breach of contract. So, it wrote to her in September 2021 to set out its position. Having also treated that claim as a complaint, BPF went on to reject it. But rather than explain to Mrs C what her options now were, BPF referred her back to its FRL if she wasn't happy with its answer to that particular claim.

As a result, PR referred a complaint to the Financial Ombudsman Service on 19 July 2022. It was then considered by an investigator who, having looked at the information available, thought that it had been referred too late under the Financial Ombudsman's six-month time limit.

PR disagreed. And as an informal resolution couldn't be reached, the complaint was referred for an ombudsman's decision – which is why it was passed to me.

I issued a Provisional Decision ('PD') on 21 June 2023 in which I concluded that Mrs C's complaint about her claims for misrepresentation and an unfair relationship under Sections 75 and 140A of the CCA were referred to the Financial Ombudsman Service too late under the six-month time limit.

I wasn't inclined to come to the same conclusion in relation to her complaint about her Section 75 claim for breach of contract or her complaint about the credit broker's authority. But as I wasn't persuaded by the merits of those complaints, I wasn't minded to uphold them anyway.

In response to my PD, neither side had anything new to add. So, I reconsidered this complaint, and this is the last of two decisions setting out my final thoughts.

I dealt with the Financial Ombudsman Service's jurisdiction over Mrs C's complaint about her claims for misrepresentation and an unfair relationship under Sections 75 and 140A of the CCA in a Decision on 23 August 2023. So, I'll now deal with Mrs C's complaint about the handling of her Section 75 claim for breach of contract and her complaint about the credit broker's authority.

My Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, I still don't think the relevant merits of this complaint should succeed.

Section 75: Breach of Contract

Mrs C's Complaint Form suggests that this claim was made because the timeshare provider went into liquidation in early 2020. But having looked at her purchase agreement (dated 29 October 2012), as I still understand it, the two resorts named on it (Beverley Hills Club and Hollywood Mirage Club) remained open and available to members. And as it's still the case that neither Mrs C nor PR have said and/or provided much in relation to this allegation to demonstrate what specific rights Mrs C lost as a result of the timeshare provider's liquidation, I'm not persuaded that there's been a breach of contract that BPF is likely to be jointly responsible for on this occasion.

Was Mrs C's Credit Agreement Enforceable?

In response to BPF's FRL, and on referral to the Financial Ombudsman Service, Mrs C suggested that the timeshare provider wasn't authorised to arrange the credit agreement she entered into. And it remains my view that, as this is a complaint against BPF, the upshot of that assertion must be to suggest that it wasn't permitted to enforce the credit agreement as a result.

However, as I said in my PD, having looked at the Financial Ombudsman Service's internal records, I can see that the business named on Mrs C's credit agreement as the credit intermediary did hold, at the relevant time, a Consumer Credit Licence issued by the Office of Fair Trading. And in the absence of evidence to suggest otherwise, I'm satisfied that the credit broker in question was likely to have been properly authorised to arrange the credit agreement Mrs C entered into as a result.

My Final Decision

For the reasons set out above, I don't uphold this complaint as far as the relevant merits of it are concerned.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 October 2023.

Morgan Rees
Ombudsman