

## The complaint

Mr L complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") responded unfairly to his claim for additional losses following their settlement of a mis sold timeshare claim.

## What happened

In or around 2008, Mr L purchased a timeshare product from a timeshare supplier. The purchase was funded with a loan that the supplier arranged through BPF.

Sometime after the sale was completed, Mr L had concerns that the timeshare product had been mis sold to him. So, he engaged a professional representative ("the PR") to assist and advise him. Later, in 2010, the PR was appointed to seek a refund from BPF for the timeshare product Mr L says was mis sold to him.

In July 2022, the PR wrote to Mr L advising they'd made a payment to his bank account of £10,742.19. The PR said they'd settled his claim with BPF on 21 April 2022 *"on terms which see you receive £10,872.19 (amounting to 60.74% of your principal loan amount) and payment of 60% of the legal fees you have incurred with us"*. The PR also confirmed they would *"write off the remaining 40% of our fees"*. Included with the PR's letter to Mrs L was an invoice representing *"Professional Charges for Legal Services"* of £8,823.71. The payment Mr L received was after deduction of those charges.

In November 2022, BPF wrote to Mr L confirming they'd completed a review in respect of his timeshare purchase and related loan. And as he'd already been refunded the payments made in relation to the loan, no refund was due to Mr L as a result of that review. However, BPF did invite Mr L to make a claim for any other losses incurred. BPF enclosed a questionnaire for Mr L to complete with any claim details.

Mr L completed and submitted the 'Additional Loss Questionnaire' to BPF with details of the legal fees charged by the PR totalling £8,823.71. In response, BPF offered a payment of £300 for distress and inconvenience. But in relation to the legal costs, they said *"As you could have raised a complaint with us directly we're declining this claim"*.

Unhappy with BPF's response to his claim, Mr L complained to BPF. He didn't think the amount offered was representative of the *"lengthy and protracted dispute instigated by [the PR] way back in 2010 [...]"*.

BPF didn't uphold Mr L's complaint. They believed *"the offer made [...] is fair and reasonable. [...]. [...] we still believe that you did not have to incur third party costs of £8,823.71, as a complaint could have been raised directly with us"*.

Unhappy with BPF's response, Mr L referred his complaint to this service. One of our investigators considered all the information and evidence provided. Having done so, they didn't think BPF's response to Mr L's complaint was unfair or unreasonable. So, didn't think BPF needed to do anything more.

Mr L disagreed with our investigator's findings. He said he'd suffered financially having been told by the supplier that his timeshare *"shares"* could be resold the following year. He explained that he became aware in 2012/2013 that the PR were setting up a service with a Contingency Fee Arrangement to reach an agreement with BPF. And having reached an agreement, he lost £8,800 – representing the PR's legal fees. Mr L pointed out that it'd taken

the PR over 10 years to obtain an outcome, so questioned any suggestion it wasn't necessary to obtain the services of a third party to achieve that. He thought that in addition to the loan reimbursement, he should receive damages and costs.

As an agreement couldn't be reached, Mr L asked that an ombudsman make a final decision. So, his complaint has been passed to me to consider further.

### **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.

#### Relevant considerations

When considering what's fair and reasonable, DISP<sup>1</sup> 3.6.4R of the FCA<sup>2</sup> Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

It's relevant to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. While the decision of an ombudsman can be legally binding - if accepted by the consumer - we do not provide a legal service. And this service isn't able to make legal findings. Where a consumer doesn't accept the findings of an ombudsman, it doesn't prejudice their right to pursue their claim in other ways.

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.

#### The claim against BPF

Mr L's original claim stems from his dissatisfaction with a timeshare product he purchased in 2008. In particular, Mr L alleges he purchased the product with a verbal assurance (from the supplier) that it could be resold the following year. It appears he subsequently engaged the services of the PR to recover his outlay for the timeshare product.

From the evidence available, it appears the PR agreed to represent Mr L in bringing a claim (jointly with a significant number of other consumers) against BPF. I've not seen any of the details of that claim. But it's possible it may have been submitted under section 75 of the Consumer Credit Act 1974 ("the CCA").

Section 75 of the CCA ("S75") provides protection for consumers for goods or services bought using credit. Mr L says he paid for the timeshare product with a loan arranged by the supplier with BPF. So, it isn't in dispute that S75 applies here – subject to any restrictions and limitations. So, where the requirements of the CCA are met, it means Mr L is afforded the protection offered to borrowers like him under those provisions.

Section 56 of the CCA ("S56") is also relevant. This is because it says that any negotiations between Mr L and the supplier are deemed to have been conducted by the supplier as an agent of BPF.

While a consumer may choose to utilise the services of a professional representative or specialist claims management company in bringing a claim, this isn't a requirement of S75.

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<sup>1</sup> Dispute Resolution: The Complaints sourcebook (DISP)

<sup>2</sup> Financial Conduct Authority

Such a claim can be made to the lender directly by any consumer that is party to both the purchase and credit agreements – subject to any restrictions that may apply.

This service hasn't been asked to consider the outcome of a claim made under S75 – assuming that was what was submitted. Rather, Mr L's complaint relates to his subsequent claim to BPF to cover legal cost he incurred in reaching a settlement. I haven't seen a detailed breakdown of those costs, so it isn't clear what specific professional services they actually relate to. And it isn't possible to establish whether the costs incurred were reasonably incurred in achieving the settlement received. So, I can't say with any certainty that the costs incurred specifically related to either a S75 claim or in achieving any other settlement.

#### BPF's response to Mr L's additional costs claim

BPF told Mr L that he didn't need to engage a third party in order to submit a complaint to them for the alleged mis sale of the timeshare product. For the reasons explained above, I agree with BPF on this point. Mr L was always able to submit any complaint or a claim under S75 to BPF himself.

But Mr L chose to engage the PR to represent him. The evidence shows that the services provided by the PR were on a contingent fee basis. In other words, payment of their legal costs and charges were only payable in the event they were successful in negotiating a settlement for Mr L.

I'm aware the Court<sup>3</sup> requested the FCA investigate the brokering of loans by the timeshare supplier with BPF. In particular as loans may have been brokered without the required regulatory authority and the required checks may not have been completed before agreeing to lend. Having done so, the FCA required that BPF review the information they used when making their decision to lend in these particular circumstances. However, BPF decided that in all cases, they would provide any consumer impacted with a full refund of loan repayments they'd made together with interest.

BPF's settlement process was a voluntary commercial decision they made in order to satisfy the FCA's requirements following the Court's decision above. And I think Mr L's settlement was agreed and provided as part of that exercise, rather than as a consequence of any successful S75 claim for misrepresentation or breach of contract. So, in agreeing the settlement, I don't believe BPF accepted any liability under S75. Rather, it was in response to the Court's decision and the subsequent FCA requirements.

BPF offered to consider a claim from Mr L for additional losses incurred. I think this was a reasonable approach to take in these circumstances. So, the question I've considered is whether the costs incurred by Mr L were done so reasonably and unavoidably in order to achieve the settlement outcome he received.

From the information available, I'm not persuaded Mr L's legal charges and costs can be directly attributed to the settlement provided by BPF. I say that because I think it more likely than not he'd have received that settlement from BPF anyway as a consumer impacted by the Court's decision. And because of that, I don't think it would be fair or reasonable to ask Barclays to reimburse those costs to Mr L.

#### Summary

I appreciate that my findings will not meet with Mr L's expectations here, which will undoubtedly cause great disappointment. I want to reassure him that I've carefully considered everything he's said together with the all the information and evidence available. Having done so, and for the reasons above, I won't be asking BPF to do anything more.

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<sup>3</sup> *Plaxedes Chickombe and 44 others v Financial Conduct Authority and Clydesdale Financial Services Ltd* [2018] UKUT 0258 (TCC)

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 April 2024.

Dave Morgan  
**Ombudsman**