

The complaint

Mrs D complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance (“BPF”) failed to deal properly with her claim under the Consumer Credit Act 1974 regarding a timeshare purchase.

What happened

In 2012 Mrs D along with her husband purchased a timeshare product from a company I will call S. It cost £30,000 and was funded by a loan from BPF. The loan was in Mrs D’s name and I will refer to her as the purchaser to keep things simple. In May 2019 S went into liquidation. The loan was repaid in May 2021. Mrs D contacted BPF and the matter was brought to this service. Mrs D was subsequently represented by a claims management company and later by a firm of solicitors.

It would appear that the original complaint was concerning a breach of contract due to the liquidation of S. However, subsequently the solicitors raised questions about a breach of the Financial Services and Markets Act 2000 by S.

BPF sought documentary evidence in support of the claim and in due course our investigator concluded that sufficient evidence had been provided. BPF then agreed and made an offer to settle the matter. It offered a total of £25,193.46. This was calculated on the basis that the 37 year membership had been ended after 6 years and five months. And so it agreed to refund 30 years and 7 months of the loan of £30,000 plus interest at 8% simple on payments made since the date of liquidation.

The solicitor suggested that the interest charged also be included which would increase the sum due by some £14,500. BPF didn’t agree and our investigator explained that the offer had been assessed on the basis of redressing a breach (rather than rescission) of a contract - which is the fundamental distinction to note here. This means the interest accrues from when the contract was breached (i.e. the point of liquidation), rather than when the membership began.

The solicitor asked that the matter be considered by an ombudsman and said Mrs D was entitled to proportionate compensation for the loss of use of the capital paid which would cover the interest paid as well.

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.

It is agreed by all parties that Mrs D is entitled to a refund in respect of the period when she was no longer able to use the accommodation offered in the agreement. This arises from s.75 CCA.

S. 75 of the CCA says:

“If the debtor under a debtor-creditor-supplier agreement falling within s.12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

This means that, in certain circumstances, if Mrs D paid for goods or services using certain types of credit (even in part), and there was a breach of contract or misrepresentation by the supplier of those goods or services, the creditor can also be held responsible.

The contract we have to consider is that with S for which Mrs D paid £30,000. It is not the finance agreement. That means that Mrs D is entitled to a refund of that proportion of the cost of the contract covering the period after S went into liquidation and was unable to offer the facilities promised in the agreement. This is what BPF has agreed to cover in its responsibilities under s. 75.

The interest paid by Mrs D to BPF is not part of the disputed contract with S. Mrs D has, under s.75, a like claim against BPF as she would against S and so the interest paid to BPF does not form part of the redress.

This service does award interest to cover loss of use of money and this would cover the period after S went into liquidation. In essence the contract is deemed to have ended at that point and so a refund was due for the remaining 30 years and 7 months. So in effect this sum is being returned by dint of the redress with interest on the refund of expired unused years from the date of breach until the date of settlement at 8% simple is payable as BPF has acknowledged.

In short I consider BPF's offer to be fair and reasonable.

Putting things right

BF should refund that part of the cost of the timeshare relating to the period after liquidation of S.

My final decision

My final decision is that I uphold this complaint and I direct Clydesdale Financial Services Limited trading as Barclays Partner Finance to refund 30 years and 7 months' worth of the contract price as set out in its calculations. It should also pay annual simple interest at 8% on the refund of expired unused years from the date of breach until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 22 May 2023.

If BPF considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs D how much it's taken off. It should also give Mrs D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Ivor Graham
Ombudsman