

## The complaint

Mrs D has complained that Clydesdale Financial Services Limited, trading as Barclays Partner Finance (“BPF”) unfairly turned down her complaint about a timeshare she bought using a loan from BPF.

## What happened

In June 2007, Mr and Mrs D bought timeshare membership from a timeshare provider (“the Supplier”). Under this, they were able to stay for a week in two different apartments every year, so two weeks in total, at a resort called “HMC”. The membership cost £9,000 and was paid for by Mrs D taking a loan with BPF.

In October 2007, Mr and Mrs D bought a further timeshare membership from the Supplier. Under this, they were able to stay for a week in four different apartments every year, so four weeks in total. The apartments were in three different resorts, one in a resort called “BHH”, one in a resort called “CP” and two in a resort called “HMC”. The membership cost £25,000 and was paid for in part by Mrs D borrowing more from BPF under the same account that was used to fund the June 2007 purchase.<sup>1</sup>

In 2019, Mrs D complained to BPF using the help of a professional representative (“PR”) about the loan and memberships. PR said that the memberships were presented to Mrs D as an investment that could be resold later at a profit. But, when they tried to sell them, they didn’t sell as expected. PR alleged that this was a misrepresentation that BPF were responsible for under s.75 CCA. PR also said BPF was a party to an unfair debtor-creditor relationship, as set out in s.140A CCA, due to the way the memberships were sold.

In 2020, Mrs D contacted BPF as she found out that the Supplier had gone into liquidation that year. She said that as BPF had lent her the money to buy the memberships, it was jointly liable to compensate her for what went wrong.

In May 2022, BPF upheld Mrs D’s claim in part and made an offer to settle it. It said that any claim for misrepresentation made under s.75 CCA or arising out an unfair debtor-creditor relationship under s.140A CCA had been made too late in respect of both purchases. But BPF said there was a breach of contract claim that it was jointly liable for. It said that the Supplier had become insolvent and one of the resorts (CP) had closed. So it offered a refund of £2,579.02 for that part of the claim. BPF said that the other resorts (BHH and HMC) were still operating, so it didn’t accept there was a breach of contract in relation to those aspects of the memberships.

Mrs D wasn’t happy with the amount that BPF had offered, so she referred a complaint to our service – she did so without the assistance of PR. She said that the total level of loss was significantly more than what was offered and asked for the full contract value to be returned.

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<sup>1</sup> I’m aware that Mr and Mrs D made other purchases from the Supplier and used BPF loans to pay for them. Some of those purchases have also been complained about, but in this decision I’m only looking at the advances from BPF taken in July and November 2007 in Mrs D’s name. That means I’ll refer to her throughout this decision.

One of our investigators considered everything and thought that due to the time that had passed since the purchase and from when the loan had been paid off, the only thing that BPF needed to consider was whether it was jointly liable for a breach of contract. And he thought its offer for that claim was fair. But Mrs D disagreed and asked for complaint to be reconsidered by an ombudsman.

I considered everything and, although I agreed with the overall conclusion our investigator reached, I didn't think the compensation BPF offered was fair. So I set out my thoughts in a provisional decision and invited both parties to respond with anything further they wanted me to consider.

Neither party has asked me to reconsider my finding that Mrs D had made her complaint too late to BPF that it was responsible for the Supplier's misrepresentations at the time of sale or that it was a party to an unfair debtor-creditor relationship. And BPF accepts that it was liable for the Supplier's breach of contract, so I need not comment on those issues further. It follows, that the only thing I need to consider following my provisional decision is the amount of BPF's offer.

In that decision, I noted that the Supplier became insolvent in 2019 and Mrs D raised a claim about this to BPF in 2020. She said she'd lost out as a result as she couldn't use the membership in the way she'd been able to before the Supplier's insolvency, which was a breach of contract.

I didn't think it was in dispute that Mrs D lost the ability to stay at the apartment that her CP membership entitled her to. Our investigator said that any entitlement to stay at apartments at BHH and HMC hadn't been lost by the Supplier's insolvency and I'd not seen any evidence to contradict that, nor had Mrs D disagreed with that part of the investigator's view. So I thought Mrs D only lost the chance to stay at CP apartments (as well as exchanging that entitlement to stay at other resorts elsewhere). And it was for that loss that BPF offered to pay compensation.

I looked at the purchase agreements from October 2007 and it listed four properties of which Mr and Mrs D were buying usage.<sup>2</sup> At BHH there was a two bedroom apartment sleeping six, the two HMC apartments are described as a one bed and two bed 'DLX' that slept four and six people respectively and the CP apartment is a 'city' apartment that slept two. The total price for these rights was £25,000 and there wasn't any breakdown of that, attributing part of the price to each of the apartments. For Mr and Mrs D to use their accommodation rights, they also had to pay a certain amount every year as a maintenance fee.

BPF made an offer to Mrs D to pay compensation for the loss of her CP rights. BPF attributed one quarter of the amount borrowed to the CP accommodation, it being one of the four weeks bought. It then worked out an annual cost of the membership, based on dividing up the total cost over the time the agreement was set to run, from when Mrs D took it out to when the membership ended in December 2049. And then BPF offered to pay to Mrs D the amount for the 'unused' period from the date of the Supplier's liquidation in June 2019, as well as adding 8% per annum simple interest on that amount from the date of liquidation. Having considered everything, I didn't think that was a fair way to work out compensation.

BPF started with the total amount borrowed by Mrs D in October 2007, £16,000, and divided that by four to give an indicative cost of the CP part of the membership, i.e. £4,000. But the contract price of the membership was £25,000, so I didn't think £4,000 was the right figure. Instead, I thought BPF should use a starting figure of £6,250 as the cost of the CP part of the

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<sup>2</sup> The June 2007 agreement doesn't provide for any accommodation rights at CP, so there was no breach of that agreement.

membership, that being a quarter of the contract price. I thought that was fair for the following reasons:

- For a breach of contract claim, the amount paid is designed to compensate someone for the losses they've suffered due to that breach. Here, Mrs D was unable to use accommodation in CP, and I thought a better estimate of the upfront cost of that was £6,250 and not £4,000.
- BPF agreed with the Supplier to lend money to the proposed customers to purchase the Supplier's memberships, so BPF and the Supplier were effectively working together in enabling memberships to be sold. Therefore I took it that BPF effectively agreed to lend to Mrs D based on the contract price of £25,000 and, in turn, BPF must accept that as the value of the membership rather than just the amount borrowed to pay for it.
- The contract price is important when determining the effect of s.75 CCA. It only applies to items "to which the supplier has attached a cash price" (s.75(3)) between £100 and £30,000. Had the total cost of the membership for all four weeks exceeded £30,000, BPF would not be liable under s.75 CCA even if had lent less than £30,000 – it is the value on the contract determined by the Supplier that is important, not the amount lent by BPF.

I thought the remainder of BPF's method of calculating compensation was fair. However, I noted that Mrs D disagreed, but I'll explained why I didn't accept her position on that.

Mrs D said that the CP part of the membership was actually worth more. She explained that the CP resort was in luxury apartments and she provided photographs showing the accommodation. She also explained that it could be used any week of the year and also provided accommodation worldwide. Finally, Mrs D said that in reality, the CP part of the membership was the only part of value purchased and the other three were effectively free or of little value.

I thought about that and considered the evidence provided. I agreed that the pictures of the CP accommodation do look 'luxurious' and the accommodation appears to be of a good quality. But I didn't think it would be fair to tell BPF to do anything differently. That was because in the actual purchase agreement, the different weeks hadn't been given different purchase prices. Further, although the CP accommodation might have been of a higher standard, it was also the smallest of the apartments listed in the agreement. So, for example, the BHH apartment slept three times the number of people as the CP apartment and, without knowing more, it was difficult to say the CP apartment was worth more or less than the BHH one. Finally, I was aware that Mr and Mrs D placed the CP membership for sale in 2017 for more than they paid for it. But I'd not seen any evidence that anyone ever expressed an interest or desire to buy it for that amount, so I couldn't say CP part of the membership was 'worth' the amount for which it was marketed for sale.

For the reasons I explained, I thought BPF needed to work out compensation in the way I set out above. I thought that method was both pragmatic and fair in all the circumstances. I asked BPF, in response to my provisional decision, to provide an updated calculation showing what compensation looked like on the basis I set out and with 8% simple interest running to the date of the calculation.

Mrs D responded to say she accepted what I'd said in my provisional decision.

BPF responded to say it didn't agree with what I'd said. It said its offer wasn't based on the amount borrowed, rather it was based on Mrs D's contribution to the purchase price. It said that the £25,000 purchase was funded by a £1,000 debit card payment, a £4,000 bank transfer and finance for £20,000. BPF said that the finance was split so Mrs D borrowed

£16,000 and Mr D borrowed £4,000. As it had no evidence that Mrs D was the sole provider of the funds from the debit card or bank transfer, it wouldn't include anything from that part of the payment.

### **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.

In this case, the only issue I need to consider is the amount that BPF needs to pay Mrs D.

When BPF assessed the extent of its liability for the Supplier's breach of contract, it needed to think about what Mrs D lost out on as a result of the breach. Here, she lost the right to stay at the CP apartment. That right was something shared with her husband. But any liability BPF had was for the whole of the loss and not for the proportion of the purchase price that was funded by the borrowing in question.

It's right to say that the Supplier might have an identical liability to Mr D, as he was named on the timeshare agreement. And BPF has confirmed that it lent Mr D £4,000 toward the cost of the membership, so it might have a liability to Mr D too.<sup>3</sup> But I can't see that the Supplier has paid anything to Mr and Mrs D or that BPF has paid anything to Mr D. So the entirety of the loss is still outstanding.

Here, Mrs D is entitled to seek the full amount of her loss from BPF and, as I can't see that any of that loss has been recovered elsewhere, I think BPF needs to pay that full amount. So I do not see any reason to depart from my provisional conclusions.

### **Putting things right**

I direct BPF to pay Mrs D £6,250, plus 8% per annum simple interest from the date of the Supplier's liquidation to the date Mrs D is paid.

### **My final decision**

I uphold Mrs D's complaint against Clydesdale Financial Services Limited, trading as Barclays Partner Finance and direct it pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 5 March 2024.

Mark Hutchings  
**Ombudsman**

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<sup>3</sup> I understand Mr D has made a claim, but BPF has said it didn't pay him anything in relation to it.