

## **The complaint**

Ms X complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') is liable to pay her compensation following a complaint made about a timeshare bought using credit provided by BPF.

The credit agreement to which this complaint concerns is in Ms X's sole name, so she is the only eligible complainant here. However, the timeshare in question was purchased in both Ms X and Mr K's names, so I will refer to both of them wherever it is appropriate in this decision.

## **What happened**

Ms X and Mr K purchased membership of an asset-backed timeshare called the Fractional Property Owners Club ('FPOC') from a timeshare provider ('the Supplier') on 6 October 2014 (the 'Time of Sale'). They bought 1500 Fractional Points at a cost of £18,968.

Ms X and Mr K paid for their FPOC Membership by taking finance from BPF in Ms X's name. She entered into a 10-year restricted use Fixed Sum Credit Agreement (the 'Credit Agreement') for £18,968 with the total amount repayable after interest being £39,752.40.

The purchase agreement (the 'FPOC Purchase Agreement') dated 6 October 2014, was made between one of the timeshare provider's sales companies and Ms X and Mr K. The sales company, who had the right to promote and sell Fractional Rights in the FPOC, was the Supplier for the purposes of the CCA. Under the FPOC Purchase Agreement, Ms X and Mr K agreed to be bound by the club Rules and Project Regulations.

Under the terms of the FPOC membership, Ms X and Mr K could exchange their Fractional Points for holidays. And at the end of their projected membership term, they also had a share in the net sales proceeds of a property tied to their membership (the 'Allocated Property'). As their interest in the Allocated Property was limited to a share in its net proceeds, they didn't have any preferential rights to stay in the Allocated Property or use it in any other way.

On 28 November 2016, Ms X and Mr K, who were at the time represented by a professional third-party ('JG'), sent a letter of complaint to the Supplier. Their complaints were, in essence:

- They had been pressurised into purchasing the FPOC membership which was unfair, by being in effect locked away during the presentation, away from other people.
- The Supplier misrepresented the holiday product, and specifically used actors who pretended to be FPOC members to persuade Ms X and Mr K to join.
- They have been unable to find the holidays they want due to a lack of availability.
- They are unable to sell the FPOC membership.
- The sales agreement has no validity under Spanish Law so is null and void and should be cancelled.

A copy of this letter was also sent to BPF who treated it as a complaint.

The Supplier replied to this letter on 13 January 2017, refuting that there had been any breach of contract or misrepresentation. It said the presentation had been given in the presence of other clients and members who were attending similar presentations; full disclosure had been given to Ms X and Mr K regarding the FPOC membership, and they had been fully protected with rescission rights; and Spanish Law did not apply as the contract clearly stated English Law. In summary, the supplier said that Ms X and Mr K were able to make an informed decision regarding the FPOC membership's suitability, and it is able to provide, as presented, the product and services purchased by Ms X and Mr K.

The Supplier wrote further, on 13 February 2017, in response to a reply from JG. The supplier maintained its position that Ms X and Mr K's contract was valid, and made the following points:

- Ms X and Mr K had only made one reservation request, in July 2016, and this had subsequently been cancelled at Ms X and Mr K's request.
- The sales representatives generally saw at least 50 families a day, and had neither the time nor the necessity to employ actors to pose as other members, and did not do so.
- The FPOC sales contract is subject to English Law.

BPF, having treated Ms X and Mr K's letter to the Supplier as a complaint that BPF would deal with, then didn't send a substantive response to the correct addresses of either Ms X and Mr K, or JG. So there was a delay in Ms X and Mr K understanding what BPF's response was. As a result they referred their complaint to our Service on 13 September 2017.

Our Investigator, having considered all of the evidence provided, didn't think Ms X's complaint should be upheld. She thought that the complaints being made best fit with a complaint about BPF's responsibilities under the Consumer Credit Act 1974 ("CCA"). The investigator didn't think she had seen enough evidence to suggest that anything had happened during the sales process which meant the credit relationship between Ms X and BPF was unfair to Ms X. The Investigator also thought she hadn't seen enough evidence to persuade her that there were any actionable misrepresentations at the Time of Sale.

Ms X did not agree. She said, in summary:

- The FPOC membership was sold as a contract which was to provide them with regular holidays that they were never able to use. The holidays were never available despite them spending many hours on the phone speaking to the Supplier. They had been cheated into paying for something that was not there – neither the property nor the holidays.
- The FPOC membership was paid for using a very unfair expensive loan, in a very stressful environment where they were under a lot of pressure.

As no agreement could be reached the complaint has come to me for a decision.

### **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.

Ms X, and on occasion Mr K on her behalf, have made a number of detailed points and provided a lot of evidence, and I have looked at it all. We're an informal dispute resolution service, set up as a free alternative to the courts. In deciding this complaint I've focussed on what I consider to be the heart of the matter, rather than commenting on every issue in turn. This isn't intended as a discourtesy to Ms X. Rather it reflects the informal nature of our service, its remit and my role in it.

And where there is conflicting information available, or indeed a lack of definitive evidence because of the passage of time, I need to decide what I think is most likely to have happened on the balance of probabilities.

#### Is the FPOC contract a breach of Spanish Law and therefore void

In its correspondence to both the Supplier and BPF, JG stated that the contract was in breach of Spanish Law, because Ms X and Mr K had purchased points rather than a specific week or apartment. And in the complaint form submitted to our Service the contract has been described as both "*illegal*" and "*unlawful*".

If I thought the timeshare agreement was voidable, I think it is likely that the related loan is also voidable on the rescission of the agreement it was used to fund. So I have gone on to consider this point first.

I note that it has not been expressly stated which part of Spanish Law has been breached, but I don't think Spanish Law is applicable in these circumstances anyway. I think this because the FPOC Purchase Agreement states that it is governed by English Law, not Spanish Law, so I do not think that any Spanish judgement could be applied directly to the question as to whether the contract is voidable under English Law.

#### Ms X's Complaint about the Supplier's Misrepresentations and Breach of Contract

Ms X says that there were misrepresentations made by the Supplier during the sales process, and a breach of their contract. This is something that BPF could be jointly liable to answer under the operation of Section 75 CCA, so I've considered that provision. I'll deal with each alleged misrepresentation in turn:

1. The Supplier had used actors who had pretended to be FPOC members to persuade Ms X and Mr K to join.

Ms X has not provided any evidence to support this part of her complaint and it is denied by the Supplier. I also think such a scheme would be costly to the Supplier and it's not clear to me what the benefit of hiring actors would be, so I think it is inherently unlikely. So based on the available evidence, on balance, I am unable to say this is something that happened. So I am not persuaded that there was an actionable misrepresentation by the Supplier in this regard.

2. They had been unable to find the holidays they had been led to believe they could take.

I cannot know for certain what Ms X and Mr K were told in relation to the availability of holidays during the sales process, and Ms X has not provided any information to support this complaint point, and neither she nor Mr K have provided their actual recollections of what they were told at the Time of Sale.

However, I have seen a copy of the FPOC Information Statement which was given to Ms X and Mr K as part of the sales process, and I find this useful as a guide for me to understand the type of things Ms X and Mr K might have been told. And in one section it says "*All*

*bookings are subject to availability and are handled on a first-come first-served basis.” And further “Space is subject to availability and seasonal demand.”*

So I think it is likely that Ms X and Mr K were told that holidays were subject to availability. I have not seen enough evidence to say, on balance, that any alleged false statements of existing fact were made to Ms X and Mr K by the Supplier in this regard.

But being unable to take the holidays they were entitled to take could be a breach of the contract, and again under Section 75 CCA BPF could be jointly liable for any breaches of the contract by the Supplier. But other than saying they were unable to book any holidays, Ms X or Mr K have not provided any substance to this complaint. They have not said anything about what they wanted to book, when they tried and what was available. And the Supplier has said they have only booked one holiday and had cancelled that themselves prior to taking it, and hadn't tried to book anything else. So on the evidence provided, I'm not persuaded that there has been a breach of contract in this regard.

### 3. They are unable to sell the FPOC membership.

Ms X has said they understood that they would be able to sell their FPOC membership, but she has not expanded on this at all, and has not provided any further recollections of what they were told by the Supplier in this regard. And I can't see that they have actually tried to sell it anyway.

As I've said above, I am unable to say with any degree of certainty what Ms X and Mr K were told, but the purchase agreement Terms and Conditions document assists me somewhat to understand the type of things they might have been told:

Section G. Duration of Ownership states: *“...shall continue until the Sale Date when the Allocated Property is sold or when he sells or transfers his Fractional Rights or ceases to be an owner, whichever happens sooner.”*

And further, under the heading 4. Resale, Rental and Re-purchase:

*“There is no resale, rental or re-purchase of Fractional Rights in place operated by the Vendor or the Management Company, although Owners are entitled to sell their Fractionals on the open market if they wish to do so.”*

So this shows that, under the contract, it is possible to sell or transfer the ownership prior to the end of the contract. As I've said, Ms X has not told our Service what she was told about their ability to sell their FPOC membership, so I don't know what misrepresentation(s) she is saying were made here. So I have not seen enough evidence to say, on balance, that any alleged false statements of existing fact were made by the Supplier in this regard. I also cannot see that there has been any breach of contract that BPF is jointly responsible for.

So having considered everything, and without a more detailed description of the conversation(s) surrounding the alleged misrepresentations, or any supporting evidence, Ms X's claim of misrepresentation doesn't have sufficient weight to succeed.

### Ms X's Complaint about her Credit Relationship with BPF being Unfair to Her

I've already explained why I'm not currently persuaded that the contract entered into by Ms X and Mr K was misrepresented by the Supplier. But there is another aspect of the sales process in question that, being the subject of Ms X's dissatisfaction, I need to explore in more detail. This was that Ms X and Mr K were put under undue pressure to make the purchase. If I thought there was a high level of pressure that caused Ms X and Mr K to buy

something they otherwise would not have, it is possible such pressure could have led to an unfair debtor-creditor relationship.

In the complaint form that was submitted to our Service, it has been said that there was undue pressure placed on both Ms X and Mr K to make the purchase and to finance it with a loan from BPF, and that they were effectively locked away from other people for the whole day. Mr K has said that pressure was exerted on Ms X to take the credit arrangement with BPF on the basis that it had a reduced interest rate and she would not find a better deal elsewhere. But having seen a copy of the Credit Agreement I think the interest attached to the loan is made clear, and so Ms X ought to have been aware of this. And she was given a 14-day 'cooling off' period in which she would have been able to review both the Purchase Agreement and Credit Agreement at her own leisure, and if she had wished to she could have compared the interest rate against those available to her. Further, although I accept that the sales process may not have been relaxing, there is nothing I've seen that makes me think, on balance, Ms X and Mr K were effectively locked away from others or not able to leave the sales environment.

So I am not persuaded, on balance, that Ms X and Mr K were unduly pressured into agreeing to purchase the FPOC membership, nor that Ms X was unduly pressured into taking the credit agreement with BPF.

### **Conclusion**

In conclusion, when taking everything into account, I'm not persuaded that there was an actionable misrepresentation by the Supplier when it sold to Ms X and Mr K Fractional Rights in the Allocated Property on 6 October 2014. So this means I do not think that BPF acted unfairly or unreasonably in not accepting Ms X's claim under Section 75 CCA. I am also not persuaded that BPF was party to a credit relationship with Ms X that was unfair to her.

### **My final decision**

I do not uphold this complaint made by Ms X against Clydesdale Financial Services Limited trading as Barclays Partner Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms X to accept or reject my decision before 13 May 2024.

Chris Riggs  
**Ombudsman**