

The complaint

Mrs S complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') acted unfairly and unreasonably by making deductions from redress offers it made to her in relation to finance it had provided to purchase three timeshare products.

What happened

Mrs S purchased timeshare products from a timeshare provider on three occasions during the 2000s. Mrs S paid for each of the timeshare product purchases by taking finance from BPF in her sole name (the 'Credit Agreements').

In August 2020, Mrs S says she complained to BPF about her timeshare product purchases and the associated Credit Agreements. However, the specific details of that complaint haven't been provided and it's unclear whether BPF provided its response to it.

In August 2023, BPF wrote to Mrs S offering to review her time share purchases and the related finance under the Credit Agreements. Mrs S completed and submitted to BPF the Review Request Forms it had provided, which she dated 16 Augusts 2023. On each form, Mrs S said that she'd bought the timeshares *"as a financial investment to sell at a profit"*.

In January 2024, BPF wrote to Mrs S confirming it had completed its review and as a consequence, would refund to her an amount representing all payments she'd made, including fees and deposits less any rental/sale income received, holiday benefit or refunds previously made plus compensatory interest (after deductions for income tax). The available information provided suggests that BPF paid amounts of £44,454.64, £47,992.61 and £45,618.08 to Mrs S on or around 28 June 2024.

Around the same time as the refunds were provided, Mrs S contacted the Financial Ombudsman Service specifically to complain about the deductions BPF had proposed within the refund amounts offered. She wanted BPF to refund the holiday benefit deductions, together with associated interest, on the basis that she'd already paid maintenance charges covering the holidays she'd taken using the timeshare products.

At this stage, it appears Mrs S hadn't formally complained to BPF about those deductions. So, on 20 August 2024, she submitted a complaint asking BPF to refund the deductions and associated interest. However, having considered Mrs S's complaint, BPF rejected it on every ground.

Unhappy with BPF's response, Mrs S asked this service to look into matters for her. Having considered all the information and evidence available, one of this service's investigators didn't think Mrs S's complaint should be upheld. In particular, our investigator thought that BPF's offer was fair and reasonable and was in line with what this service would expect to see in the circumstances.

Mrs S didn't agree with the investigator's findings and asked for an ombudsman to look into her complaint, which is why it has been passed to me. In support, Mrs S said, *"I do not believe that monies should have been deducted from the refund. I paid for accommodation only via the annual Management fees"*. Mrs S later added, *"When using the accommodation we had to pay for everything – NOTHING WAS PROVIDED & therefore, in our opinion the deductions are unnecessary"*.

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.

Having done that, I will not be upholding Mrs S's complaint and will explain my reasons for that below.

When first referring her complaint to this service, Mrs S said that she'd complained to BPF in August 2020. I haven't been provided with the specific details of that complaint, so it's unclear what Mrs S's specific concerns and complaint points were. It also hasn't been confirmed whether BPF specifically responded to that complaint with its findings. However, it does appear, and Mrs S confirms, BPF contacted her in August 2023 offering to review the circumstances of her timeshare purchases together with the finance it had provided under the Credit Agreements. And in order to do so, Mrs S needed to agree to that review taking place and complete and return the Review Request Form provided by BPF. Mrs S did that on 16 August 2023.

Whilst I'm aware that BPF proactively undertook reviews of the sale of certain timeshare products where it had provided funding under regulated credit agreements, it's unclear whether the review of Mrs S's timeshare purchases here formed part of that remediation exercise or whether it was prompted by the complaint Mrs S says she made in August 2020. And if it did fall under a remediation exercise, what it was that prompted BPF to include Mrs S's purchases.

BPF have confirmed they did receive Mrs S's complaint in August 2020. So this raises two scenarios in my mind.

- Firstly, that BPF initially investigated but did not uphold Mrs S's complaint in 2020 and issued a final response confirming that. If that was the case, the subsequent review of Mrs S's timeshare purchase in 2023 may constitute the reopening of that complaint resulting in an outcome that differs from BPF's original findings, so supersedes any previous final response. And as Mrs S is unhappy with BPF's latest redress offer, she has the right to refer that outcome to this service – subject to the time limits that apply.
- Secondly, that BPF did not investigate and respond to Mrs S's complaint in 2020 and the review of her timeshare product purchase was, in fact part of a proactive remediation exercise by BPF. The absence of a formal response to Mrs S's complaint in 2020 may also give her the right to refer her complaint to this service.

The Financial Ombudsman's Jurisdiction

DISP¹ 2.3.1R says that this service can consider a complaint under its Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the regulated or other covered activities, or any ancillary activities carried out by the firm in connection with them. So, this means that this service is only able to consider the merits of a complaint submitted by Mrs S to BPF in relation to any one of the regulated activities included in that particular section of DISP. That would include BPF's handling of any complaint or claim relating to any allegation of mis-sale of the timeshare product (from April 2007 onwards) together with the associated Credit Agreement – as long as that complaint was referred to this service within the timescales permitted within DISP.

So, I've thought about whether this service has jurisdiction to consider Mrs S's complaint about the redress amounts offered and paid by BPF, if they were made under a voluntary remediation exercise rather than being in response to a formal complaint or claim. A

¹ Dispute Resolution: Complaints Sourcebook ('DISP') – part of the Financial Conduct Authority's ('FCA') Handbook.

voluntary redress exercise isn't a regulated activity for the purposes of DISP 2.3.1 as it doesn't satisfy the definition of a regulated service or product. So, any offer made by BPF under that exercise would have been made as a gesture of goodwill, not as part of any formal complaint or claim outcome. This means that Mrs S's complaint would fall outside of this service's jurisdiction to consider because it doesn't relate to a regulated activity.

However, whilst I've not seen any evidence of the complaint Mrs S says she made to BPF in 2020, BPF have confirmed that a complaint was received at that time. So, as I've explained in the two scenarios above, if that's the case – and in the absence of a clear explanation from BPF of the rationale prompting its remediation exercise – I believe Mrs S's complaint does fall within this service's jurisdiction as it relates to the complaint she says she submitted to BPF in 2020.

However, it's also relevant to point out that the Financial Ombudsman's Consumer Credit Jurisdiction only came into force on 6 April 2007. So, this service isn't able to consider complaints in respect of acts and/or omissions that happened before that date. The documents from the time of each sale haven't been provided. However, statements relating to Mrs S's loans do show that at least one of the purchases was completed before that date. With that being the case, it's possible that this service does not have jurisdiction to consider that particular purchase and the associated Credit Agreement. However, given my findings below, I don't think that ultimately makes a difference to the outcome of this complaint.

Mrs S's complaint

This complaint specifically relates to the redress offered and paid by BPF. So, on the face of it, there is no need for me to consider further the merits of any complaint Mrs S submitted to BPF in 2020. I say that because BPF have already agreed to provide Mrs S with a refund. And assuming I was to uphold such a complaint on its merits, the outcome and redress I would propose is likely to be broadly in line with that offered by BPF here.

Mrs S's main concern relates to the deductions made by BPF in respect of the comparative cost of holidays she took when using her timeshare product. Whether or not Mrs S was entirely satisfied with those holidays, she clearly benefitted from them and there was clearly a cost associated with them. So, I think it is fair and reasonable to make deductions from any redress offered for the holidays Mrs S took using his timeshare product..

I've carefully considered the rationale and explanation used by BPF to calculate those deductions. Whilst I understand and appreciate the various representations Mrs S has made; I'm satisfied that the rationale used to calculate the comparative holiday costs – taking into account annual maintenance charges paid by Mrs S - was fair and reasonable. In particular, it appears they are in line with orders this service has made for similar complaints of this type.

Whilst I realise Mrs S will undoubtedly be disappointed, I can't reasonably conclude that BPF's redress offer was unfair or unreasonable. Because of that, I won't be asking it to do anything more here.

My final decision

For the reasons set out above, I don't uphold Mrs S's complaint against Clydesdale Financial Services Limited trading as Barclays Partner Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 6 March 2025.

Dave Morgan
Ombudsman