DRN-5724653

The complaint

Mr L has complained that there was an unfair debtor-creditor relationship between himself and Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("BPF") arising out of a loan taken to pay for a timeshare membership.

What happened

In June 2014, Mr L was on holiday with family members. Whilst there, he and his parents attended a sales presentation with a timeshare provider ("the Supplier"). Mr L's parents already held a timeshare membership with the Supplier.

At the sales presentation, Mr L's parents agreed to trade in their existing membership for a new one costing an additional £8,542. To pay for this they needed to take out a loan. However, Mr L said that his parents could not afford this as they already had taken a loan for the purchase of their earlier membership, so he took a loan with BPF in his sole name to pay for the membership ("the Credit Agreement"). The loan was for the full amount of £8,542 and was set to run for 15 years. Under this type of timeshare membership, members had an interest in an Allocated Property that was to be sold after several years, and the proceeds shared amongst the members whose memberships were linked to that particular property.

In December 2023, Mr L used a professional representative ("PR") to make a complaint to BPF on his behalf. The complaint was made on the basis that there were breaches of the Consumer Credit Act 1974 ("CCA"), in particular, that there was an unfair credit relationship as defined by s.140A CCA due to the Supplier's misrepresentations and breaches of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 by selling membership as an investment. PR also argued that BPF had not undertaken the right creditworthiness assessment to understand whether Mr L was able to afford the loan repayments.

BPF responded to Mr L to say it needed more time to provide a proper response, but as that was not received, PR referred Mr L's complaint to the Financial Ombudsman Service.

One of our investigators considered the complaint, but did not think it was one that ought to be upheld. That was because he did not think there were the right sort of legal arrangements in place that meant BPF was liable to Mr L under the CCA in the way alleged. Further, they thought that there was no evidence that the loan was unaffordable for Mr L.

PR, on Mr L's behalf, disagreed and asked for the matter to be passed to an ombudsman.

What I have 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.

When deciding complaints, I am required by DISP 3.6.4 R of the FCA Handbook to take into account:

"(1) relevant:

(a) law and regulations;
(b) regulators' rules, guidance and standards;
(c) codes of practice; and

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."

There are a number of ways in which Mr L could bring a claim or complaint under the CCA in respect of this purchase, so I think it is helpful to set out the relevant legal provisions.

s.12(b) CCA states that a debtor-creditor-supplier ("D-C-S") agreement is a regulated consumer credit agreement being:

"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier"

An agreement is a s.11(1)(b) restricted-use credit agreement if it is a regulated CCA agreement used "*to finance a transaction between the debtor and a person (the "supplier") other than the creditor*".

s.140A CCA states:

"(1)The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following –

(a) any of the terms of the agreement or of any related agreement;
(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor."

Section 140C CCA says that the reference in s.140A CCA to a 'related agreement' includes a linked transaction in relation to the main agreement, which is defined in s.19 CCA as:

"(1) A transaction entered into by the debtor or hirer, or a relative of his, with any other person ("the other party"), except one for the provision of security, is a linked transaction in relation to an actual or prospective regulated agreement (the "principal agreement") of which it does not form part if -
…
(b) the principal agreement is a debtor-creditor-supplier agreement and the transaction is financed, or to be financed, by the principal agreement…"

Finally, s.56 CCA creates a statutory agency in certain circumstances, the most relevant to this complaint being negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a D-C-S agreement. It was held in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) that negotiations undertaken by a supplier in these circumstances were things done *'by or on behalf of'* the creditor as set out in s.140(1)(c). But again, a D-C-S agreement was a prerequisite for this to be the case.

In summary and having considered the CCA, a D-C-S agreement is needed if the Supplier's acts and/or omissions were to be considered as part of an assessment of unfairness under s.140A CCA.

But, on the face of it, there were no such arrangements in place at the relevant times as the loan was taken out by Mr L from BPF, but the timeshare was taken out by Mr L's parents from the Supplier. That meant that the loan was not used to finance a transaction between Mr L and the Supplier, as required by s.11(b) CCA, rather it was used to finance a transaction between the Supplier and his parents. So I have considered whether, in reality, Mr L was actually a party to the timeshare contract.

There are a number of documents from the time of sale that do not include Mr L's name. So, for example, he is not named as an applicant for membership of the timeshare on the '*Application and Purchase Agreement*' ("the Purchase Agreement") that was signed only by his parents. Similarly, he has not signed the application form nor the '*Member's Declaration*' that sets out some of the key information about the membership for prospective members to acknowledge they have received. Further, Mr L is not named on the withdrawal form, that his parents signed, that they would have needed to send back had they wished to pull out of the purchase in the cooling-off period – in other words, the Supplier did not indicate that it thought Mr L needed to agree to end the contractual relationship arising out of the purchase.

Mr L name does appear on the '*Fractional Rights Certificate*', where he is listed as an 'Owner'. Under the Supplier's Rules, an Owner is described as:

> *"a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."*

Under the Rules, Owners are entitled to Points by releasing their rights to use the Allocated Property to the Manager (Rule 3.1). The Owners have responsibilities to the Vendor and Manager to comply with the Rules and pay the management charges due when they fall to be paid (Rule 4). So, Owners have rights and responsibilities under the Rules, and I have considered whether Mr L obtained such rights under the Purchase Agreement which was funded by the Credit Agreement.

The Supplier argued that Mr L was not a party to the contact. But he had been issued with a Fractional Rights Certificate, naming him as an Owner (along with his parents and another family member who I understand to be his sister). It is possible that because he is named as an Owner, he acquired timeshare rights, had an Allocated Property assigned to him and was liable to pay a management charge under the Rules - in short, it was possible that Mr L was a party to the Purchase Agreement, even if his name was omitted on the face of the agreement.

Further, Mr L's evidence said:

"The [Supplier's] reps talked about the benefits of upgrading the Timeshare as it would give us more Points and Weeks to use and that [the resort] was in a very popular area so that the property prices were increasing which would mean more money for us when they were sold.

...

I was 22 at the time and working […]. [the Supplier] arranged the loan with Barclays Partner Finance for 15 years. They said that it was quite affordable for me and that by me paying for the Timeshare ***it would benefit all of us****."* (emphasis my own)

So it would appear that Mr L thought he was benefitting from the purchase, in other words he may have believed he was a party to it. And I think there is some force in this belief, given that he paid for the membership by taking out the loan in his sole name. Given all of this, is it possible that Mr L's name was simply omitted from the Purchase Agreement, rather than there being no intention on the Supplier's part to enter into a contractual relationship with him.

However, having considered all of the available evidence, I have concluded that Mr L was not a party to the Purchase Agreement. The Supplier has provided a credible explanation why his name appears on the certificate without being a party to the contract, and that is because it enabled holidays to be booked in Mr L's name without paying further fees. The Supplier has also provided the application form filled in by the Supplier for Mr L's parents, which has recorded on it, in a section titled '*Remarks', 'CHILDREN DEEDS ONLY X2*". The Supplier has explained that this means Mr L's name (along with his sister's) was included on the certificate for the purpose of avoiding fees. Further, I note that Mr L's sister's name appears as an 'Owner', despite her name neither being on the Purchase Agreement nor the Credit Agreement. Given that there is no argument before me that she was a party to the Purchase Agreement, it does appear that the list of 'Owners' does not only include parties to the Purchase Agreement.

Further, the later actions of the Supplier, Mr L and his parents do not fit with the idea that Mr L was actually a timeshare member. First, there is no evidence that the Supplier ever approached Mr L for payment of any fees or charges, or provided him with any ongoing information about membership after the sale, whereas there is evidence that they did do so with his parents. Further, in September 2016, Mr L's parents gave up the membership, signing a form in only their names to do so. This followed a letter written to the Supplier by them in July 2016, stating that they wished to hand back their membership due to Mr L's father's declining health. I fail to understand why, if Mr L believed he was a member of the timeshare, he either did not also give his consent to this or, alternatively, continued to use the membership in his own name.

In its submissions to this Service, PR has pointed to a number of reasons it says there was a D-C-S agreement in place. In addition to some of the matters I have already dealt with above, it makes the point that under the Terms and Conditions of the Credit Agreement it says the following:

"You have agreed to by the good and services from the retailer as shown, and this agreement will provide the loan and help pay for your purchase"

and

"If you use your right under your timeshare agreement with the retailer to withdraw from your timeshare agreement, your loan agreement will automatically end."

PR also points to a passage setting out that borrowers are entitled to make a claim against the lender if they are not satisfied with the goods or services if the cash price is between

£100 and £30,000. Finally, PR points to the face of the Credit Agreement where it states that the loan was taken to help pay for *'Timeshare Weeks'*. PR argues that all of this demonstrates that BPF were well aware of the nature of this transaction and that it accepted at the time that parts of the CCA applied to the purchase, in other words BPF were aware there was a D-C-S agreement in place.

I have carefully considered what PR has said, however I do not agree with PR's submissions. The passages it points to are not declarations of the background facts of the purchase or an acceptance of the legal position, rather they are passages from standard words in the relevant documents. These documents were not designed for the situation in which one person takes out a loan to pay for another person's purchase, so I have to look at the underlying facts to decide whether Mr L was actually a party to the Purchase Agreement funded by the Credit Agreement. Whether a Credit Agreement formed part of a D-C-S agreement is, in my view, a wider question than what was recorded in its standard terms.

On balance, the evidence I have seen points to the conclusion that the membership was taken out in Mr L's parents' names only and Mr L paid for it by taking a loan in his name from BPF. I do not think he was a party to the Purchase Agreement, the contract funded by the Credit Agreement, and it follows, I find that there was no D-C-S agreement in this case.[1]

PR has also argued that if there was no product to lend against by BPF, then the Supplier arranged a fraudulent loan for Mr L, which created an unfair credit relationship. However, I think it is clear that there was a product for which the Credit Agreement funded and I think this was clear to all parties. In light of that, I fail to see what about this transaction was fraudulent.

Under the rules set out above, I said must take into account the law, but come to my own determination of what is fair and reasonable in any given complaint. Here, I do not think it would be fair to make BPF responsible for the Supplier's alleged failures when the law does not impose such a liability.

With respect to the lending decision, PR says that the right checks were not conducted before BPF lent to Mr L. I have not seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that BPF failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr L was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with BPF was unfair to him for this reason. From the information provided, I am not satisfied that the lending was unaffordable for Mr L.

My final decision

I do not uphold Mr L'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 Mr L to accept or reject my decision before 27 August 2025.

Mark Hutchings
Ombudsman

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[1] It may have been that Mr L acquired rights of some sort with the Supplier, but I am satisfied that he did not acquire any such right by being a party to the Purchase Agreement.