

complaint

Mr W complains about two timeshare agreements he entered into. They were each financed by a loan from Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF"). Mr W says the seller of the agreements ("the Seller") falsely claimed the timeshares would be resold for a profit within a short time. And he says BPF shouldn't have lent him the money because he couldn't afford it.

background

Beginning in the early 1990s, Mr W entered into a number of timeshare agreements with the Seller. He paid for most of these with his own money. But there were two agreements – one in 2007 and one in 2009 – that he paid for using loans from BPF. I'll refer to the 2007 loan as "agreement one" and the 2009 loan as "agreement two".

Mr W says that in both 2007 and 2009, he was told that the timeshares would be sold within a 12-month period for a 15% profit. So he says he saw this as a short term investment opportunity. He says the resale didn't happen. And had he known the timeshares wouldn't be resold, he wouldn't have entered into the agreements. He asked BPF to cancel the finance and refund him what he's already paid. He asked it to do this under section 75 of the Consumer Credit Act 1974. This says that – in some circumstances – a credit provider is liable for a misrepresentation or breach of contract by a seller.

Mr W also says that the loans weren't affordable for him. He says BPF should have checked this but didn't.

BPF says there's been no misrepresentation. It says that – although the Seller would look to sell the timeshares at some point – the documents Mr W signed made it clear that a sale wasn't guaranteed. It also says the loans were affordable. Finally, in relation to agreement one, BPF says Mr W hasn't brought his complaint within the required time limit.

my findings

agreement one

I don't have a free hand to decide complaints. I must act within my powers which are laid down by the Financial Services and Markets Act 2000 along with the FCA's Dispute Resolution ("DISP") Rules. These are available on the FCA's website.

DISP 2.8.2 says I can't consider a complaint if it's brought more than six years after the event that's being complained about. As Mr W is complaining about a misrepresentation around the time he entered into the agreement, the event he's complaining about happened in 2007. So the six year time limit expired in 2013. But the rules also say I can consider a complaint after this time if it was brought within three years of when Mr W should reasonably have become aware he had reason to complain. However, as I say above Mr W says the reason the agreement was mis-sold is that he was told the weeks he'd bought would be sold on within 12 months. So I think he should have reasonably become aware he had cause to complain in around 2008. This means I don't think this helps Mr W by extending the time limit later than 2013. As Mr W didn't complain until late-2014, I think he has brought his complaint outside of the required time limits.

I can still consider the complaint if I think that the delay in Mr W making his complaint was as a result of exceptional circumstances. Mr W says he instructed a legal firm to deal with this matter for him. The legal firm chose to pursue the case through the courts and not through us. He says if he'd known earlier that he could bring the complaint to us then he would have done so. I'm sorry to tell Mr W that I don't think this reason amounts to exceptional circumstances. The law firm was acting on his behalf and it chose what it thought was the best way to deal with this matter. I think that was a matter for its professional judgment. And in this particular case, I don't think this means there are exceptional circumstances for Mr W bringing the complaint late.

For those reasons, I don't have any power to consider Mr W's complaint in relation to agreement one.

agreement two

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

section 75

As I say above, Mr W says the timeshare was misrepresented to him. He says he was told the weeks he'd bought would be sold on within 12 months for a profit. So he only ever saw it as a short term investment.

Because of the time that's passed, it's difficult to know exactly what was said to Mr W. But BPF has been able to provide a number of documents from the time of sale. One of the documents has a number of statements written on it with a "yes/no" option next to each one. One of the statements says that Mr W hasn't been given any resale timeframe and that re-selling won't start for at least 24 months. Another says the timeshare wasn't being sold to Mr W as an investment. "Yes" has been marked next to both of these to show Mr W understood. More importantly, I've seen a letter from February 2009 which is very short. It says "there are **NO** guarantees regarding the resale time frame of my/our weeks" (capitalisation and formatting as written). Mr W has signed this letter.

I accept that Mr W was probably hoping to sell his weeks on at some stage. But I think he would have understood that this wouldn't happen within 12 months. And I also think he would have understood there was no guarantee of a resale. I say that because of the documents he signed, especially the short letter I've referred to above which dealt only with this issue. I think he would have seen this and understood it. So I'm sorry to tell Mr W that I don't think it's likely he entered into this agreement because of a misrepresentation made by the Seller.

affordability

Before lending Mr W the money, BPF needed to make reasonable efforts to check it was affordable for him. This means he should be able to afford the repayments without too much difficulty over the course of the whole agreement. Mr W has sent some documents to us about his finances at the time. But these show that he appeared to have more money coming in than going out. And that he had two bank accounts that were in credit and which had balances that were increasing over time.

I understand that Mr W has now had his timeshare cancelled because he didn't keep up payments of maintenance fees. And this is because he is in some financial difficulties. But I understand this is because of a change in his circumstances. And having looked carefully at the paperwork he's sent us, it seems likely to me that the loan was affordable at the time BPF lent the money to him. So I'm sorry to tell Mr W that I don't think BPF did anything wrong in lending him the money. But I will take this opportunity to remind BPF it must treat Mr W positively and sympathetically if he is now struggling financially.

my final decision

For the reasons given above, I can't consider Mr W's complaint in relation to agreement one. And I don't uphold his complaint in relation to agreement two.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision in relation to agreement two before 13 November 2015.

Ross Crawley
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