

## **complaint**

Mrs M has complained that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, has not agreed to refund payments she made after the first two years of her loan. She was told when she took it out that that she would only have to make payments for two years.

## **background**

In 2008 Mrs M was overseas and took out a 10-year fixed-sum loan for £25,000 to buy a timeshare. She was told that she would receive a cheque for £3,500 shortly after taking out the loan and was reassured that the loan would be paid off within two years.

She received the cheque as promised. She has continued to make monthly payments ever since. She did not receive a cheque for £17,500 as she thought she was going to after two years had passed. She complained to the resort and then Barclays Partner Finance (BPF). She wondered why BPF agreed to lend her this money over a 10 year period as she was 81 when she took the loan out. BPF told her that they do not reject loan applications on the basis of age.

Mrs M brought her complaint to the ombudsman service. Our adjudicator reviewed whether there had ever been a promise to sell the timeshare for Mrs M. He felt that the paperwork did not support this. But he did consider whether the loan was affordable when Mrs M first took it out. He knew that Mrs M was now having difficulties affording her repayments. He thought overall that the evidence showed that the loan was affordable when Mrs M took it out.

Mrs M asked an ombudsman to consider her case.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I believe that Mrs M was told when she took out this agreement that there was a £17,500 lump-sum payment coming to her. This would mean that she thought she was only ever making payments for two years but she never received this money. I have seen a copy of the notes a friend of Mrs M took when the loan was being discussed and these are very clear.

Mrs M asked whether she would have to pay anything more after 24 months. The answer was a categorical “no”. She was told:

*“at the end of the 24 month period (or earlier) of the £17,804 left [to be paid on the credit agreement] £17,500 will be paid into personal bank account”*

I weighed up this evidence in light of there being no doubt that Mrs M signed a credit agreement for 10 years. However I felt it was fair to believe that this was the reason that Mrs M took out the loan. I shared this evidence with BPF and told them this.

In considering this case I struggled to understand why an 81 year-old woman would be happy to take out a £25,000 fixed-sum loan for a period of 10 years. I appreciate BPF’s statement that there is no discrimination on the basis of age. However that didn’t help me

understand why Mrs M took out a loan of that length. She strikes me as very conscientious – after all she has made all the monthly payments – and financially capable. I also know that when she first took out the loan, she transferred money from investments and savings into her current account to help make the monthly payments.

In fact I believe that she thought she was only paying the monthly amount of £304 for two years. Receiving £17,500 would mean she could pay off the loan and she wouldn't in fact have a 10-year loan at all.

I believe this also explains why Mrs M has been finding making these monthly payments increasingly difficult. She hadn't expected to be making these payments for so long when she initially took out the loan.

There is no dispute that Mrs M never received the cheque for £17,500.

I did wonder why Mrs M had taken some time to refer her case to us. Overall I think she did raise her concerns with the resort early on and wasn't given an effective answer. And it probably took her some time before she realised she could raise a complaint with BPF in 2012.

I confirmed to BPF that I felt that I could hold them liable for Mrs M not receiving £17,500 within two years of taking out the loan. I suggested the fair redress was to:

- cancel the credit agreement and amend her credit record;
- refund Mrs M any payments made on this agreement over and above the first two years; and
- pay her 8% simple interest per annum on £17,500 as if she had received this in August 2010.

Mrs M confirmed she was happy to accept this outcome.

BPF made an alternative offer to:

- cancel the credit agreement and write off the remaining balance;
- refund Mrs M any payments made on the agreement over and above the first two years;
- deduct the resale figure of £2,000 (2 x £1,000) for her timeshares;
- deduct the equivalent value of Mrs M's use of her timeshare (a week usage every year for seven years); and
- pay 8% interest on £17,500 from 2010 to date.

I referred this to Mrs M but she was unwilling to accept this offer.

I'm in no doubt that Mrs M has made regular use of her timeshare. However I don't agree with BPF that she is required to pay for her use. I don't believe this is the basis she took out the agreement. I believe the evidence, referred to above, remains relevant. She was paying monthly payments for the first two years and understood that there was nothing else for her to pay.

I have confirmed to Mrs M that I believe it's fair that BPF offsets her final settlement by the resale value of her timeshares.

**my final decision**

For the reasons stated above, my final decision is to uphold Mrs M's complaint. I instruct Clydesdale Financial Services Limited, trading as Barclays Partner Finance to:

- cancel the credit agreement and amend her credit record;
- refund Mrs M any payments made on this agreement over and above the first two years;
- deduct the resale figure of £2,000 (2 x £1,000) for her timeshares; and
- pay her 8% simple interest per annum on £17,500 as if she had received this in August 2010.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs M to accept or reject my decision before 8 June 2015.

Sandra Quinn  
**ombudsman**