

The complaint

Mr D complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, won't refund to him the money that he and his wife paid for some holiday club membership points. He's being represented in his complaint by a claims management company.

What happened

Mr D entered into a fixed sum loan agreement with Barclays Partner Finance in January 2011 to pay for his and his wife's purchase of a trial membership of a holiday club. The price of the trial membership was £3,995 and Mr D agreed to make 36 monthly payments of £143.86 to Barclays Partner Finance. They entered into an acquisition agreement to upgrade their membership by buying some holiday club membership points in July 2011. The purchase price of the points was £17,768 and they traded-in their trial membership which was given a value of £6,000 so the balance due from them was £11,768. Mr D entered into another fixed sum loan agreement with Barclays Partner Finance for a loan of £13,371 (which included £1,603 to settle the loan that had been made to him in January 2011). He agreed to make 180 monthly repayments of £200.34 to Barclays Partner Finance.

Barclays Partner Finance says that the loan was repaid in September 2012 when Mr D and his wife again upgraded their membership but that the purchase of that upgrade was financed by a loan from another finance provider.

Mr D's representative made claims to Barclays Partner Finance in July 2017 about the July 2011 purchase under section 140A of the Consumer Credit Act 1974. It said that the points were mis-sold and, but for the misrepresentations made, Mr D and his partner wouldn't have purchased the points nor entered into a loan agreement. It said that the terms of the agreement were unfair as an undisclosed commission was paid and they were pressured into entering the loan agreement. A statement from Mr D was provided.

Barclays Partner Finance responded to that claim in August 2017 and said that the product was never misrepresented and that the product and the finance weren't mis-sold to Mr D. Mr D wasn't satisfied with its response so a complaint was made to this service. His complaint form says that the holiday company and Barclays Partner Finance failed to conduct a proper assessment of his ability to afford the loan, the holiday company unduly pressured him into entering the agreements and Barclays Partner Finance paid a commission to the holiday company which wasn't declared to him, all rendering the agreements unfair pursuant to section 140A.

Our investigator didn't recommend that Mr D's complaint should be upheld. She considered his claims about the January 2011 and the July 2011 loans separately. She didn't think that Barclays Partner Finance's decision to turn down his claim under section 140A about the January 2011 loan was unfair or unreasonable. She didn't think that its decision to turn down his claims under sections 75 and 140A of the Consumer Credit Act about the July 2011 loan for misrepresentation and an unfair relationship was unfair or unreasonable. She said that she hadn't seen anything to persuade her that the lending was unaffordable at the time of the loans and she explained why she didn't consider that Barclays Partner Finance had acted incorrectly in connection with any commission that it paid to the holiday company

Mr D representative, on his behalf, has asked for this complaint to be considered by an ombudsman. It has responded to our investigator's recommendations in detail and sets out further reasons that it considers that there were misrepresentations and an unfair relationship, including that:

- the burden of proof is on the creditor to prove that there were no misrepresentations;
- verbal representations were made to Mr D and his wife about the nature, extent and benefits of this timeshare product and they were induced to make a transactional decision based on those misrepresentations and Barclays Partner Finance is liable to Mr D under section 75;
- the misrepresentations include that they would achieve or acquire enhanced benefits to better accommodation at resorts, priority or better rights for booking accommodation, wider availability of accommodation and ability to use the exchange system, and a discounted price which was only available that day;
- Mr D and his wife weren't given sufficient information about management charges payable to make an informed decision about the product;
- the holiday company was able to unilaterally increase charges payable and to terminate ownership for non-payment;
- there's no effective right of withdrawal (or termination) from additional liabilities/costs imposed as management charges;
- there was unfair pressure to complete and insufficient time to consider on the date of purchase; and
- the holiday company has given misstatements about additional points remedying deficiencies in availability and standards of accommodation in existing points held by Mr D and his wife before their purchase of more points in September 2012.

It has also described its concerns about the way in which the finance was sold to Mr D.

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 so, I agree with our investigator that Mr D's complaint shouldn't be upheld but for these reasons:

- Mr D's claim was made under section 140A but I'm not determining the outcome of that claim in this decision as only a court would be able to do that - I'm considering whether or not Barclays Partner Finance's response to that claim was fair and reasonable in the circumstances;
- I consider it to be clear from Mr D's representative's letter to Barclays Partner Finance in July 2017 and the complaint form that was sent to this service that Mr D's

claim was made under section 140A and that no claim was made under section 75 – our investigator referred to a claim under section 75 but, as Mr D's complaint was made about Barclays Partner Finance's response to his claim under section 140A, I haven't considered any complaint about Barclays Partner Finance's response to a claim under section 75 in this decision;

- section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor;
- Mr D's representative described in the letter that it sent to Barclays Partner Finance in July 2017 the ways that it says that the membership was mis-sold to Mr D and his wife in July 2011 and the ways that it was misrepresented to them – it says that they were advised that the purchase would provide them with an exclusive holiday product with excellent value for less money and that they would have a better chance of booking any holiday they wanted than non-members but it says that there's a lack of availability, Mr D and his wife couldn't book the holidays they wished, the holidays weren't exclusive and holidays are available online at the same resorts for much less money;
- I've not been provided with a copy of the trial membership agreement that Mr D and his wife entered into in January 2011 but I consider that it's reasonable to conclude that it hadn't been misrepresented to them as they chose to trade-in that membership and upgrade their membership six months later by buying some membership points – and the loan agreement that Mr D had entered into in January 2011 was repaid by the loan that he took out in July 2011;
- Mr D and his wife signed documents in July 2011 including the acquisition agreement (which included its terms and conditions), a member's declaration, a separate standard form of the withdrawal notice that could be given, a standard information form and they each signed a credit application – Mr D also signed the loan agreement;
- the standard information form that was signed by Mr D and his wife says: *"The purchase of membership ... is for the primary purpose of holidays and is neither specifically for direct purposes of a trade-in nor as an investment in real estate"*;
- the member's declaration that was signed by Mr D and his wife says: *"We understand that [the holiday company] aims to provide personal service to our members and its prices will be comparable to but not necessarily cheaper than other providers of the same services"*;
- Mr D and his wife also confirmed in the member's declaration that that they understood their liability for the annual management fee and the individual management charge and the consequences of non-payment;
- I'm not persuaded that there's enough evidence to show that the exclusivity or availability of the resorts was misrepresented to Mr D and his wife or that they were told that the holidays would be cheaper than other equivalent holidays;
- I've carefully considered what Mr D has said in his statement and the other information that his representative has provided (including its detailed response to our investigator's recommendations) but I'm not persuaded that there's enough evidence to show that the membership points were misrepresented to Mr D and his wife by the holiday company in July 2011 or that they were induced into entering into the acquisition agreement by any misrepresentations;
- nor am I persuaded that the terms of the acquisition agreement are unfair or that the membership points were mis-sold to Mr D and his wife;

- Mr D and his wife again upgraded their membership in September 2012 and I consider that many of the points raised by Mr D's representative relate to misrepresentations that it says were made at that time as reasons for them to increase their points holding – but as that upgrade wasn't paid for using finance provided by Barclays Partner Finance, it wouldn't be liable for any misrepresentations that were made at that time;
- I've seen no evidence to show that Mr D and his partner complained to the holiday company or Barclays Partner Finance about any of those issues until July 2017 – about six years after they entered into the acquisition agreement and if they considered that the membership points had been misrepresented or mis-sold to them in July 2011, I consider that it would be reasonable to expect them not to have entered into further agreements with the holiday company;
- Mr D's representative says the holiday company and Barclays Partner Finance failed to conduct a proper assessment of Mr D's ability to afford the loan but Barclays Partner Finance has provided copies of the credit applications that were signed by Mr D and his wife – they show that they were both employed and homeowners and that Mr D had an annual income of £40,000 and that his wife had an annual income of £20,000;
- I consider that it was reasonable for Barclays Partner Finance to conclude, on the basis of that information, that Mr D could afford a loan with monthly repayments of £200.34 - he repaid the loan in September 2012 and I've seen no evidence to show that the loan wasn't affordable for him when it was made to him in July 2011;
- I've seen no evidence to show that Mr D asked Barclays Partner Finance for any information about its affordability assessment before July 2017 and its account notes show that he contacted it in January and August 2012 to request settlement figures but there's no reference in the notes to him raising any concerns about the affordability of the loan or asking for information about its affordability assessment – as the loan was made to him in July 2011 and was repaid in September 2012, I consider that it would be reasonable to expect him to have raised any concerns about the affordability of the loan before July 2017;
- I'm not persuaded that there's enough evidence to show that Mr D and his wife were unduly pressured into buying the trial membership in January 2011 or the membership points in July 2011, that Mr D was unduly pressured into entering into the loan agreements or that the holiday company used unacceptable sales practices against them – I've seen no evidence to show that Mr D complained to Barclays Partner Finance about those issues until July 2017 (about six years after the July 2011 loan had been made to him) and I consider that it would be reasonable to expect him to have complained to Barclays Partner Finance about any such issues before then;
- Mr D and his wife had signed the separate standard form of the withdrawal notice that could be given and if they felt that they'd been unduly pressured into entering into the agreements in July 2011 or didn't want to continue with the purchase for any reason they could have given notice to withdraw from the agreements – but I've seen no evidence to show that they contacted either the holiday company or the finance provider during the withdrawal period about withdrawing from the agreements;
- Mr D's representative says that Barclays Partner Finance paid an undisclosed commission to the holiday company – but I've not been provided with any evidence to show what commission, if any, was paid by Barclays Partner Finance to the holiday company;
- from what this service has seen across the industry, if commission was ever paid it

tended to be low and of less than 10% and I'm satisfied that Barclays Partner Finance wouldn't have breached any duty in making any such payment – nor was it under any regulatory duty to disclose the amount of any commission paid in these circumstances - and I don't consider that the level of any commission that was normally paid in this type of situation was sufficiently high to mean that Barclays Partner Finance should have appreciated that not disclosing any commission to Mr D and his partner risked the relationship being unfair under section 140A;

- I'm not persuaded that Mr D has provided enough evidence to show that his relationship with Barclays Partner Finance was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mr D and Barclays Partner Finance in these circumstances – nor am I persuaded that there's enough evidence to show that the loan agreements were mis-sold to him;
- I don't consider that Barclays Partner Finance's response to Mr D's claim was fair or reasonable but I consider that, if it had properly considered his claim, it would have concluded that it shouldn't be upheld; and
- I sympathise with Mr D for the issues that he and his wife have had with their membership, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclays Partner Finance to refund to Mr D any of the money that he paid under the loan agreement, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 April 2023.

Jarrold Hastings
Ombudsman