

The complaint

Mr L complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, has rejected the claims that he's made under the Consumer Credit Act 1974. He's being represented in his complaint by a claims management company.

What happened

Mr L and his wife entered into an acquisition agreement in November 2010 to buy some holiday club membership points. The price of the membership points was £7,949 and Mr L entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount. He agreed to make 180 monthly repayments of £119.49 to Barclays Partner Finance. Mr L's representative says that Mr L and his wife upgraded to a different type of membership in 2011 and increased that membership a number of times between then and 2014.

Mr L's representative made claims to Barclays Partner Finance in February 2017 under sections 75 and 140A of the Consumer Credit Act 1974. It said that the membership had been misrepresented to Mr L and his wife, the holiday company had breached the contract, there was an unfair relationship between Mr L and Barclays Partner Finance, unfair pressure was applied to them to get them to sign the agreements and a proper assessment of the affordability of the loan for Mr L hadn't been made.

Barclays Partner Finance didn't provide a substantive response to those claims so a complaint was made to this service. Mr L's representative also says that a commission was paid by Barclays Partner Finance to the holiday company that wasn't disclosed to Mr L. Barclays Partner Finance then said that Mr L's claims were time-barred under the Limitation Act 1980.

Our investigator didn't recommend that Mr L's complaint should be upheld. He thought that Barclays Partner Finance was entitled to rely on the timing of the misrepresentation claim to turn it down. He said that he was unable to look into the breach of contract claim as it related to the upgraded memberships that Mr L and his wife had bought between 2011 and 2014 and which didn't relate to Mr L's loan with Barclays Partner Finance. He said that he hadn't seen enough to suggest that the relationship between Mr L and Barclays Partner Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He didn't consider that Barclays Partner Finance had acted incorrectly in connection with any commission paid to the holiday company and he said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr L.

Mr L's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. It has referred to a decision issued by this service on a complaint about the type of membership to which Mr L and his wife upgraded in 2011 in which it was found that the charges were unfair. It says that the charges payable under the acquisition agreement are unfair and that the agreement is unfair pursuant to section 140A. It has also provided a generic submission from counsel about the holiday company.

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 L's complaint shouldn't be upheld for these reasons:

- we don't have a free hand to consider every complaint that's referred to us and our rules, which we are required by law to follow, say – amongst other things – that we can't normally deal with a complaint if it's referred to us more than six years after the event complained of; or (if later) more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint;
- Mr L's complaint is that Barclays Partner Finance turned down the claims that he'd made to it and I accept that he referred his complaint to this service within six years of that happening - but I need to consider whether the Limitation Act applies to his claims;
- Mr L's claims were made under sections 75 and 140A but I'm not determining the outcome of those claims 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 those claims was fair and reasonable in the circumstances;
- section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- Mr L's claim under section 75 is that there's been a breach of contract by the holiday company and that the membership was misrepresented to him and his wife and that they wouldn't have bought it if it hadn't been misrepresented to them;
- if the criteria for a claim under section 75 were met, Barclays Partner Finance would be expected to consider that claim unless the claim was brought outside of the time limits set out in the Limitation Act in which case it would be entitled to rely on the Limitation Act and to not consider the claim;
- the time limit for a misrepresentation claim (whether under sections 2 or 9 of the Limitation Act) is six years from the date on which the cause of action accrued (which is when everything needed to make a claim had occurred);
- I consider that Mr L could have made a claim to the holiday company or Barclays Partner Finance about the misrepresentations that he says induced him and his wife into buying the membership in November 2010 as that was the latest time that any misrepresentations would have been made and any loss would have been incurred as that was when he also entered into the loan agreement with Barclays Partner Finance;
- I consider that his cause of action accrued at that time, so he would have had six years from then to bring a misrepresentation claim against either the holiday company or Barclays Partner Finance – but a misrepresentation claim wasn't made to Barclays Partner Finance until February 2017, more than six years later so was outside of the time limits set out in the Limitation Act and I consider that his misrepresentation claim is now time-barred;
- Mr L's representative has also referred to breaches of contract by the holiday company, but I consider that those breaches relate to the upgraded memberships

that Mr L and his wife bought between 2011 and 2014 – Mr L's loan agreement with Barclays Partner Finance was used to pay for the membership that he and his wife bought under the acquisition agreement in November 2010 and I'm not persuaded that the breaches to which his representative has referred relate to that membership;

- I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company for which Barclays Partner Finance would be liable under section 75;
- Mr L's representative says that there was an unfair relationship between Mr L and Barclays Partner Finance - 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;
- the courts have said, when considering section 140A, that the time for limitation purposes runs from the date that the credit agreement ended (if it was not still running at the time the claim was made) and the limitation period for a claim under section 140A is six years;
- Barclays Partner has provided an account statement which show that Mr L's loan account was still open in February 2017 when the claims were first made so I don't consider that Mr L's claim under section 140A is time-barred;
- I'm not persuaded that there's enough evidence to show that Mr L and his wife were unduly pressurised into buying the membership points in November 2010, that Mr L was unduly pressurised into entering into the loan agreement or that the holiday company used unacceptable sales practices against them – I've seen no evidence to show that Mr L complained to Barclays Partner Finance about those issues until February 2017 (more than six years after the 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 L's representative says that Barclays Partner Finance didn't make a proper assessment of the affordability of the loan for Mr L - Barclays Partner Finance hasn't provided any evidence about its assessment of the affordability of the loan for Mr L but the loan account statement shows that Mr L made the loan repayments of £119.49 each month from January 2011 to March 2013, that he made a loan repayment of £6,000 in January 2012 and that the outstanding balance of the loan in March 2013 was £451.33;
- Barclays Partner Finance's account records show that Mr L cancelled his monthly direct debit in March 2013 and that he contacted it in April 2013 because he'd entered into an individual voluntary arrangement – he then made reduced monthly repayments of £5 between August 2013 and June 2017;
- although it's clear that Mr L has experienced financial difficulties, I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for him in November 2010 when it was made to him;
- Barclays Partner Finance was required to respond to any financial difficulties that Mr L was experiencing positively and sympathetically and I consider that by accepting reduced monthly repayments of £5 it has done so;
- Mr L's representative says that Barclays Partner Finance should have told him about any commission that it paid to the holiday company for arranging the loan – 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 L risked the relationship being unfair under section 140A;
- Mr L's representative has referred to a decision issued by this service in which it was found that the charges were unfair – but this service considers each complaint on its individual merits;
- Mr L and his wife signed a member's declaration in November 2010 which said that they'd only be able to use their membership points if all annual fees were paid up to date and the current annual membership fee and annual individual management charge were identified and it said that the basis of those dues was set out in the holiday company's memorandum and articles of association and its scheme rules and regulations;
- I'm not persuaded that there's enough evidence to show that the charges that Mr L and his wife were required to pay for the membership points that they acquired under the acquisition agreement were unfair;
- Mr L's representative has provided a generic submission from counsel about the holiday company but I'm not persuaded that it shows that Mr L's relationship with Barclays Partner Finance was unfair;
- I'm not persuaded that there's enough evidence to show that Mr L's 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 L and Barclays Partner Finance in these circumstances;
- Barclays Partner Finance didn't issue a substantive response to Mr L's claims in February 2017, and it then said that his claims were time-barred, so I can't say that its response to his claims was fair and reasonable – but if it had properly responded to his claims I consider that it would have been fair and reasonable for it not to have upheld them; and
- I sympathise with Mr L for the issues that he and his wife have had with their membership and the other difficulties that they've experienced, 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 L any of the money that he's 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 L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 March 2023.

Jarrold Hastings
Ombudsman