

## The complaint

Mr T complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, won't refund to him the money that he paid for a holiday product. He's being represented in his complaint by a legal adviser.

## What happened

Mr T's representative says that Mr C entered into a fixed sum loan agreement with Barclays Partner Finance in June 2010 to pay for his and his wife's purchase of a holiday product but I've not been provided with a copy of the purchase agreement or the loan agreement.

Mr T wrote to Barclays Partner Finance in June 2020 about two loans and said that it appeared that the credit intermediaries recorded on his loan agreements weren't permitted or authorised to arrange the loans and he asked it to explain its position. Barclays Partner Finance said that the purchase agreements that Mr T sought to challenge were dated in September 2009 and June 2010 so he was out of time to bring any claim in respect of the issues he claimed to have happened at the point of sale.

Mr T then complained to this service and his representative wrote a complaint letter to this service in April 2021. It referred to agreements that Mr T and his wife had entered into in June 2010 and said, in summary and amongst other things, that the credit intermediary wasn't authorised to arrange the loan, there was a lengthy and pressurised sales presentation, the product was misrepresented to them, there was an unfair relationship between Mr T and Barclays Partner Finance, there was no evidence that a credit check was conducted before the loan was granted and the high interest rate was an indication of an unfair relationship. It also referred to a judgment from an overseas court which it said had found that the structure employed by the group of companies that includes the holiday company was a fraud.

Our investigator didn't recommend that Mr T's complaint should be upheld. She said that allegations of misrepresentation and an unfair relationship under sections 75 and 140A of the Consumer Credit Act 1974 are legal claims and don't constitute complaints that this service can consider until the claims have been put to the business responsible for answering them and a subsequent complaint has then been made about its response to the claims. She said that neither of those steps was taken by Mr T or his representative so the only aspect of this complaint that she could consider was about the authorisation of the credit broker.

Our investigator said that Mr T's initial complaint letter referred to two credit intermediaries and her own research had shown that both of them held a licence granted by the Office of Fair Trading at the time of sale so she concluded that the credit agreements were arranged by an authorised broker.

Mr T's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. It has responded in detail and says, in summary and amongst other things, that:

- Mr T's June 2020 letter doesn't make direct reference to sections 75 or 140A but the

issues raised query the relationship between Barclays Partner Finance and the holiday company in order to identify whether the loan constituted an unfair relationship and was therefore unlawful and it can't be denied that Mr T intended to raise issues pertaining to sections 75 and 140A;

- in its response to that letter, Barclays Partner Finance referred to the complaint as being about mis-selling of a timeshare and interpreted the issues raised by Mr T as including sections 75 and 140A;
- the ombudsman service isn't required to follow the relevant law, guidance and practice but to reach an evaluative assessment of the merits of Barclays Partner Finance's decision; and
- our investigator's findings are inconsistent with Mr T's allegations about the credit intermediary's regulation as a credit broker so she should supply the information on which her finding is based.

### **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.

Mr T first raised his concerns about the authorisation of the credit intermediaries with Barclays Partner Finance in June 2020. I consider that Mr T was asking Barclays Partner Finance to explain its position about the authorisation of the credit intermediaries and I don't consider that his letter would properly be considered to be a complaint. There was no reference in that letter to the holiday products, any mis-selling or any claim under the Consumer Credit Act.

Barclays Partner Finance's response did refer to a complaint about the alleged mis-selling of a timeshare and to a claim under section 75 but it said that Mr T was out of time to bring any claim in respect of the issues he claimed to have happened at the point of sale. The only issue that Mr T had raised was that it appeared that the credit intermediaries recorded on his loan agreements weren't permitted or authorised to arrange the loans.

This service's records show that the two credit intermediaries that were identified in Mr T's June 2020 letter to Barclays Partner Finance were both covered under our consumer credit jurisdiction in September 2009 and June 2010. They wouldn't have been covered under that jurisdiction if they hadn't been granted consumer credit licences by the Office of Fair Trading. I don't consider that it's unreasonable for me to conclude, in the absence of any persuasive evidence to suggest otherwise, that it's more likely than not that the credit intermediaries held the required consumer credit licences at the times that the loans were made to Mr T and that the loan agreements are likely to be enforceable.

I don't consider that Mr T asked Barclays Partner Finance to consider claims under sections 75 or 140A or that Barclays Partner Finance has had a proper chance to investigate the claims that were made in his representative's complaint letter to this service in April 2021. Mr T's letter refers to accounts for loans that were made to him in September 2009 and June 2010 but his representative's letter and his complaint form only refer to the loan that was made in June 2010. I've not been provided with copies of any of the purchase agreements or loan agreements or any evidence as to whether the loans have been repaid.

In these circumstances, I consider that Mr T's claims, including the claims in his representative's letter to this service about a lengthy and pressurised sales presentation, the product being misrepresented to Mr T and his wife, the unfair relationship between Mr T and Barclays Partner Finance, the credit checks that were conducted before the loan was granted, the high interest rate and the structure of the group of companies that includes the holiday company should first be properly made to Barclays Partner Finance. If Mr T isn't satisfied with its response to those claims (or if Barclays Partner Finance doesn't respond to the claims within eight weeks) he may then be able to make a separate complaint to this service about its response to those claims.

I'm not persuaded that there's enough evidence to show that the credit intermediary for the loan that was made to Mr T by Barclays Partner Finance in June 2010 didn't have the appropriate consumer credit licence to arrange the loan. I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclays Partner Finance to refund to Mr T any of the money that he's paid under that 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 T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 March 2023.

Jarrold Hastings  
**Ombudsman**