

The complaint

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

What happened

Mr S and his wife signed a purchase agreement in June 2009 to buy some holiday club membership points. The purchase price was £6,900 and Mr S also entered into a credit card agreement with Barclays Partner Finance for credit that he used to pay for the membership. The credit agreement said that the purchase wouldn't be charged to his account for six months. Barclays Partner Finance says that the credit was repaid in December 2009.

Mr S wrote to Barclays Partner Finance in December 2020 and said that it appeared that the credit intermediary wasn't permitted or authorised to arrange loans and he asked it to explain its position. He also asked it to provide evidence of what checks were undertaken concerning his loan and its suitability for him.

Barclays Partner Finance didn't provide a substantive response to Mr S so he complained to this service. His representative wrote to this service in August 2021 and said, in summary and amongst other things, that Barclays Partner Finance hadn't been able to provide evidence that the holiday company had the requisite licence need to arrange the loan, the membership was misrepresented to Mr S, there was an unfair relationship between Mr S 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.

Our investigator didn't recommend that Mr S's complaint should be upheld. He 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. He said that neither of those steps was taken by Mr S or his representative so the only aspects of this complaint that he could consider were about the authorisation of the credit broker and the credit checks carried out at the time of sale.

He said that that the holiday company held a licence granted by the Office of Fair Trading at the time of sale so the credit agreement was arranged by an authorised broker. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr S.

Mr S'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 S's December 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 S intended to raise issues pertaining to 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;
- even if the holiday company had a consumer credit authorisation, it was exercised to induce Mr S and his wife into an agreement through misrepresentation by intentionally giving them the impression that the agreement would provide them with a product which was grossly exaggerated in quality above what they actually received; and
- finance companies shouldn't be allowed to absolve themselves of liability for their agents pursuant to section 75.

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 S first raised his concerns about the authorisation of the credit intermediary and the credit checks that were conducted with Barclays Partner Finance in December 2020. I consider that Mr S was asking Barclays Partner Finance to explain its position about the authorisation of the credit intermediary and the credit checks that it conducted. I don't consider that his letter would properly be considered to be a complaint and there was no reference in that letter to the holiday club membership points, any mis-selling or any claim under the Consumer Credit Act.

Barclays Partner Finance didn't provide a substantive response to that letter but I consider it to be clear that the only issues that Mr S had raised were that it appeared that the credit intermediary recorded on his credit card agreement wasn't permitted or authorised to arrange the credit and about the credit checks that it had conducted.

The holiday company was shown on the credit agreement as being the retailer and I've seen no evidence to show that it didn't also act as the credit intermediary – so I consider it to be more likely than not that the holiday company arranged the credit. This service's records show that the holiday company was covered under our consumer credit jurisdiction in June 2009. It wouldn't have been covered under that jurisdiction if it hadn't been granted a consumer credit licence 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 holiday company held the required consumer credit licence at the time that the credit was made available to Mr S and that the credit agreement is likely to be enforceable.

Mr S asked Barclays Partner Finance to provide evidence of what checks were undertaken concerning his loan and its suitability for him. It didn't provide that evidence to him. The credit was made available to Mr S in June 2009 and Barclays Partner Finance has provided evidence to show that the credit was repaid in December 2009, less than six months later. I've not been provided with any evidence to show that the credit wasn't affordable for Mr S at the time that it was made available to him. I've also seen no evidence to show that Mr S asked Barclays Partner Finance for any information about its credit checks before December 2020, about eleven years after the credit was repaid. I consider that it would be reasonable to expect him to have raised any concerns about the credit checks or the affordability of the credit before then.

I don't consider that Mr S 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 August 2021. In these circumstances, I consider that Mr S's claims, including the claims in his representative's letter to this service about a lengthy and pressurised sales presentation, the membership being misrepresented to Mr S and his wife, the unfair relationship between Mr S and Barclays Partner Finance and the high interest rate that was payable, should first be properly made to Barclays Partner Finance. If Mr S 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 holiday company didn't have the required licence to arrange the credit for Mr S or that the credit wasn't affordable for him at the time that it was made available to him. I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclays Partner Finance to refund to Mr S any of the money that he's paid under the credit 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 S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 March 2023.

Jarrold Hastings
Ombudsman