

The complaint

Mr H 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. His wife is also involved in his complaint and he's being represented by a claims management company.

What happened

Mr H and his wife entered into a purchase agreement to buy 120,000 holiday club membership points from a holiday company in June 2016. The purchase price was £11,500 and Mr H entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount. He agreed to make 120 monthly repayments of £170.93 to Barclays Partner Finance, with the first payment due three months later, but the loan was repaid in September 2016.

Mr H and his wife entered into another purchase agreement to buy 40,000 more holiday club membership points from the holiday company in December 2017. The purchase price was £5,500 and Mr H entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount. He agreed to make 120 monthly repayments of £81.40 to Barclays Partner Finance, with the first payment due three months later, but the loan was repaid in March 2018.

Mr H's representative made separate claims, on behalf of Mr H, to Barclays Partner Finance under sections 75 and 140A of the Consumer Credit Act 1974 in January 2022 about the June 2016 and the December 2017 purchases. The representative's letters to Barclays Partner Finance included claims that: the membership points were mis-sold to Mr H and his wife, and but for the misrepresentations made to them, they wouldn't have purchased them nor entered into the loan agreements; the membership points were sold to Mr H and his wife as investments, contrary to the Timeshare Regulations; they were pressured into entering into the purchase agreements; the terms of the agreements are so egregious so as to be unfair and the payment of commission was hidden from view; and no affordability checks were carried out on Mr H's ability to afford the loans.

Barclays Partner Finance didn't provide substantive responses to those claims so Mr H made two complaints to this service. His complaint forms say that: Barclays Partner Finance paid commissions to the holiday company which weren't declared to him; the holiday company failed to conduct a proper assessment of his ability to afford the loans, unduly pressured him and his wife into entering into the purchase agreements and him into entering into the loan agreements and used aggressive commercial practices to pressure them; and the membership points were misrepresented to them; all rendering the loan agreements unfair pursuant to section 140A; and it said that the claims should also be considered under section 75.

Our investigator didn't recommend that Mr H's complaints should be upheld. He wasn't persuaded that there were misrepresentations at the times of sale. He said that he hadn't seen enough to suggest that the relationship between Mr H and Barclays Partner Finance was unfair, he wasn't persuaded that it was likely that a court would find that the non-

disclosure and payment of any commissions created an unfair relationship and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr H.

Mr H rejected our investigator's recommendation and his representative asked for Mr H's complaints to be referred to an ombudsman for a decision. Mr H's representative has provided further submissions, which describe the general background to complaints about holiday products and say, in summary and amongst other things, that:

- the membership points were sold to Mr H as an investment that could easily be resold at a profit;
- it was represented to Mr H and his wife that the membership points were available at a special price but only if purchased on that day and they were subjected to aggressive commercial practices in breach of the Consumer Protection from Unfair Trading Regulations 2008;
- Mr H thought that the membership points purchased were an investment, would be a cure for the products that he'd previously bought and which were in perpetuity and were a method for decreasing maintenance fees; and
- the holiday company had a responsibility under the Timeshare Regulations to give Mr H and his wife sufficient information for them to make an informed contractual decision (such as the value on the open market of the product being purchased along with its likely value on the open market in the future) but failed to provide the necessary information;

and it has raised serious concerns about the way that the loans were sold to Mr H.

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

- Mr H and his wife had bought holiday club membership points from the holiday club in April 2009 and July 2013 and they entered into a purchase agreement in June 2016 to buy another 120,000 holiday club membership points and they entered into another purchase agreement in December 2017 to buy 40,000 more holiday club membership points;
- Mr H has provided unsigned copies of the June 2016 and December 2017 purchase agreements and an unsigned copy of the right of withdrawal form relating to the June 2016 purchase - but I consider it to be likely that he and his wife would have signed other documents with the holiday company relating to those purchases but those documents haven't been provided;
- Mr H also entered into loan agreements with Barclays Partner Finance in June 2016 for a loan of £11,550 and in December 2017 for a loan of £5,500 – under both of those loans the first payment wasn't due until three months after the advance date – Mr H repaid the June 2016 loan in September 2016 and he repaid the December 2017 loan in March 2018;
- Mr H's representative made claims to Barclays Partner Finance in January 2022 about the June 2016 and December 2017 purchases and Mr H then made

complaints to this service – the representative’s letters included claims under sections 75 and 140A;

- 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) and 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;
- I’m not determining the outcome of those claims as only a court would be able to do that but I’m considering whether or not Barclays Partner Finance’s response to them was fair and reasonable in the circumstances;
- the January 2022 letters say that it was represented to Mr H and his wife in June 2016 that: the contracts for their existing membership points were in perpetuity and the only way to remove themselves from the membership was to purchase the additional points which could be resold to the holiday company potentially at a profit; the purchase would remedy recurring issues they were having around booking availability; with the additional points they would be able to book high quality self-catering holidays all over the world; they would be able to book where they wanted, when they wanted; and this was a special offer only available on that day;
- the letters also say that Mr H and his wife were told in December 2017 that the holiday club had a new scheme and if members purchased further points they would be eligible to purchase an apartment on any of the resorts in three years;
- the June 2016 purchase agreement says that the holiday company agreed to sell and Mr H and his wife agreed to buy 120,000 holiday club membership points “... *upon and subject to the terms and conditions stated on this document and in the attached schedules*” – but the terms and conditions and the schedules for that purchase haven’t been provided;
- the December 2017 purchase agreement says that the holiday company agreed to sell and Mr H and his wife agreed to buy 40,000 holiday club membership points “... *upon and subject to the terms and conditions stated on this document and in the attached schedules*” – but the terms and conditions and the schedules for that purchase haven’t been provided;
- as I’ve not been provided with the terms and conditions and the schedules for the purchases or the other documents I consider it to be likely that Mr H and his wife would have entered into with the holiday company at those times, I can’t see what was agreed between Mr H and his wife and the holiday company;
- Mr H’s representative has described in its January 2022 letters and in its responses to our investigator’s recommendation the misrepresentations that it says were made to Mr H and his wife – but neither Mr H nor his representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to Mr H and wife before their June 2016 and December 2017 purchases;
- I’m not persuaded that there’s enough evidence to show that the holiday company represented to Mr H and his wife that the membership points were an investment, that the membership points were misrepresented to them by the holiday company or that they were induced into entering into the purchase agreements by any such misrepresentations;

- nor am I persuaded that there's enough evidence to show that the holiday company marketed and sold the membership points as an investment in breach of the Timeshare Regulations;
- the January 2022 letters also says that the quality of the resorts has deteriorated and Mr H and his wife have had to compromise on their holidays every year - but I'm not persuaded that there's enough evidence to show that there's been a breach of either of the purchase agreements by the holiday company for which Barclays Partner Finance would be liable under section 75;
- the January 2022 letters also says that Mr H's relationship with Barclays Partner Finance was unfair and Mr H's complaint forms say that: Barclays Partner Finance paid commissions to the holiday company which weren't declared to him; the holiday company failed to conduct proper assessments of his ability to afford the loans; and the holiday company unduly pressured him and his wife into entering into the purchase agreements and him into entering into the loan agreements and used aggressive commercial practices to pressure them;
- none of Mr H, his representative and Barclays Partner Finance has provided any evidence to show what commission, if any, was paid by Barclays Partner Finance to the holiday company in connection with the loans that were made to Mr H;
- from what this service has seen across the industry, if commission was ever paid it tended to be low and of less than 15% and I'm satisfied that Barclays Partner Finance wouldn't have breached any duty in making any such payments – 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 H risked the relationship being unfair under section 140A;
- Barclays Partner Finance says that the applications for the loans that it made to Mr H in June 2016 and December 2017 were system reviewed and accepted as they met its lending criteria at those times – and it has provided evidence to show that Mr H's gross annual income was £45,000 and his net monthly income was £2,823;
- it also says that Mr H didn't miss any loan payments, both of the loans were repaid within three months and he didn't contact it to raise any affordability concerns throughout the life of the loans, which doesn't indicate that the loans were unaffordable for him;
- neither Mr H nor his representative has provided any detailed information about Mr H's financial situation in June 2016 and December 2017 when the loans were made to him but he was able to fully repay both loans within three months of them having been made to him;
- the June 2016 loan was fully repaid in September 2016 and the December 2017 loan was fully repaid in March 2018 but I've seen no evidence to show that Mr H complained to Barclays Partner Finance about the affordability checks that it had conducted until his representative's January 2022 letter – if the loans were unaffordable for him I consider that it would be reasonable to expect him to have contacted Barclays Partner Finance about that issue sooner than he did;
- I'm not persuaded that there's enough evidence to show that the loans weren't affordable for Mr H when they were made to him, that Barclays Partner Finance didn't assess the affordability of the loans for him, that the loans were mis-sold to him or that Barclays Partner Finance has acted incorrectly in connection with the loans;

- Mr H and his wife received a form about their right to withdraw from the June 2016 purchase agreement and they had the right to withdraw from the purchase agreements within fourteen days without giving any reason but I've seen no evidence to show that they contacted the holiday company to withdraw from either of the purchase agreements within the applicable withdrawal periods;
- the loan agreements say: *"You can withdraw from the loan within 14 days beginning on the day after you sign the agreement"*; but I've seen no evidence to show that Mr H contacted Barclays Partner Finance to withdraw from either of the loan agreements within the applicable withdrawal periods;
- Mr H and his wife bought the membership points in June 2016 and December 2017 but I've seen no evidence to show that they complained to either the holiday company or Barclays Partner Finance about the undue pressure that they claim was applied to them until Mr H's representative's January 2022 letter – if they'd been unduly pressured into signing the purchase agreements and didn't want to buy the membership points, I consider that it would be reasonable to expect them to have contacted either the holiday company or Barclays Partner Finance about that issue sooner than they did;
- Mr H's representative says that Mr H and his wife bought 56,000 more holiday club membership points from the holiday company in July 2019 – if they'd been unduly pressured into making their earlier purchases or felt that their existing membership points had been misrepresented to them, I consider that it would be reasonable to expect them not to have then bought more membership points from the holiday company;
- I'm not persuaded that there's enough evidence to show that Mr H and his wife were unduly pressured into entering into the purchase agreements or that Mr H was unduly pressured into entering into the loan agreements or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr H's responses to our investigator's recommendation say that the holiday company had a responsibility under the Timeshare Regulations to give Mr H and his wife sufficient information for them to make an informed contractual decision (such as the value on the open market of the product being purchased along with its likely value on the open market in the future) but failed to provide the necessary information;
- I'm not persuaded that those regulations would require the holiday company to provide Mr H and his wife with information about the value on the open market of the membership points or their likely value on the open market in the future;
- neither Mr H nor his representative has identified any other information that Mr H and his wife required to make an informed decision regarding the purchases but that wasn't provided to them by the holiday company - and I don't consider that they've provided all of the documentation that would have been provided to them at the times of the purchases;
- Mr H and his wife had made purchase from the holiday company in April 2009 and July 2013 and I consider that it would be reasonable to expect them to have been aware of the information that they needed before they made the decisions to buy more membership points in June 2016 and December 2017 so I'm not persuaded that there's enough evidence to show that there's been a breach of any of those regulations as alleged;
- the January 2022 letters also say that the terms of the agreement are so egregious so as to be unfair but neither Mr H nor his representative has said which of the terms they consider to be unfair;

- it would be for a court to determine whether or not any of the terms in the purchase agreements or the other documents that Mr H and his wife entered into with the holiday company are unfair – but I don't consider that the presence of an unfair (or potentially unfair) term alone is likely to mean that a court would conclude that it created an unfair relationship between a debtor and a creditor as the court would consider how the term operated in practice and whether the operation of that term caused the relationship to be unfair;
- I'm not persuaded that there's enough evidence to show that the terms of the documents have been applied or operated unfairly against Mr H and his wife and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the documents created an unfair relationship between Mr H and Barclays Partner Finance;
- having carefully considered all of the information and evidence that Mr H and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr H'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 H and Barclays Partner Finance in these circumstances;
- Barclays Partner Finance didn't provide a substantive response to the claims that had been made to it so I can't say that its response to those claims was fair and reasonable - but if it had properly responded to those claims I consider that it would have been fair and reasonable for it not to have upheld them; and
- I sympathise with Mr H and his wife for the issues that they've had with their membership points, 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 H any of the money that he paid under the loan agreements, 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 H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 February 2024.

Jarrold Hastings
Ombudsman