

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 a holiday club membership. His partner is also involved in his complaint.

What happened

Mr H and his partner entered into an agreement with a holiday company to buy a holiday club membership in July 2012. The purchase price was £20,000 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 payments of £247.71 to Barclays Partner Finance but the loan was fully repaid in December 2013. Mr H and his partner entered into another agreement to buy other holiday products from the holiday company in May 2015 and they traded in the membership that they'd bought in July 2012.

Mr H made claims to Barclays Partner Finance in September 2022, including a claim under section 75 of the Consumer Credit Act 1974, about the membership that he and his partner had bought in July 2012. He said that: the credit intermediary wasn't authorised to arrange the loan so the loan agreement is unenforceable; the membership was for more than 50 years, contrary to EU law; the holiday company had stopped trading so was in breach of contract; and the membership was misrepresented to him and his partner.

Barclays Partner Finance said that it couldn't uphold those claims and that Mr H's claim under section 75 was made too late under the Limitation Act 1980. Mr H wasn't satisfied with its response so he complained to this service.

Our investigator didn't recommend that Mr H's complaint should be upheld. He thought that Barclays Partner Finance was entitled to rely on the timing of Mr H's misrepresentation claim under section 75 to turn it down and that any claim under section 140A of the Consumer Credit Act was made too late. He said that it appeared that Mr H traded in the membership for other holiday products in May 2015 so he no longer owned the membership that he purchased using finance provided by Barclays Partner Finance so he didn't think that a breach of contract had occurred (and even if he still owned the membership, the holiday club was still in operation, so the liquidation of the holiday company wouldn't have affected his ability to use it); and the credit intermediary held a licence granted by the Office of Fair Trading at the time of sale so he was satisfied that the loan agreement was arranged by an authorised broker.

Mr H said that he would like his complaint passed on to an ombudsman for a final decision.

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:

- we don't have a free hand to consider every complaint that's referred to us and our rules, which we're 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 H's complaint is that Barclays Partner Finance didn't uphold the claims that he'd made to it about the agreement that he and his partner entered into in July 2012 and I accept that he referred his complaint to this service within six years of Barclays Partner Finance's response to his claim in January 2023 - but I need to consider whether the Limitation Act 1980 applies to his claims;
- Mr H's claims included a claim under section 75 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 his claim 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 H'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 partner 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 section 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 H could have made a claim to the holiday company or Barclays Partner Finance about the misrepresentations that he says induced him and his partner into buying the membership in July 2012 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 section 75 misrepresentation claim against either the holiday company or Barclays Partner Finance – but a misrepresentation claim wasn't made under section 75 until September 2022, more than ten years later, which was outside of the time limits set out in the Limitation Act so I consider that Barclays Partner Finance has a defence to that claim and I find that it wasn't unreasonable for it to reject it;
- Mr H says that the holiday company has stopped trading so is in breach of contract but Mr H and his partner traded in the membership that they'd bought in July 2012 when they bought other holiday products from the holiday company in May 2015 – so when the holiday company stopped trading they no longer had the membership that they'd bought in July 2012 and I don't consider that there's been any breach of contract in these circumstances for which Barclays Partner Finance would be liable under section 75;
- I also understand that the holiday club has continued to operate even though the

holiday company has stopped trading so memberships of the holiday company have continued to be available for members to use;

- Mr H's September 2022 letter to Barclays Partner Finance didn't include a claim under section 140A and his complaint form didn't include a complaint about Barclays Partner Finance's response to any claim under section 140A so I don't consider that Mr H has made a claim to Barclays Partner Finance under section 140A and I make no finding in this decision about its response to a claim under section 140A;
- Mr H says that the credit intermediary wasn't authorised to arrange the loan so the loan agreement is unenforceable – but the holiday company was licenced by the Office of Fair Trading at the time that the loan was made to Mr H and I'm not persuaded that the credit intermediary wasn't authorised to arrange the loan or that the loan agreement is unenforceable;
- the loan was made to Mr H in July 2012 and was fully repaid (and the account closed) in December 2013 but I've seen no evidence to show that Mr H contacted Barclays Partner Finance about the authorisation of the credit intermediary or the enforceability of the loan agreement until September 2022 – more than ten years after the loan was made to him and more than eight years after the loan account was closed – and I consider that it would be reasonable to expect him to have raised any such issues before then;
- Mr H also says that the membership was for more than 50 years, contrary to EU law, but I'm not persuaded that he's provided enough evidence to show that the membership was for more than 50 years or that it was contrary to EU law – but even if it was for more than 50 years, I understand that Mr H and his partner traded in the membership when they bought other holiday products from the holiday company in May 2015 so their membership ended then and I'm not persuaded that Barclays Partner Finance would now have any liability to him arising from the duration of the membership;
- I sympathise with Mr H for the issues that he and his partner have had with their membership but I consider that Barclays Partner Finance's response to the claims that had been made to it was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Barclays Partner Finance to refund to Mr H 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 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 6 March 2024.

Jarrold Hastings
Ombudsman