

## **The complaint**

Mr A 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 claims management company.

## **What happened**

Mr A and his wife had bought holiday club membership points from a holiday company in February 2010 and November 2013 and they entered into a purchase agreement to buy 40,000 more membership points from the holiday company in April 2016. The net purchase price was £7,570 and Mr A also 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 £94.26 to Barclays Partner Finance but it says that the loan was repaid and the account was closed in December 2017.

Mr A's representative made claims, on behalf of Mr A, to Barclays Partner Finance under sections 75 and 140A of the Consumer Credit Act 1974 in February 2022. The representative's letter to Barclays Partner Finance included claims that: the membership points were mis-sold to Mr A and his wife and, but for the misrepresentations made to them, they wouldn't have purchased them and Mr A wouldn't have entered into the loan agreement – which he did so under pressure and acting under duress; the terms of the agreement are so egregious so as to be unfair and the payment of commission was hidden from view; and the holiday company didn't undertake a credit or affordability check.

Barclays Partner Finance said that it was unable to uphold those claims and it gave the details of how it had reached its decision. Mr A wasn't satisfied with its response so he complained to this service. His complaint form says that: Barclays Partner Finance paid a commission to the holiday company which wasn't declared to him; the holiday company failed to conduct a proper assessment of his ability to afford the loan, unduly pressured him and his wife into entering into the purchase agreement and him into entering into the loan agreement and used aggressive commercial practices to pressure them; and the membership points were misrepresented to them; all rendering the loan agreement unfair pursuant to section 140A; and it said that the claim should also be considered under section 75.

Our investigator didn't recommend that Mr A's complaint should be upheld as she didn't think that Barclays Partner Finance had acted unfairly. She said that she hadn't seen enough to suggest that the relationship between Mr A and Barclays Partner Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She wasn't persuaded that there was a misrepresentation at the time of sale and she said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr A.

Mr A's representative says that Mr A isn't accepting our investigator's recommendation and that it would like the matter referred to an ombudsman for a decision. It has provided 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 A and his wife as an investment that could easily be resold at a profit;
- it was represented to Mr A and his wife that their access to holidays and standard of accommodation would improve and that converting to the points would mean that their timeshare was no longer in perpetuity but would allow a quick and easy exit within a short period of time, the maintenance fees would decrease and the membership points were available at a special price but only if purchased on that day;
- Mr A and his wife were subjected to aggressive commercial practices in breach of the Consumer Protection from Unfair Trading Regulations 2008;
- it's widely accepted that holiday products tend to be overvalued by sales agents, and there's no functioning timeshare resale market;
- Mr A was 64 years of age (and his wife was 67 years of age) when they were sold the membership points and they would have been responsible for paying what was termed maintenance charges with failure to pay them resulting in termination of the membership with no refund; and
- the holiday company had a responsibility under the Timeshare Regulations to give Mr A 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 A. It also requested that this complaint be looked at in conjunction with the complaint that Mr A has made to this service relating to the November 2013 purchase.

### **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 A's complaint shouldn't be upheld for these reasons:

- I understand that Mr A and his wife had bought holiday products from the holiday company in February 2010 and November 2013 and they then signed the purchase agreement in April 2016 to buy 40,000 more holiday club membership points;
- Mr A's representative has provided a copy of the purchase agreement for that purchase but not copies of the other documents that I consider it to be likely that they would have also signed with the holiday company at that time;
- Mr A also entered into a loan agreement with Barclays Partner Finance for a loan of £7,570 and Barclays Partner Finance has provided a copy of the loan agreement, the pre-contract credit information for the loan and a loan explanation document – it has also provided a loan account statement which shows that the loan was fully repaid in December 2017 and that the loan account was then closed;
- Mr A's representative made claims to Barclays Partner Finance in February 2022 about the purchase agreement that Mr A and his wife had entered into in April 2016 and Mr A then made a complaint to this service – the representative's letter 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 February 2022 letter says that it was represented to Mr A and his wife by the holiday company that: purchasing an additional 40,000 points would upgrade their membership, remedy all issues as they would be able to book their preferred holidays and it would give them access to more luxurious accommodation; and the purchase would provide a five year exit plan;
- it says that Mr A and his wife have continued to struggle to book the holidays of their choosing, the annual maintenance fees have increased drastically every year and don't accurately reflect their share of the money required to be spent to maintain the property, non-members are able to access the same accommodation by booking online and paying much less after taking into account the maintenance fees, and they were told that this offer was only available that day and if they didn't purchase the membership points then the price would significantly increase;
- neither Mr A 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 A and his wife before their April 2016 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr A 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 agreement 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 February 2022 letter also says that Mr A's relationship with Barclays Partner Finance was unfair and Mr A's complaint form says that: Barclays Partner Finance paid a commission to the holiday company which wasn't declared to him; the holiday company failed to conduct a proper assessment of his ability to afford the loan, unduly pressured him and his wife into entering into the purchase agreement and him into entering into the loan agreement and used aggressive commercial practices to pressure them;
- Barclays Partner Finance says that, if a commission was paid, it wouldn't have been at a level that would have impacted the loan application and I've not been provided with any evidence to show that it paid a commission to the holiday company in relation to the loan that it made to Mr A;
- 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 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 would have been sufficiently high to mean that Barclays Partner Finance should have appreciated that not disclosing the amount of the commission to Mr A risked the relationship being unfair under section 140A;

- Barclays Partner Finance says that it's satisfied that affordability criteria were met and a detailed review of Mr A's account shows that there weren't any affordability concerns raised or any missed payment or arrears and there's no evidence to suggest that Mr A was unable to afford the loan - but it hasn't provided any further information about the affordability assessment that it conducted;
- neither Mr A nor his representative has provided any detailed information about Mr A's financial situation in April 2016 when the loan was made to him but the loan account statement shows that he made the loan repayment of £94.26 each month from June 2016 to December 2017 and that he made a payment of £6,951.90 to fully repay the loan in December 2017;
- the loan was made to Mr A in April 2016 and was fully repaid in December 2017 but I've seen no evidence to show that he complained to Barclays Partner Finance about the affordability checks that it had conducted until his representative's February 2022 letter (nearly six years after the loan was made to him and more than four years after the loan had been repaid) – if the loan was unaffordable for him or there were any other issues with the loan I consider that it would be reasonable to expect him to have contacted Barclays Partner Finance about those issues sooner than he did;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr A in April 2016 when it was made to him, that Barclays Partner Finance didn't assess the affordability of the loan for him, that the loan was mis-sold to him, or that Barclays Partner Finance lent to him irresponsibly;
- Mr A and his wife had the right to withdraw from the purchase agreement and Mr A had the right to withdraw from the loan agreement within fourteen days without giving any reason but I've seen no evidence to show that Mr A or his wife contacted either the holiday company or Barclays Partner Finance to withdraw from either the purchase agreement or the loan agreement within the applicable withdrawal periods;
- those agreements were entered into in April 2016 but I've seen no evidence to show that Mr A complained to either the holiday company or Barclays Partner Finance about the undue pressure that he claims was applied to him and his wife until his representative's February 2022 letter (nearly six years later) – if they'd been unduly pressured into signing the purchase agreement and didn't want to buy the membership points, I consider that it would be reasonable to expect Mr A to have contacted either the holiday company or Barclays Partner Finance about that issue sooner than he did;
- Mr A's representative has requested that this complaint be looked at in conjunction with Mr A's complaint relating to the November 2013 purchase – I can see that a decision has been issued by another ombudsman on that complaint and that it wasn't upheld but I can also see that Mr A complained that the holiday company unduly pressured him and his wife into entering into the purchase agreement for that purchase in November 2013 and him into entering into the loan agreement that he entered into at that time and that it used aggressive commercial practices to pressure them at that time - if Mr A and his wife had been subjected to undue pressure and aggressive commercial practices in November 2013 I consider that it would be reasonable to expect them not to have been unduly pressured into buying the membership points from the holiday company in April 2016;
- Mr A's representative's submissions in response to our investigator's recommendation say that Mr A bought another holiday product from the holiday company in January 2020 and if Mr A and his wife had been subjected to undue pressure and aggressive and misleading commercial practices in April 2016 I consider that it would be reasonable to expect them not to have bought another holiday product from the holiday company in January 2020;

- I'm not persuaded that there's enough evidence to show that Mr A and his were unduly pressured into entering into the purchase agreement or that Mr A was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive or misleading commercial practices against them;
- the February 2022 letter says that the terms of the agreement are so egregious so as to be unfair but I've not been provided with copies of all of the documents that I consider that Mr A and his wife would have entered into with the holiday company in April 2016;
- it would be for a court to determine whether or not any of the terms in the purchase agreement or the other documents that Mr A 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 A 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 A and Barclays Partner Finance;
- Mr A's representative's submissions in response to our investigator's recommendation say the holiday company had a responsibility under the Timeshare Regulations to give Mr A 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 don't consider that the holiday company was required to inform Mr A and his wife of the value on the open market of the membership points or their likely value on the open market in the future - and I don't consider that they've provided all of the documentation that would have been provided to Mr A and his wife at the time of the purchase;
- Mr A and his wife had made purchases from the holiday company in February 2010 and November 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 a decision to buy more membership points in April 2016 - and I'm not persuaded that there's enough evidence to show that there's been a breach of the Timeshare Regulations or the Consumer Protection from Unfair Trading Regulations by the holiday company;
- having carefully considered all of the information and evidence that Mr A and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr A'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 A and Barclays Partner Finance in these circumstances;
- I sympathise with Mr A for the issues that he and his wife have had with their membership points, 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 A any of the money that he 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 A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 March 2024.

Jarrold Hastings  
**Ombudsman**