

## The complaint

Mr N's complaint is, in essence, that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, acted unfairly and unreasonably by: (1) participating in an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974; and (2) deciding against paying claims under Section 75 of that Act.

## What happened

Mr N and his wife bought a trial membership of a holiday club (the 'Holiday Club') and they then entered into an acquisition agreement (the 'Purchase Agreement') in November 2009 to become members of the Holiday Club, buying 1,000 membership points.

The purchase price of the membership points was £17,294, from which a trade-in value of £5,595 relating to the trial membership was deducted, so the amount payable by Mr N and his wife was £11,699. Mr N entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount (the 'Credit Agreement'). He agreed to make 180 monthly repayments of £175.40, but the loan was fully repaid in April 2013.

Mr N and his wife entered into a fractional property owners club application and purchase agreement in May 2013 to become members of an asset backed timeshare (the 'Fractional Purchase'). Mr N and his wife transferred their Holiday Club membership to the holiday company and Mr N entered into another loan agreement with Barclays Partner Finance to pay for their Fractional Purchase. That loan was fully repaid in September 2013.

Mr N, using a professional representative, wrote to Barclays Partner Finance in November 2017 to complain about:

1. misrepresentations by the holiday company at the time of sale and a breach of contract, giving him claims under Section 75; and
2. Barclays Partner Finance's participation in an unfair credit relationship under the loan agreements and the related purchase agreements for the purposes of Section 140A.

His representative's letter to Barclays Partner Finance said, in summary, that: the holiday company misrepresented the memberships to Mr N and his wife and the misrepresentations and practices in the sales presentations made the loans unfair within Section 140A. It also said that no assessment of Mr N's financial position was made prior to the granting of the loans.

Barclays Partner Finance responded to Mr N's concerns in June 2018 and treated them as a complaint, but it only responded to the concerns that had been raised about the Fractional Purchase. It set out the reasons for its decision that it wouldn't be fair or reasonable to uphold Mr N's complaint.

Mr N wasn't satisfied with its response to his concerns, so he complained to this service. His representative wrote to this service and said, in summary, that Mr N was induced to enter into the Fractional Purchase by misrepresentations made by the holiday company and that those misrepresentations and its practices created a relationship between Barclays Partner

Finance and Mr N which was unfair. It also raised concerns about the way that the loans were sold to Mr N.

The complaint was then looked at by one of this service's investigators who, having considered everything, didn't think that Mr N's complaint should be upheld as he didn't think that Barclays Partner Finance had acted unfairly. He considered the Holiday Club purchase and the Fractional Purchase separately. In relation to the Holiday Club purchase, he said that: he hadn't seen enough to suggest that the credit relationship between Mr N and Barclays Partner Finance was unfair; he thought that the timing of Mr N's Section 75 claim gave and gives Barclays Partner Finance a complete defence to it; and he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr N.

Mr N's representative said that it doesn't accept what the investigator has said and would like an ombudsman to make a decision on Mr N's complaint. Barclays Partner Finance then made an offer to Mr N about the loan for the Fractional Purchase which was accepted by Mr N. But his representative says that it still wishes for the complaint about the Holiday Club purchase to be referred to the Ombudsman.

### **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 N's complaint about the Holiday Club purchase shouldn't be upheld for the reasons set out below. As Barclays Partner Finance has made an offer to Mr N about the loan for the Fractional Purchase which he accepted, I make no findings on Mr N's complaint insofar as it relates to the Fractional Purchase.

### **Mr N's Section 75 complaint about misrepresentation**

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). But creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it's relevant to consider whether Mr N's Section 75 claim was time-barred under the Limitation Act before he put it to Barclays Partner Finance.

A claim under Section 75 is a "*like*" claim against the creditor. It essentially mirrors the claim that the consumer could make against the supplier. A claim for misrepresentation against the supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967 and the limitation period to make such a claim expires six years from the date on which the cause of action accrued (under Section 2 of the Limitation Act).

But a claim like Mr N's is also "*an action to recover any sum by virtue of any enactment*" under Section 9 of the Limitation Act and the limitation period under that provision is also six years from the date on which the cause of action accrued. The date on which the cause of action accrued was the time of sale. I say this because Mr N and his wife entered into the Purchase Agreement at that time based on the alleged misrepresentations of the holiday company – which Mr N says they relied on. And as the November 2009 loan from Barclays Partner Finance was used to finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr N first notified Barclays Partner Finance of his Section 75 claim in November 2017. And as more than six years had passed between the time that he and his wife entered into the Purchase Agreement and when he first put his claim to Barclays Partner Finance, I don't think that it would have been unfair or unreasonable for it to have rejected Mr N's concerns about the holiday company's alleged misrepresentations. So I consider that the timing of Mr N's Section 75 claim gave and gives Barclays Partner Finance a complete defence to it.

#### Mr N's Section 140A complaint

As I've already said, Mr N's concerns include that the misrepresentations and practices in the sales presentations made the November 2009 loan unfair within Section 140A and that Barclays Partner Finance made no assessment of Mr N's financial position prior to the granting of the loan.

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 so only a court has the power to decide whether the credit relationship between Mr N and Barclays Partner Finance under the Credit Agreement was unfair for the purpose of Section 140A. But, as it's relevant law, I do have to consider it. So, in arriving at a fair and reasonable outcome to this complaint, I also think it will be helpful to consider whether an unfair credit relationship is likely to have come into existence between them.

The courts have said that the protection afforded to debtors by Section 140A isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. So, even if the holiday company did make some mistakes when the Holiday Club membership was sold to Mr N, it doesn't automatically follow that those mistakes led to an unfair credit relationship between Mr N and Barclays Partner Finance for the purpose of Section 140A - any such mistakes (and any consequences) must be looked at in the round, rather than in a narrow or technical way. And that's what I've done here.

Mr N's representative's November 2017 letter says that Mr N and his wife relied on the following statements made by the holiday company in the sales presentations:

- they easily could divest themselves of the points membership by selling it, or renting out the rights purchased under it;
- they could always recoup the cost of purchasing their points membership by selling it; and
- they would be able to holiday at any resort they wished in high season with accommodation of the same standard as they were enjoying at the time that they entered into the Purchase Agreement;

all of which were untrue.

The letter says that Mr N and his wife found it difficult to book the dates they wanted, as either the accommodation wasn't available, or they didn't have enough points to go there, they found that most of the accommodation was in one country and proved very expensive when compared to booking through their local travel agents and the maintenance fees went up each year. It also says that, when they tried to sell their membership, the holiday company made it impossible, without them losing a lot of money, and it was more difficult than they'd been told to let it out.

Mr N and his wife transferred their Holiday Club membership to the holiday company in May 2013 but I've seen no evidence to show that they complained about those issues until Mr N's

representative's letter to Barclays Partner Finance in November 2017, more than eight years after they'd bought that membership. And Mr N hasn't 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 him and his wife before their November 2009 purchase.

I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the Holiday Club membership to Mr N and his wife in a way that would have caused Mr N's credit relationship with Barclays Partner Finance to be unfair to him.

Mr N and his wife had the right to withdraw from the Purchase Agreement within 14 days and the Credit Agreement stated that Mr N had the right to withdraw from it within the same timeframe. Mr N hasn't said or provided much to support his allegations that the practices in the sales presentations caused his credit relationship with Barclays Partner Finance to be unfair to him.

Mr N's representative's letter says that no assessment of Mr N's financial position was made prior to the granting of the loan but Barclays Partner Finance says that Mr N applied for a loan in November 2009 and met its lending criteria. It also says that, due to the time that has elapsed, it's unable to retrieve the application. Mr N hasn't set out any reasons as to why the loan was unaffordable for him nor has he provided any detailed information about his financial situation in the build-up to Barclays Partner Finance's lending decision in November 2009 to support the allegation that it was.

Even if I was to find that Barclays Partner Finance failed to do everything that it should have when it agreed to lend (on which I make no formal finding), I'd have to be satisfied that the money lent to Mr N was actually unaffordable before also concluding that he lost out as a result if I'm to find that his credit relationship with Barclays Partner Finance was unfair to him. But, given what little has been said on, and provided in relation to, the subject, I'm not persuaded that the loan to pay for the Holiday Club membership was unaffordable for Mr N.

Overall, therefore, having considered all of the information and evidence that both sides have provided, I'm not persuaded that Mr N's credit relationship with Barclays Partner Finance resulting from the Credit Agreement was likely to have unfair to him for reasons relating to its, or the holiday company's, acts and/or omissions at the time of sale.

### Conclusion

I recognise that Mr N has concerns about the Holiday Club membership, but for the reasons I've set out above, I don't think that Barclays Partner Finance needs to do anything to put things right in this complaint.

**My final decision**

My decision is that I don't uphold Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 June 2024.

Jarrold Hastings  
**Ombudsman**