

## The complaint

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

## What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follows:

*"Mr V and his wife entered into a membership application agreement in November 2006 to buy a holiday club membership from a holiday company. The membership fee was £24,500 and Mr V entered into a credit card agreement with Barclays Partner Finance for credit that he used to pay that amount to the holiday company. The credit was on "buy now - pay later" terms and the purchase wasn't charged to Mr V's credit card account until six months from the purchase date. The credit was repaid in August 2007 and the holiday company stopped trading in 2019 and went into liquidation in 2020.*

*Mr V's representative, on behalf of Mr V, made claims to Barclays Partner Finance in January 2020 under sections 75 and 140A of the Consumer Credit Act 1974. It said that the holiday company was in liquidation and couldn't provide the service sold so was in breach of contract. It also said that the membership was mis-sold to Mr V and his wife and, but for the misrepresentations made to them, they wouldn't have purchased it nor entered into the credit card agreement. It also said that the terms of the agreement are so egregious as to be unfair, the payment of commission was hidden from view and the membership was marketed as an investment. It said that the membership was sold to them under extreme sales pressure, a proper affordability check wasn't undertaken and Mr V's relationship with Barclays Partner Finance was unfair.*

*Barclays Partner Finance didn't accept Mr V's claims regarding the sale of the membership but it accepted that a breach of contract had likely occurred. It offered a proportionate refund of the payments that Mr V had made, with interest, and cancellation of any outstanding loan repayments. That offer wasn't acceptable to Mr V so a complaint was made to this service.*

*Mr V's complaint form says that: the holiday company misrepresented the membership to him and his wife; 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 credit; the holiday company unduly pressured him and his wife into entering into the membership application agreement and him into entering into the credit card agreement and used aggressive commercial practices to pressure them; the holiday company marketed and sold the timeshare as an investment in breach of the applicable regulations; and the holiday*

*company closed between April and June 2019 and then went into liquidation so was in breach of contract.*

*Mr V's representative said that it had contacted Barclays Partner Finance about its proportionate offer but it hadn't responded. It said that it had a reasonable apprehension that accepting the proportionate offer could lead to severe prejudice to Mr V in relation to the complaint and lead to Barclays Partner Finance refusing to make any offer in certain circumstances which remained unclear.*

*Our investigator didn't recommend that Mr V's complaint should be upheld. She said that: Mr V wasn't entitled to more than six years from the date of the membership application agreement to make his misrepresentation claim; she hadn't seen enough to suggest that the relationship between Mr V and Barclays Partner Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair; and she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr V. She didn't think that the offer that Barclays Partner Finance had made to Mr V for the holiday company's breach of contract was unfair but she asked his representative to contact Barclays Partner Finance with information relating to Mr V's membership to allow his claim to be settled.*

*Mr V's representative, on behalf of Mr V, has asked for this complaint to be considered by an ombudsman. It says that Barclays Partner Finance won't make any offer of refund unless Mr V can provide evidence of payment of the maintenance fees for 2019 and will determine that the membership was not active at the time of liquidation and reject the complaint. It says that the holiday company's maintenance fee demand was sent to Barclays Partner Finance but wasn't paid as the holiday company closed its doors and didn't take any further bookings after April or May 2019. It also says that the membership would expire in January 2050".*

I said in my provisional decision: "I agree with our investigator that Mr V's complaint shouldn't be upheld but for these reasons:

- *we don't have a free hand to consider every complaint that's referred to us and our rules, which we are 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 V's complaint is that Barclays Partner Finance turned down some of the claims that he'd made to it and that the offer that it made to him wasn't acceptable - I accept that he referred his complaint to this service within six years of that happening, but I need to consider whether the Limitation Act 1980 applies to his claims;*
- *Mr V's claims were made under sections 75 and 140A but I'm not determining the outcome of his claim under section 75 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 that 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 V'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 wife 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 V could have made a claim to the holiday company or Barclays Partner Finance about the misrepresentations that he says induced him and his wife into buying the membership in November 2006 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 credit card 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 misrepresentation claim against either the holiday company or Barclays Partner Finance – but a misrepresentation claim wasn't made to Barclays Partner Finance until January 2020, more than thirteen years later so was outside of the time limits set out in the Limitation Act and I consider that Barclays Partner Finance has a defence to the claim and that it wouldn't have been unreasonable for it to have rejected the claim;*
- *Mr V's representative has also referred to a breach of contract by the holiday company because it went into liquidation and the time limit for a breach of contract claim in these circumstances is also six years from the date on which the cause of action accrued;*
- *Mr V's representative says that the holiday company closed between April and June 2019 and went into liquidation in 2020 and a breach of contract claim was made to Barclays Partner Finance in January 2020 so I consider that it was made within the time limits set out in the Limitation Act;*
- *Barclays Partner Finance accepted that a breach of contract had likely occurred and it offered a proportionate refund of the payments that Mr V had made, with interest, and cancellation of any outstanding loan repayments – and it asked Mr V to provide: "Confirmation of the length of the timeshare membership; this can often be found on the timeshare certificate or purchase agreement ..."; and "Evidence that the membership was valid at the time of the closure of the resort eg, proof of payment of current year's membership fee or confirmation from the resort of the timeshare membership and that the membership could no longer be used";*
- *Mr V's representative says that the holiday company's maintenance fee demand was sent to Barclays Partner Finance but it hadn't been paid by Mr V as the holiday company closed its doors and didn't take any further bookings after April or May 2019;*
- *Barclays Partner Finance said in a response to this service that it required the following information and evidence that Mr V still owned the membership at the time that the holiday company went into liquidation: "Copies of original purchase documentation, including purchase contract, timeshare certificate, any other documentation; Evidence of maintenance fees paid; Details of usage, i.e. holidays taken; Evidence of rental income received; Confirmation of the length of the timeshare membership; this can often be found on the timeshare certificate or purchase agreement ...; Evidence that the membership was valid at the time of the closure of the resort eg, proof of payment of the latest year's membership fee or confirmation from the resort of the timeshare membership and that the membership*

could no longer be used if this is personally addressed to [Mr V]”;

- *Mr V received an invoice for service fees for 2019 in December 2018 for a total of £3,158 and £869 of those service fees related to the membership that Mr V and his wife had bought in November 2006 – but he says that he didn’t pay those fees because the holiday company closed its doors and didn’t take any further bookings after April or May 2019 - and the effect of non-payment of the maintenance fee would mean that he couldn’t use the membership until his maintenance fees were up to date;*
- *an e-mail was sent to Mr V in October 2020 about the appointment of the liquidator - it was addressed to: “All Known Members of [the holiday company]”; and said: “We write to you in your capacity as a member of [the holiday company]”;*
- *I’ve seen no evidence to show that Mr V’s membership had been terminated by the holiday company before it went into liquidation or that Mr V hadn’t paid the maintenance or service fees for 2018 or previous years – so I’m satisfied that Mr V was a member of the holiday company when it went into liquidation;*
- *I’ve seen no evidence to show that Mr V or his representative has provided Barclays Partner Finance with the information that it requires to calculate the amount of his refund and I don’t consider that it’s response to his breach of contract claim has been unfair or unreasonable;*
- *I consider that Barclays Partner Finance’s offer of a proportionate refund of the payments that Mr V had made, with interest, and cancellation of any outstanding loan repayments was fair and reasonable so I consider that Mr V should provide it with the additional information that it’s requested so that the refund can be calculated – save that I don’t consider that Mr V should be required to provide any further evidence that the membership was valid at the time of the closure of the resort;*
- *I’m not persuaded that there’s enough evidence to show that there’s been any other breach of contract by the holiday company for which Barclays Partner Finance would be liable under section 75;*
- *Mr V’s representative also says that there was an unfair relationship between Mr V and Barclays Partner Finance 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;*
- *section 140A came into force on 6 April 2007 and applies to credit agreements covered by the Consumer Credit Act, including those taken out before 6 April 2007 as long as they were still in force on 6 April 2008;*
- *Mr V entered into the credit card agreement in November 2006 (so before section 140A came into force) and Barclays Partner Finance has provided an account statement which shows that the credit was repaid in August 2007 so I consider that it wasn’t still in force on 6 April 2008 and that section 140A doesn’t apply to Mr V’s credit card agreement;*
- *Mr V’s representative’s January 2020 claim letter says that a proper affordability check wasn’t undertaken and Mr V’s complaint form says that the holiday company failed to conduct a proper assessment of Mr V’s ability to afford the credit and, although section 140A doesn’t apply to Mr V’s credit card agreement, I can consider a complaint that the credit that Barclays Partner Finance made available to Mr V in November 2006 wasn’t affordable for him;*
- *Barclays Partner Finance hasn’t provided any information about the affordability assessment that it conducted before the credit was made available to Mr V in*

*November 2006 and neither Mr V nor his representative has provided any evidence to show that the credit wasn't affordable for Mr V at that time – but Mr V made two payments of £10,000 and a payment of £3,000 to Barclays Partner Finance in May 2007 and a payment of £1,397.78 to it in August 2007 and the credit was fully repaid later that month;*

- the credit was made available to Mr V in November 2006 and was repaid in August 2007 but I've seen no evidence to show that Mr V asked Barclays Partner Finance for any information about the affordability checks that it had conducted until his representative's January 2020 claim letter to it, more than thirteen years after the credit had been made available to him and more than twelve years after it had been repaid, and I consider that it would be reasonable to expect him to have made any complaint about those checks sooner than that;*
- I'm not persuaded that there's enough evidence to show that the credit wasn't affordable for Mr V in November 2006 when it was made available to him, that the credit card agreement was mis-sold to him or that Barclays Partner Finance has acted incorrectly in connection with the credit;*
- I sympathise with Mr V for the issues that he and his wife have had with their membership but I consider that Barclays Partner Finance's response to Mr V's claim under section 75 was fair and reasonable;*
- I find that Barclays Partner Finance's offer of a proportionate refund of the payments that Mr V had made, with interest, and cancellation of any outstanding repayments under the credit card agreement was fair and reasonable and Mr V should provide it with the additional information that it's requested so that the refund can be calculated – save that I don't consider that Mr V should be required to provide any further evidence that the membership was valid at the time of the closure of the resort; and*
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclays Partner Finance to refund to Mr V more than it has already offered to refund to him, to pay him any other compensation or to take any other action in response to his complaint”.*

Subject to any further comments or evidence that I received from any of Mr V, his representative and Barclays Partner Finance, my provisional decision was that I didn't intend to uphold this complaint. Barclays Partner Finance says that it has nothing further to add at this stage and is happy for the complaint to continue to final decision but neither Mr V nor his representative has responded to my provisional 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.

As Barclays Partner Finance says that it has nothing further to add at this stage and is happy for the complaint to continue to final decision and neither Mr V nor his representative has responded to my provisional decision, I see no reason to change my provisional decision.

### **My final decision**

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

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

Jarrold Hastings  
**Ombudsman**