

The complaint

Mr W complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, won't refund to him the money that he paid for two holiday club memberships. He's being represented in his complaint by a claims management company.

What happened

Mr W and his wife bought two holiday club memberships from a holiday company in June 2012. The price of the memberships was £15,951 and Mr W 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 £197.72 to Barclays Partner Finance and the loan was repaid in September 2022.

Mr W's representative made claims, on behalf of Mr W, to Barclays Partner Finance in April 2023. The representative's letter to Barclays Partner Finance said that Mr W and his wife had bought floating week timeshares and included claims that: the holiday company misrepresented the memberships to Mr W and his wife; the memberships were sold to them as an investment; the investment had the characteristics of a collective investment scheme; Barclays Partner Finance had breached provisions of the Consumer Credit Act 1974, including sections 75 and 140A of that Act; and Barclays Partner Finance hadn't carried out a creditworthiness assessment to see if Mr W could afford the loan.

Barclays Partner Finance didn't provide a substantive response to those claims so Mr W complained to this service. Our investigator didn't recommend that Mr W's complaint should be upheld. He said that he hadn't seen enough to suggest that the relationship between Mr W and Barclays Partner Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He thought that the timing of Mr W's misrepresentation claim under section 75 gave Barclays Partner Finance a complete defence to it. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr W.

Mr W's representative has provided a detailed response in which it says that it doesn't agree with our investigator's recommendation and would like an ombudsman to review the complaint. It has referred to a decision issued by an ombudsman on a "fractional" ownership product and to a 2023 judicial review decision and says, in summary and amongst other things, that the memberships were sold to Mr W and his wife as an investment and that Mr W's relationship with Barclays Partner Finance is unfair.

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 W'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 W's complaint was referred to this service within six years of his claims being made to Barclays Partner Finance - but I need to consider whether the Limitation Act 1980 applies to his claims;
- Mr W's claims included claims under sections 75 and 140A but I'm not determining the outcome of those claims 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 those claims 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 W's claim under section 75 is that the memberships were misrepresented to him and his wife by the holiday company and that they wouldn't have bought them if they 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 W 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 memberships in June 2012 as that was the latest time that any misrepresentations about the memberships would have been made to them and any loss would have been incurred as that was when Mr W 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 misrepresentation claim against either the holiday company or Barclays Partner Finance – but a misrepresentation claim wasn't made to Barclays Partner Finance until April 2023, more than six 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 the claim and I find that it wouldn't have been unreasonable for it to have rejected the claim on that basis;
- Mr W's representative says that Mr W's relationship with Barclays Partner Finance is unfair 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;
- the courts have said, when considering section 140A, that the time for limitation purposes runs from the date that the credit agreement ended (if it was not still running at the time the claim was made) and the limitation period for a claim under section 140A is six years;
- Mr W's loan was repaid in September 2022 so I don't consider that his claim under section 140A is time-barred and I can consider whether the alleged

misrepresentations caused his relationship with Barclays Partner Finance to be unfair;

- Mr W and his wife bought two holiday club memberships from the holiday company in June 2012 but I've not been provided with a copy of the purchase agreement or copies of all of the other documents that I consider it to be likely that they would also have signed with the holiday company at that time;
- Mr W's representative's April 2023 letter to Barclays Partner Finance says that Mr W and his wife were told that they could use their memberships to book holidays at any time of the year and that the timeshares were an investment for the future and that the holiday company claimed that they would own a part of the resort asset which would grow in value like normal property and which they could sell and recoup their investment;
- Mr W and his wife have provided a statement which says that they were told that as long as they kept the memberships for a year the holiday company would then sell them at a profit and they would get their money back and that it was an investment;
- Mr W and his wife signed a letter in June 2012 that said: "*We understand and acknowledge ... that there are NO guarantees regarding the resale time frame of my/our weeks*", and I've seen no other documentation from that time to show that the holiday company had agreed that Mr W and his wife would be able to sell their memberships at a profit;
- neither Mr W 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 W and his wife before their June 2012 purchase;
- Mr W has provided copies of maintenance fee invoices dated January 2013, 2014 and 2015 but not for any subsequent years and his representative says that they didn't use the memberships, and Mr W's and his wife's statement says that they've relinquished their timeshares - but I've seen no evidence to show that Mr W complained to the holiday company or Barclays Partner Finance that the holiday company misrepresented the memberships to him and his wife or that the memberships were sold to them as an investment until his representative's April 2023 letter to Barclays Partner Finance, more than ten years after they'd bought them;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr W and his wife that the memberships were an investment, that the memberships were misrepresented to them by the holiday company or that they were induced into buying them by any such misrepresentations;
- nor am I persuaded that there's enough evidence to show that the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations or that the memberships were a collective investment scheme;
- Mr W's representative says that Barclays Partner Finance hadn't carried out a creditworthiness assessment to see if Mr W could afford the loan but neither Mr W nor his representative has provided any detailed information about Mr W's financial situation in June 2012, when the loan was made to him, or to show that the loan wasn't affordable for him at that time;
- the loan was made to Mr W in June 2012 and the loan account statement that Mr W has provided shows that he made the monthly loan repayment of £197.72 each month during the term of the loan and that it was fully repaid in September 2022 - 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 April 2023 letter – if the loan was unaffordable for him or he had concerns about the affordability assessment that it had conducted, 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 W in June 2012 when it was made to him or that Barclays Partner Finance has acted incorrectly in connection with the loan;
- Mr W's representative says that the holiday company wasn't authorised to arrange the loan and that the loan agreement is unenforceable but the holiday company was identified on the loan agreement as the credit intermediary and this service's records show that the holiday company was covered under the consumer credit jurisdiction in June 2012 – which it wouldn't have been had it not been granted a consumer credit licence by the Office of Fair Trading – and, in the absence of any persuasive evidence to suggest otherwise, I don't consider that it's unreasonable to conclude that it's more likely than not that the holiday company held the requisite licence when Mr W entered into the loan agreement and that it's more likely than not that the loan agreement would be enforceable;
- Mr W's representative has referred to a decision issued by an ombudsman on a "fractional" ownership product and to a 2023 judicial review decision but that decision related to a different type of holiday ownership product which was sold as an investment and related to a specified property – Mr W and his wife bought a holiday club membership from the holiday company which their representative has described as floating week timeshares and which didn't relate to a specified property and which I don't consider were sold to them as an investment;
- both types of products were often sold in similar ways and may have had similar contractual documentation but the operation and effect of the contractual documentation would be significantly different between the products;
- having carefully considered all of the information and evidence that Mr W and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr W'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 W 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 them was fair and reasonable but, if 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 W for the issues that he and his wife have had with their memberships, 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 W 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 W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 April 2024.

Jarrod Hastings
Ombudsman