

The complaint

The estate of the late Mrs S complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, won't refund to it the money that Mrs S paid for some holiday club membership points rights. The late Mrs S's husband is also involved in this complaint and the estate of the late Mrs S is being represented by a claims management company.

What happened

Mrs S and her husband had owned holiday club membership points since at least November 2002. They entered into a purchase agreement in March 2010 to buy 2,000 holiday club membership points rights from a holiday company. The purchase price was £2,840 and I understand that Mrs S's husband also entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount – and that the loan was repaid in September 2010.

Mrs S and her husband entered into another purchase agreement in April 2011 to buy 2,000 more holiday club membership points rights from the holiday company. The purchase price was £3,340 and I understand that Mrs S's husband also entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount – and that the loan was repaid in August 2012.

Mrs S and her husband entered into another purchase agreement in June 2012 to buy 4,000 more holiday club membership points rights from the holiday company. The purchase price was £3,500 and Mrs S entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of £6,739. She agreed to make 120 monthly repayments of £87.52 to Barclays Partner Finance.

Mrs S's representative made claims, on behalf of Mrs S and her husband, to Barclays Partner Finance under section 140A of the Consumer Credit Act 1974 in October 2016. It said that the holiday company: was in breach of contract; didn't conduct a proper assessment of their financial position and ability to repay the loans; applied considerable pressure to procure their agreement to the loans; and breached EU Law. A complaint was then made to this service.

Mrs S and her husband's representative referred to claims under section 75 of the Consumer Credit Act as well as the claims under section 140A. Their complaint form says that the holiday company and Barclays Partner Finance failed to conduct a proper assessment of their ability to afford the loans, Barclays Partner Finance paid a commission to the holiday company which wasn't declared to them and the holiday company unduly pressured them into entering into the purchase agreements and the loan agreements; all rendering the loan agreements unfair pursuant to section 140A. Barclays Partner Finance then provided a response to the claims that had been made to it in which it set out in detail the reasons that it didn't consider that the claims should be upheld. Mrs S sadly passed away in May 2018.

Mrs S's husband's complaint about Barclays Partner Finance's response to the claims that had been made to it relating to the loans that had been made to him in March 2010 and April

2011 was then separated from Mrs S's complaint about Barclays Partner Finance's response to the claims that had been made to it relating to the loan that had been made to her in June 2012. The late Mrs S's husband's complaint has been considered separately and a decision has been issued on that complaint by another ombudsman.

Our investigator didn't recommend that the estate of the late Mrs S's complaint should be upheld as she didn't think that Barclays Partner Finance's decision to turn down the claims was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale. She said that she hadn't seen enough to suggest that the relationship between Mrs S and Barclays Partner Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She didn't consider that Barclays Partner Finance had acted incorrectly in connection with any commission paid to the holiday company and she also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs S.

Mrs S's representative says that it doesn't agree with our investigator's recommendation and it has provided a generic submission from a legal counsel about the holiday company and the unfair terms that it uses. It has also set out the reasons that it considers that there's been a fundamental breach of contract by the holiday company.

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 Mrs S's complaint shouldn't be upheld for these reasons:

- in this decision I'm only considering the estate of the late Mrs S's complaint about Barclays Partner Finance's response to the claims that had been made to it relating to the loan that had been made to Mrs S in June 2012 – the late Mrs S's husband's complaint about Barclays Partner Finance's response to the claims that had been made to it relating to the loan that had been made to him has been dealt with separately;
- Mrs S and her husband signed a purchase agreement in June 2012 to buy 4,000 more holiday club membership points rights from the holiday company and Mrs S signed a credit application and a customer compliance statement and she entered into the loan agreement;
- the purchase agreement referred to the terms and conditions, a key information document and the holiday company's articles and associated legal documentation which were contained in a legal and governing documents booklet but none of those documents have been provided to me;
- Mrs S's representative sent an undated letter to Barclays Partner Finance which made claims under section 140A and the complaint form that was then sent to this service said that a complaint to Barclays Partner Finance had first been made in October 2016 – the letter included claims that that the holiday company was in breach of contract, didn't conduct a proper assessment of Mrs S's financial position and ability to repay the loan, applied considerable pressure to procure her agreement to the loan; and breached EU law;
- a complaint was then made to this service which referred to claims under sections 75 and 140A and the complaint form included complaints that the holiday company and Barclays Partner Finance failed to conduct a proper assessment of Mrs S's ability to afford the loan, Barclays Partner Finance paid a commission to the holiday company

which wasn't declared to Mrs S and the holiday company unduly pressured Mrs S and her husband into entering into the purchase agreement and Mrs S into entering into the loan agreement;

- 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 Mrs S's claims under sections 75 and 140A as only a court would be able to do that but I'm considering whether or not Barclays Partner Finance's response to her claims was fair and reasonable in the circumstances;
- the claim letter that was sent to Barclays Partner Finance said that the holiday company was in breach of contract and had breached EU law, but no further information about those breaches was provided in that letter; Mrs S's representative then set out, in response to our investigator's recommendation, the reasons that it considers that there's been a fundamental breach of contract by the holiday company, but I'm not persuaded that there's enough evidence to show that there's been a breach of contract or EU law by the holiday company for which Barclays Partner Finance would be liable under section 75;
- that claim letter also says that Mrs S and her husband were told that they would get access to better accommodation that would rent out for a higher sum of money and that they were "100% guaranteed" to rent out the points and cover all, if not more, of their yearly fees – and that they were told that their monthly finance amount would go down;
- neither Mrs S nor her 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 Mrs S and her husband before their June 2012 purchase;
- Mrs S and her husband had previously made purchases from the holiday company in March 2010 and April 2011 and they claim that misrepresentations were also made to them about those purchases – but if misrepresentations had been made to them about those purchases I consider that it would be reasonable to expect them to have been more cautious before making another purchase from the holiday company and to have ensured that any representations that were made to them were confirmed in writing;
- I'm not persuaded that there's enough evidence to show that the holiday company provided any guarantee to Mrs S and her husband that they would be able to rent out their points rights or that they would make a profit from them and I don't consider it to be likely that it would have given such guarantees to them;
- Mrs S and her husband bought the points rights in June 2012 but I've seen no evidence to show that they complained to the holiday company or Barclays Partner Finance about any misrepresentations before October 2016, more than four years later;
- Mrs S signed the customer compliance statement in which she confirmed that she'd received the pre-contract credit information and the loan agreement and had had adequate time to consider the information that they contained – the loan agreement clearly showed that the monthly payment due from Mrs S would be £87.52 and I'm not persuaded that there's enough evidence to show that Mrs S and her husband

were told that their monthly finance amount would go down or that it was reasonable for them to understand that their monthly payment would be less than it was before Mrs S entered into the loan agreement;

- I'm not persuaded that there's enough evidence to show that the points rights that Mrs S and her husband bought in June 2012 were misrepresented to them by the holiday company or that they were induced into entering into the purchase agreement by any such misrepresentations;
- the claim letter included a claim that the holiday company didn't conduct a proper assessment of Mrs S's financial position and ability to repay the loan and the complaint form includes a complaint that the holiday company and Barclays Partner Finance failed to conduct a proper assessment of Mrs S's ability to afford the loan;
- Mrs S completed a credit application before the loan was made to her in which she confirmed that she was a retired home-owner with annual pension income of £15,500 – Barclays Partner Finance says that it adheres to strict lending criteria and Mrs S's application was approved based on its lending criteria in place at the time;
- it also says that Mrs S's monthly outgoings were £378.40, leaving a net monthly balance of £912.60, so a monthly loan payment of £87.52 was assessed as affordable and payments were maintained until Mrs S passed away;
- Mrs S also signed the customer compliance statement in which she confirmed: *"I/we are confident that from an income perspective that the repayments will be met now and in the future"*;
- the loan was made to Mrs S in June 2012 but I've seen no evidence to show that she asked Barclays Partner Finance for any information about the affordability assessment that it conducted before October 2016 and I consider that it would be reasonable to expect her to have raised any concerns about the affordability assessment before then;
- I consider that it was reasonable for Barclays Partner Finance to conclude on the basis of the information that Mrs S had provided that she could afford a loan with a monthly repayment of £87.52 and I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for her, that Barclays Partner Finance should have done more to assess the affordability of the loan for her, that the loan was mis-sold to her or that Barclays Partner Finance has acted incorrectly in connection with the loan;
- the complaint form includes a complaint that Barclays Partner Finance paid a commission to the holiday company which wasn't declared to Mrs S - but I've not been provided with any evidence to show what commission, if any, was paid by Barclays Partner Finance to the holiday company;
- 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 was sufficiently high to mean that Barclays Partner Finance should have appreciated that not disclosing any commission to Mrs S risked the relationship being unfair under section 140A;
- Mrs S entered into the loan agreement in June 2012 and I consider it to be likely that any commission would have been paid at about that time, but I've seen no evidence to show that she contacted Barclays Partner Finance about any commission that it had paid to the holiday company before October 2016;

- the claim letter included a claim that the holiday company applied considerable pressure to procure Mrs S's agreement to the loan and the complaint form includes a complaint that the holiday company unduly pressured Mrs S and her husband into entering into the purchase agreement and Mrs S into entering into the loan agreement - but Mrs S and her husband had the right to withdraw from the purchase agreement within 14 days without giving any reason and I've seen no evidence to show that they contacted the holiday company or Barclays Partner Finance to withdraw from the purchase agreement within the applicable withdrawal period;
- it was clear from the loan agreement that Mrs S also had the right to withdraw from the loan agreement but I've seen no evidence to show that she contacted Barclays Partner Finance to withdraw from the loan agreement within the applicable withdrawal period;
- Mrs S and her husband signed the purchase agreement in June 2012 but I've seen no evidence to show that they complained to either the holiday company or Barclays Partner Finance about the undue pressure that Mrs S claims was applied to them before October 2016 – if they had been unduly pressured into signing the purchase agreement and didn't want to buy the additional points rights, I consider that it would be reasonable to expect them to have contacted either the holiday company or Barclays Partner Finance about that issue sooner than they did;
- Mrs S and her husband had entered into purchase agreements with the holiday company in March 2010 and April 2011 and they claim that they were unduly pressured into entering into those agreements – but if they'd been unduly pressured by the holiday company into entering into those agreements I don't consider it to be likely that they'd have then entered into another purchase agreement to buy 4,000 more points rights from the holiday company in June 2012;
- I'm not persuaded that there's enough evidence to show that Mrs S and her husband were unduly pressured into entering into the purchase agreement or that Mrs S was unduly pressured into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mrs S's representative has provided a generic submission from a legal counsel about the holiday company and the unfair terms that it uses – but it would be for a court to determine whether or not any of the terms in the agreements were unfair;
- 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 Mrs S and her husband 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 Mrs S and Barclays Partner Finance;
- I'm not persuaded that there's enough evidence to show that the late Mrs S'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 her and Barclays Partner Finance in these circumstances;
- I sympathise with the late Mrs S's husband and the estate for the loss of Mrs S and for the issues that have been experienced with the points rights that were bought in June 2012, but I consider that Barclays Partner Finance's response to the claims that had been made to it was fair and reasonable; and

- I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclays Partner Finance to refund to the estate any of the money that's been paid under the loan agreement, to pay it any compensation or to take any other action in response to this complaint.

My final decision

My decision is that I don't uphold the estate of the late Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask a representative of the estate of the late Mrs S to accept or reject my decision before 11 December 2023.

Jarrold Hastings

Ombudsman