

## The complaint

Mr M complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, has rejected the claims that he's made to it for a refund of the money that he paid for a holiday ownership product. He's being represented in his complaint 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 M and his wife entered into a purchase agreement to buy some holiday ownership products in October 2010. The purchase price was £30,750 and Mr M also entered into a fixed sum loan agreement with Barclays Partner Finance for a loan to pay for part of the purchase price. Barclays Partner Finance says that Mr M's loan was settled in full in September 2012.*

*Mr M's representative, on behalf of Mr M, made claims to Barclays Partner Finance in January 2021 under sections 75 and 140A of the Consumer Credit Act 1974. I've seen no evidence to show that Barclays Partner Finance responded to those claims and a complaint was then made to this service.*

*Mr M's complaint form says that: Barclays Partner Finance paid a commission to the holiday company which wasn't declared to Mr M; the holiday company failed to conduct a proper assessment of Mr M's ability to afford the loan, unduly pressured him into entering the contracts and used aggressive commercial practices to pressure him; the product was misrepresented to him; and the holiday company was in liquidation so was in breach of contract as it can't provide the goods or service sold to Mr M; all rendering the agreement unfair pursuant to section 140. It said that the claim should also be considered under section 75. Barclays Partner Finance then said that, as the purchase price was over £30,000, Mr M was unable to make a claim under section 75.*

*Our investigator didn't recommend that Mr M's complaint should be upheld. He thought that Barclays Partner Finance was entitled to rely on the timing of Mr M's section 140A claim to turn it down, and as the purchase price looked to be over the £30,000 section 75 limit, he thought that it was entitled to decline Mr M's misrepresentation claim on that basis. He considered Mr M's breach of contract claim under section 75A of the Consumer Credit Act but he said that he didn't agree that a breach of contract had taken place when the supplier went into administration. He also said that he hadn't seen any persuasive evidence to show that the loan was unaffordable for Mr M at the time that the loan agreement was setup.*

*Mr M's representative says that Mr M doesn't agree with our investigator's recommendations and requires his complaint to be referred to an ombudsman. Mr M's representative has provided a detailed response in which it sets out reasons that it considers that Mr M's complaint should be upheld. It says, in summary and*

*amongst other things, that Mr M traded in a number of holiday products as part of a purchase of a further holiday product that he made in March 2013 and that he took out a further loan with Barclays Partner Finance for £32,924 at that time – and that the March 2013 loan demonstrates a continuing relationship with Barclays Partner Finance which stretched into a period where any arguments that the period of limitation had elapsed don't apply.*

*Our investigator said that the claim submitted to Barclays Partner Finance was in relation to a purchase that took place in October 2010 and that if a further purchase or upgrade took place in 2013 and a new loan agreement was made with Barclays Partner Finance at that time, Mr M can raise a claim to Barclays Partner Finance in relation to that purchase and loan if he's unhappy about it but this service can't consider anything relating to a later purchase or loan as part of this complaint".*

I said in my provisional decision: *"I agree with our investigator that Mr M'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'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 M's complaint is about Barclays Partner Finance's response to the claims that had been made to it and I accept that he referred his complaint to this service within six years of the date of his representative's January 2021 letter to Barclays Partner Finance - but I need to consider whether the Limitation Act 1980 applies to his claims;*
- Mr M's claims were made 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);*
- one of those criteria is that section 75 doesn't apply so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000;*
- Mr M and his wife bought three holiday products from the holiday company which are listed on the purchase agreement and the total price for those three products was £30,750 – no separate price for each of the products was set out in the agreement but I consider it to be unlikely that the holiday company had attached a cash price of more than £30,000 to any one of the products so I consider it to be more likely than not that section 75 would apply in these circumstances;*
- Mr M's claim under section 75 is that the holiday company has gone into liquidation so is in breach of contract and that the holiday product 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 M 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 holiday products in October 2010 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 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 claim wasn't made under section 75 until January 2021, more than ten 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 that claim;*
- *the time limit for a breach of contract claim is also six years from the date on which the cause of action accrued – I understand that the holiday company went into liquidation in January 2020 and Mr M's representative made a breach of contract claim to Barclays Partner Finance in January 2021 so I consider that Mr M's breach of contract claim was made in time;*
- *our investigator said that the resort at which Mr M and his wife had two of their three products was still available for use by members so he didn't agree that a breach of contract had taken place because the holiday company had gone into administration;*
- *he also said that the resort at which Mr M and his wife had their other product stopped providing services to members around 2019 but he said that Mr M had upgraded that product in 2013 so the product that he and his wife had bought in October 2010 would've likely ended at that point and would no longer have been active when the resort stopped providing services;*
- *although Mr M's representative has provided a detailed response to our investigator's recommendations and says that the March 2013 loan demonstrates a continuing relationship with Barclays Partner Finance which stretched into a period where any arguments that the period of limitation had elapsed don't apply, I'm not persuaded that either Mr M or his representative has provided enough evidence to show that Mr M still had the holiday product in 2019 that he and his wife had bought in October 2010 or that they hadn't traded-in that product for another holiday product in 2013;*
- *nor am I persuaded that there's enough evidence to show that Mr M's use of the holiday products that he and his wife bought in October 2010 has been adversely impacted by the liquidation of the holiday company so I don't consider that it would be fair or reasonable for me to require Barclays Partner Finance to take any action under section 75 in response to the liquidation of the holiday company;*
- *Mr M's representative says that there was an unfair relationship between Mr M and Barclays Partner Finance because Barclays Partner Finance paid a commission to the holiday company which wasn't declared to Mr M and the holiday company unduly pressured him into entering the contracts and used aggressive commercial practices to pressure him;*

- *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;*
- *Barclays Partner Finance says that Mr M's loan was settled in full in September 2012 and I've not been provided with any evidence to show that the loan agreement continued after that time so I'm satisfied that the loan agreement ended in September 2012 and I'm not persuaded that the March 2013 loan shows that the relationship between Mr M and Barclays Partner Finance arising from the October 2010 loan agreement continued after the loan was settled in September 2012;*
- *I consider that Mr M would have had six years from September 2012 to bring a claim under section 140A against Barclays Partner Finance but a claim wasn't made until January 2021, more than eight 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 that claim;*
- *Mr M's representative also says that the holiday company failed to conduct a proper assessment of Mr M's ability to afford the loan and Mr M says that the purchase caused a financial shortage situation in his family's life as they had to curtail expenditure on other needs of a growing family life to ensure that there were sufficient funds left to pay the loan each month and that he had to work additional overtime shifts to obtain additional funds - but I've seen no other evidence to show that the loan wasn't affordable for Mr M in October 2010 when it was made to him or that he's experienced any financial difficulties since then;*
- *I've also seen no evidence to show that Mr M asked Barclays Partner Finance for any information about its assessment of his ability to afford the loan before his representative's January 2021 letter – as the loan was made to him in October 2010 and was settled in September 2012, I consider that it would be reasonable to expect him to have raised any concerns about that assessment or the affordability of the loan before then;*
- *I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr M in October 2010 when it was made to him;*
- *I've seen no evidence to show that Barclays Partner Finance responded to the claims that had been made to it by Mr M's representative in January 2021 so I can't say that its response to them was fair and reasonable – but if it had properly responded to Mr M's claims I consider that it would have been fair and reasonable for it not to have upheld them; and*
- *I sympathise with Mr M for the issues that he's had with his holiday products and the other difficulties that he's described, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclays Partner Finance to refund to him 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".*

Subject to any further comments or evidence that I received from any of Mr M, 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 to add and

neither Mr M 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 neither Mr M nor his representative has responded to my provisional decision, I see no reason to change the findings that I set out in my provisional decision.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 November 2023.

Jarrold Hastings  
**Ombudsman**