

## **The complaint**

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

## **What happened**

Mr K and his wife bought two holiday club memberships from a holiday company in July 2007. The purchase price was £24,984 and Mr K 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 £304.44 to Barclays Partner Finance. Mr K repaid that loan in January 2012.

Mr K and his wife bought six more holiday club memberships from the holiday company in July 2008. The purchase price was £10,950 and Mr K's wife entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount. The loan was repaid in March 2015.

Mr K and his wife bought two more holiday club memberships from the holiday company in July 2009 and the estate's representative says that Mr K and his wife traded in the two memberships that they'd bought in July 2007. They agreed to pay £13,941 to the holiday company and Mr K entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount. Mr K repaid that loan in January 2012.

The estate's representative says that Mr K and his wife traded in four of the memberships that they'd bought in July 2008 for another membership in July 2011. The estate's representative says Mr K and his wife then traded in that membership and the other two memberships that they'd bought in July 2008 for another membership in July 2012 and they also paid a purchase price of £4,500.

Mr K and his wife bought two more holiday club memberships from the holiday company in June 2015 and the estate's representative says that they traded in their other remaining membership. The total purchase price was £18,000. Mr K entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of £11,000 and Mr K's wife entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of £7,000.

The estate's representative made claims, on behalf of Mr K, to Barclays Partner Finance under sections 75 and 140A of the Consumer Credit Act 1974 in May 2020 about some of the . It said that the products were misrepresented to Mr K and his wife; the contract was breached; commission was paid between Barclays Partner Finance and the holiday company which wasn't disclosed to Mr K and his wife which created a breach of fiduciary duty and caused an unfair relationship; the loan was unaffordable; and the holiday company filed for liquidation in December 2019 so was in breach of contract.

Barclays Partner Finance didn't provide a substantive response to those claims so a complaint was made to this service. The complaint form says that the holiday company and Barclays Partner Finance failed to conduct a proper assessment of Mr K and his wife's ability

to afford the loans; Barclays Partner Finance paid commissions to the holiday company which weren't declared to them and the holiday company unduly pressured them into entering into agreements; all rendering the loan agreements unfair pursuant to section 140A.

The estate's representative repeated those claims in relation to the July 2007 agreements in March 2021 but Barclays Partner Finance said that the claims about those agreements were time-barred under the Limitation Act 1980. It then said that it didn't accept Mr K's and his wife's claims about the other agreements but offered redress as a gesture of goodwill in relation to the loan that had been made to Mr K's wife in July 2008 and the outstanding loans which had been made to Mr K and to his wife in June 2015. It offered to: refund all payments made towards the loans, with interest; refund any maintenance fees paid for the years in which the memberships weren't utilised (subject to provision of evidence of those payments and usage), with interest; and cancel any outstanding loan repayments and their contracts with the holiday company.

One of our investigators considered Mr K's wife's complaint about Barclays Partner Finance's response to the claims that had been made to it about her June 2015 loan separately and Mr K's wife accepted Barclays Partner Finance's offer about that loan. Mr K accepted Barclays Partner Finance's offer about the June 2015 loan that had been made to him and his wife also accepted the offer of redress that Barclays Partner Finance made to her about the July 2008.

Another of our investigators considered Mr K's complaint about Barclays Partner Finance's response to the claims that had been made to it about the July 2007 and the July 2009 loans. She didn't recommend that the complaint should be upheld. She thought that Barclays Partner Finance was entitled to rely on the timing of the section 75 misrepresentation claim and of the section 140A claim to turn them down. She said that she hadn't seen sufficient evidence to demonstrate that Mr K and his wife still owned the memberships that they'd bought in July 2007 and July 2009 at the time that the holiday company went into liquidation and that she couldn't say that there had been a breach of contract. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr K.

The estate's representative has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- the late Mr K and his wife were involved in a perpetual cycle of mis-selling with constant promises that their investment would come to fruition and the products were upgraded with the assistance of finance to the ultimate goal of premium membership;
- Mr K and his wife were 72 when they entered this cycle and had expected to sell their assets years ago but are still making repayments out of their pensions with no return on their "*investment*";
- Barclays Partner Finance facilitated this with the provision of loan agreements and a complete absence of appropriate enquiries as to how Mr K and his wife were sustaining repayments from their combined annual pension income of £28,000;
- over a period of eight years Barclays Partner Finance provided Mr K and his wife with loans of about £70,000 plus interest from an income of £28,000 and it fails to see how that's responsible lending;
- the holiday company sought to mislead Mr K and his wife as they believed they were investing their pension into property to be sold at a later date and the true nature of the product was concealed and misrepresented so the period of limitation does not begin to run until they discovered the concealment or could with reasonable diligence have discovered it under section 32 of the Limitation Act; and

- all previous purchases were part of the larger purchase in 2015 so the loans provided by Barclays Partner Finance form part of the contracts made in June 2015.

Mr K sadly passed away in November 2022.

### **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 the estate of the late Mr K's complaint shouldn't be upheld for these reasons:

- I understand that Barclays Partner Finance made five loans to Mr K and his wife between July 2007 and June 2015, that it made offers of redress to them relating to three of those fives loan and that those offers have been accepted;
- the other two loans are the loan in the amount of £24,984 that was made to Mr K in July 2007 and the loan in the amount of £13,941 that was made to him in July 2009 – and in this decision I'm only considering those two loans;
- 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;
- the estate's complaint is that Barclays Partner Finance turned down the claims that had made to it and I accept that the complaint was referred to this service within six years of that happening - but I need to consider whether the Limitation Act applies to the claims;
- the 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);
- the claim under section 75 is that there's been a breach of contract by the holiday company and that the memberships were misrepresented to Mr K and his wife 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 K would have been able to make a claim to the holiday company or Barclays Partner Finance about any misrepresentations that could have induced him and his wife into entering into the agreements in July 2007 and July 2009 to buy the memberships no later than the times that they entered into those agreements as that

was the latest time that any misrepresentations about those memberships would have been made to them and any loss would have been incurred as that was when Mr K also entered into the loan agreements with Barclays Partner Finance;

- I consider that Mr K's cause of action would have 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 until May 2020, more than six 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 such a claim and I find that it wasn't unreasonable for it to have rejected the misrepresentation claim that was made to it relating to the July 2007 loan and that it wouldn't have been unreasonable for it to have rejected the misrepresentation claim that was made to it relating to the July 2009 loan;
- the estate's representative says that the holiday company sought to mislead Mr K and his wife and that information was deliberately concealed from them so the time limits are postponed under section 32;
- section 32(1)(b) says that, if any fact relevant to the debtor's right of action has been deliberately concealed from them, the period of limitation doesn't begin until the debtor has discovered the concealment or it could with reasonable diligence have been discovered by them – and section 32(2) says that deliberate commission of a breach of duty which is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in the breach;
- I'm not persuaded that there's enough evidence to show that there's been a deliberate concealment of any relevant information in these circumstances so I don't consider that section 32 is applicable to the estate's claims;
- the time limit for a breach of contract claim is also six years from the date on which the cause of action accrued – the estate's representative says that the holiday company filed for liquidation in December 2019 so was in breach of contract - a breach of contract claim was made in May 2020 so I consider that the claim was made in time;
- the estate's representative says that Mr K and his wife's only remaining memberships at the time that the holiday company closed were the two memberships that they'd bought in June 2015 but that their previous purchases were part of the larger purchase in June 2015 and the loans provided by Barclays Partner Finance form part of the contracts entered into in June 2015;
- Mr K and his wife signed an exchange check list in June 2015 which says: *"I/We, confirm that I/we are relinquishing the above ownership(s)/membership(s)"*; and the membership that they'd bought in July 2012 was specified – they also signed the holiday company's customer compliance statement which says: *"We understand that on exchanging to our new apartment(s)/level(s) we agree to relinquish the timeshare ownership/membership of our previous apartment(s)/level(s)."*; and the membership that they'd bought in July 2012 was again specified;
- Mr K and his wife also signed an information document in June 2015 which said that the purchase price to be paid by them for acquiring the rights to the membership that they were buying at that time was £18,000 and I've seen nor reference to those memberships being given a higher price or value;
- I consider it to be clear that Mr K and his wife had relinquished the membership that they'd bought in July 2012 and I've seen no evidence to show that they'd traded in that membership or that it had been given any value when they'd bought the membership in June 2015 so I'm not persuaded that the price that they'd paid for their previous memberships was included in the price that they paid for the

memberships that they bought in June 2015;

- I also consider it to be clear that Mr K and his wife no longer owned the memberships that they'd bought in July 2007 and July 2009 when the holiday company stopped trading so I'm not persuaded that there's been a breach of contract by the holiday company relating to those memberships or that it would be fair or reasonable for me to require Barclays Partner Finance to refund to the estate any of the money that Mr K and his wife had paid for those memberships as a result of the holiday company stopping trading;
- the complaint form says that the holiday company and Barclays Partner Finance failed to conduct a proper assessment of Mr K and his wife's ability to afford the loans; Barclays Partner Finance paid commissions to the holiday company which weren't declared to them and the holiday company unduly pressured them into entering into agreements; all rendering the loan agreements unfair pursuant to section 140A;
- 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 has provided evidence to show that the July 2007 and July 2009 loans were repaid in January 2012 and I've seen no evidence to show that the loans continued after January 2012 so I consider that the loan agreements ended in January 2012;
- Mr K would have had six years from then to bring a section 140A claim against Barclays Partner Finance – but a claim wasn't made until May 2020, 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 section 140A claim and that it wasn't unreasonable for it to have rejected the section 140A claim that was made to it relating to the July 2007 loan and that it wouldn't have been unreasonable for it to have rejected the section 140A claim that was made to it relating to the July 2009 loan;
- the estate's representative's May 2020 letter says that the loans were unaffordable and the complaint form says the holiday company and Barclays Partner Finance failed to conduct a proper assessment of Mr K and his wife's ability to afford the loans;
- Barclays Partner Finance hasn't provided any information about the affordability checks that it conducted for the July 2007 and July 2009 loans but the estate's representative says that Mr K and his wife's combined annual pension income was £28,000 but it hasn't provided any information about their expenditure or evidence to show that the loans weren't affordable for Mr K;
- the July 2007 loan was for an amount of £24,984 with a monthly repayment of £304.44 and the loan account statement shows that Mr K made the monthly repayment each month until January 2012 when the loan was repaid by a payment of £16,484.12
- the July 2009 loan was for an amount of £13,941 and from the evidence that I've seen it looks as though the monthly payment was £172.90 and that Mr K made the

monthly payment each month until January 2012 when the loan was repaid by a payment of £11,769.96;

- I've seen no evidence to show that the loans weren't affordable for Mr K when they were made to him or that he asked Barclays Partner Finance for any information about its affordability assessment before May 2020 – as the loans were made to him in July 2007 and July 2009 and were repaid in January 2012, I consider that it would be reasonable to expect him to have raised any concerns about the affordability of the loans before then;
- Barclays Partner Finance said that the claims about the July 2007 agreements were time-barred under the Limitation Act and I consider that to have been a fair and reasonable response to those claims;
- it has offered to: refund all payments made towards Mr K's June 2015 loan, with interest; refund any maintenance fees paid for the years in which the membership wasn't utilised (subject to provision of evidence of those payments and usage), with interest; and cancel any outstanding loan repayments and his contract with the holiday company – I understand that that offer was accepted by Mr K before he passed away so there's no need for me to make any finding on the complaint about Barclays Partner Finance's response to the claims that had been made to it about that loan;
- Barclays Partner Finance hasn't issued a substantive response to the claims that were made to it relating to the July 2009 loan so I can't say that its response to those claims was fair and reasonable – but if it had properly considered those claims I consider that it would have been fair and reasonable for it not to have upheld them; and
- I sympathise with Mr K's wife and the estate for the loss of Mr K, for the issues that they've had with the memberships and the other difficulties that Mr K's wife has experienced, but 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 was paid under the July 2007 and July 2009 loan agreements, 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 Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask a representative of the estate of the late Mr K to accept or reject my decision before 4 December 2023.

Jarrold Hastings  
**Ombudsman**