

## **The complaint**

Mr G complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, won't refund to him the money that he paid for some holiday club membership points. His wife is also involved in his complaint and he's being represented by a claims management company.

## **What happened**

Mr G and his wife had bought 204,001 holiday club membership points from a holiday company and Mr G says that he paid for them using loans provided by Barclays Partner Finance. They then entered into a purchase agreement to buy an additional 46,000 membership points from the holiday company in October 2015 for a price of £8,500. Mr G also entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of that amount and agreed to make 120 monthly repayments of £125.80 to Barclays Partner Finance.

Mr G's representative made claims, on behalf of Mr G, to Barclays Partner Finance under sections 75 and 140A of the Consumer Credit Act 1974 in May 2020. It said that the product was misrepresented to Mr G and his wife; the contract was breached; commission was paid between Barclays Partner Finance and the holiday company which wasn't disclosed to Mr G which created a breach of fiduciary duty and caused an unfair relationship; and the loan was unaffordable.

Barclays Partner Finance didn't provide a substantive response to those claims so a complaint was made to this service. Mr G's complaint form says that the holiday company and Barclays Partner Finance failed to conduct a proper assessment of his ability to afford the loan; Barclays Partner Finance paid a commission to the holiday company which wasn't declared to him and the holiday company unduly pressured him and his wife into entering into the purchase agreement and him into entering into the loan agreement; all rendering the loan agreement unfair pursuant to section 140A.

Our investigator didn't recommend that Mr G's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract. She said that she hadn't seen enough to suggest that the relationship between Mr G and Barclays Partner Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr G.

Mr G's representative, on behalf of Mr G, has asked for this complaint to be considered by an ombudsman. It has provided a generic submission from counsel about the holiday company and the unfair terms that it uses. It has also raised its serious concerns about the way that the finance was sold to Mr G and says that the holiday company didn't broker proper credit and failed to meet the standard of a regulated firm.

## **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 G's complaint shouldn't be upheld for these reasons:

- Mr G and his wife signed the purchase agreement in October 2015 to buy 46,000 holiday club membership points which increased their number of points to 250,001 and the holiday company agreed that they would be able to surrender their points from their fifth year of membership;
- they also signed other documents including a form about their right to withdraw from the agreement and credit applications and Mr G signed the loan agreement and a customer compliance statement;
- Mr G's representative made claims to Barclays Partner Finance in May 2020 about the purchase agreement that Mr G and his wife had entered into in October 2015 and Mr G then made a complaint to this service – the claim letter refers to claims under sections 75 and 140A, including that the 46,000 points were misrepresented to Mr G and his wife, but his complaint form only refers to claims under section 140A and doesn't refer to a misrepresentation made by the holiday company;
- 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 Mr G'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 his claims was fair and reasonable in the circumstances;
- Mr G has also referred to the other purchases of points that he and his wife made from the holiday company before October 2015 but I consider it to be clear from his representative's May 2020 letter to Barclays Partner Finance that the claim that has been made relates only to the purchase that they made in October 2015 – and Mr G's complaint form says that the transaction that he's complaining about took place in October 2015 – so I'm only considering in this decision his complaint about Barclays Partner Finance's response to the claims that were made to it under section 75 and 140A about the October 2015 purchase;
- the May 2020 letter says the points were misrepresented to Mr G and his wife because they were advised that the product was of some substance and that the purchase would be an investment as the product would increase in value and, after a period of a few years, they would be able to sell it at a considerable profit – but it says that the product is worthless and has no merit;
- neither Mr G nor his representative has provided a detailed account of the circumstances in which the alleged misrepresentation was made, the conversations that took place or the information that was provided to Mr G his wife before their October 2015 purchase;
- Mr G and his wife had previously bought a total of 204,001 membership points from the holiday company so I consider it to be reasonable to conclude that they ought to

have been aware of how the membership and the points operated before they entered into the agreement to buy another 46,000 points in October 2015;

- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr G and his wife that the additional points were an investment, that the points were misrepresented to them by the holiday company or that they were induced into entering into the purchase agreement by any such misrepresentations;
- the May 2020 letter also says that the holiday company has ceased to trade and has committed a repudiatory breach of contract but I've seen no evidence to show that the holiday company has stopped trading and I'm not persuaded that there's been a breach of contract by the holiday company for which Barclays Partner Finance would be liable under section 75;
- the May 2020 letter says that the loan was unaffordable for Mr G and his complaint form says that the holiday company and Barclays Partner Finance failed to conduct a proper assessment of his ability to afford the loan – but the evidence provided by Mr G includes the credit applications that were made by him and his wife;
- Mr G and his wife had signed the credit applications and confirmed that they were home-owners, with no mortgage, that Mr G was employed with a gross annual income of £40,000, and that his wife had an income of £10,000;
- Mr G also signed the customer compliance statement in which he confirmed: *"I/we are confident that from an income perspective ... the repayments will be met now and in the future"*;
- the loan was made to Mr G in October 2015 but I've seen no evidence to show that he asked Barclays Partner Finance for any information about the affordability assessment that it conducted before his representative's May 2020 letter and I consider that it would be reasonable to expect him to have raised any concerns about the affordability assessment before then;
- Barclays Partner Finance hasn't provided any further information about the affordability checks that it conducted at that time but I consider that it would have been reasonable for it to have concluded on the basis of the information that Mr G and his wife had provided that Mr G could afford a loan with a monthly repayment of £125.80;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr G, that Barclays Partner Finance should have done more to assess the affordability of the loan for him, that the loan was mis-sold to him or that Barclays Partner Finance has acted incorrectly in connection with the loan;
- Mr G's complaint form says that the holiday company unduly pressured him and his wife into entering into the purchase agreement and him into entering into the loan agreement - but Mr G and his wife had signed the form about their right to withdraw from the purchase agreement within 14 days without giving any reason and Mr G confirmed in the customer compliance statement that he signed that he understood the right to withdraw from the loan agreement and how and when he might exercise that right – but I've seen no evidence to show that he contacted either the holiday company or Barclays Partner Finance to withdraw from either the purchase agreement or the loan agreement within the applicable withdrawal periods;
- Mr G and his wife signed those agreements in October 2015 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 Mr G claims was applied to them until his representative's May 2020 letter – if they had been unduly pressured into signing the purchase agreement and didn't want to buy the additional points, 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;

- I'm not persuaded that there's enough evidence to show that Mr G and his wife were unduly pressurised into entering into the purchase agreement or that Mr G was unduly pressurised into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- the May 2020 letter says that commission was paid between Barclays Partner Finance and the holiday company which wasn't disclosed to Mr G which created a breach of fiduciary duty and caused an unfair relationship and Mr G's complaint form says that Barclays Partner Finance paid a commission to the holiday company which wasn't declared to him - 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 Mr G risked the relationship being unfair under section 140A;
- Mr G's representative has provided a generic submission from 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 Mr G and his wife 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 Mr G and Barclays Partner Finance;
- I'm not persuaded that there's enough evidence to show that Mr G'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 G and Barclays Partner Finance in these circumstances;
- Barclays Partner Finance didn't issue a substantive response to Mr G's claims so I can't say that its response to his claims was fair and reasonable – but if it had properly responded to his claims I consider that it would have been fair and reasonable for it not to have upheld them; and
- I sympathise with Mr G for the issues that he and his wife have had with their membership points and the health and 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's paid under the loan agreement, to cancel 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 G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 30 October 2023.

Jarrold Hastings  
**Ombudsman**