

## **The complaint**

Mrs A complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, won't refund to her the money that she paid for some holiday club membership points. Her husband is also involved in her complaint and she's being represented by a legal adviser.

## **What happened**

Mrs A says that she and her husband inherited a timeshare membership in June 2010 and that they exchanged a week for a stay in another resort in February 2013. They entered into a purchase agreement to buy 61,500 holiday club membership points in February 2013. The purchase price of the points was £4,500 and Mrs A transferred to the holiday company two existing timeshare weeks. She also entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of £4,500 and agreed to make 120 monthly repayments of £61.44 to Barclays Partner Finance.

Mrs A's representative made a claim, on Mrs A's behalf, to Barclays Partner Finance under section 140A of the Consumer Credit Act 1974 in August 2020. It said that the points were misrepresented to Mrs A and her husband and the misrepresentations and sales practices adopted by the holiday company were unlawful, unconscionable, unreasonable and unfair. It said that the terms contained in the contract had created an unfair relationship between Barclays Partner Finance and Mrs A. It also said that there had been irresponsible lending and no proper assessment was done to assess Mrs A's creditworthiness.

Barclays Partner Finance didn't respond to those claims so a complaint was made to this service. Mrs A's complaint form says that a detailed letter, pursuant to sections 75 and 140A of the Consumer Credit Act was attached together with a copy of Barclays Partner Finance's response.

Our investigator didn't recommend that Mrs A's complaint should be upheld. He wasn't persuaded that there was a misrepresentation at the time of sale. He said that he hadn't seen enough to suggest that the relationship between Mrs A and Barclays Partner Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs A.

Mrs A's representative, on behalf of Mrs A, 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.

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

- Mrs A and her husband signed the purchase agreement in February 2013 and bought 61,500 holiday club membership points from the holiday company and Mrs A also signed a request to transfer to the holiday company two existing timeshare weeks;
- they also signed a right of withdrawal form and Mrs A received information about the loan from Barclays Partner Finance and pre-contract credit information – I consider it to be likely that she also signed a fixed sum loan agreement with Barclays Partner Finance but I've not been provided with a copy of that agreement;
- Mrs A's representative made a claim to Barclays Partner Finance in August 2020 under sections 140A and about irresponsible lending - a complaint was then made to this service and Mrs A's complaint form says that a detailed letter pursuant to sections 75 and 140A was attached together with a copy of Barclays Partner Finance's response - but the letter didn't refer to a claim under section 75 and I've seen no evidence to show that Barclays Partner Finance had responded to the claim that had been made to it;
- I consider that a claim was made to Barclays Partner Finance under section 140A but that no claim has been made to it under section 75 so in this decision I'm only considering Barclays Partner Finance's response to Mrs A's section 140A claim and her claim about irresponsible lending and that no proper assessment of her creditworthiness was conducted;
- I'm not determining the outcome of Mrs A's claim under section 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 claim was fair and reasonable in the circumstances;
- 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;
- Mrs A's representative's August 2020 letter says that the holiday company represented to Mrs A and her husband that: their existing timeshare company had been taken over by the holiday company; they had to exchange their week for points; if they didn't purchase, they would lose their membership; the points scheme would allow them to access resorts and accommodation worldwide; and that finance would be available to fund the purchase – and it says that those representations were untrue and misleading;
- neither Mrs A nor her representative has provided a detailed account of the circumstances in which the alleged misrepresentation were made, the conversations that took place or the information that was provided to Mrs A and her husband before they entered into the purchase agreement;
- I consider it to be clear from the documents that they signed that they were buying 61,500 holiday club membership points, that Mrs A was transferring to the holiday company two existing timeshare weeks and that the purchase price was £4,500 which Mrs A was paying using a loan from Barclays Partner Finance;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs A and her husband that their existing timeshare company had been taken over by the holiday company, that they had to exchange their week for points and that if they didn't purchase, they would lose their membership;
- the holiday company may have told Mrs A and her husband that the points scheme would allow them to access resorts and accommodation worldwide but I'm not persuaded that there's enough evidence to show that any such representation was untrue or misleading;

- Mrs A used a loan from Barclays Partner Finance to pay the purchase price for the points so it wouldn't have been untrue or misleading for the holiday company to say that finance would be available to fund the purchase;
- I'm not persuaded that there's enough evidence to show that the points were misrepresented to Mrs A and her husband by the holiday company or that they were induced into entering into the purchase agreement by any such misrepresentations;
- Mrs A's representative's August 2020 letter also says that the sales practices adopted by the holiday company were unlawful, unconscionable, unreasonable and unfair but Mrs A and her husband had signed the holiday company's right of withdrawal form which said that they had the right to withdraw from the purchase agreement within 14 calendar days without giving any reason - if they were concerned about the sales practices adopted by the holiday company and didn't want to buy the points, I consider that it would be reasonable to expect them to have contacted either the holiday company or Barclays Partner Finance within the withdrawal period to withdraw from the purchase agreement and the loan agreement – but I've seen no evidence to show that they did so;
- Mrs A and her husband entered into the purchase agreement in February 2013 but I've seen no evidence to show that they complained to the holiday company or Barclays Partner Finance about the sales practices that had been adopted by the holiday company until August 2020, more than seven years later, and if they were concerned about the sales practices that it had adopted I consider that it would be reasonable to expect them to have complained about it sooner than they did;
- I'm not persuaded that there's enough evidence to show that Mrs A and her husband were unduly pressured into entering into the purchase agreement, that Mrs A was unduly pressured into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- that letter also said that the terms contained in the contract had created an unfair relationship between Barclays Partner Finance and Mrs A, and Mrs A's representative has provided a generic submission from counsel about the holiday company and the unfair terms that it uses;
- 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 A 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 A and Barclays Partner Finance;
- Mrs A's representative says that the lending by Barclays Partner Finance to Mrs A was irresponsible and that no proper assessment of Mrs A's creditworthiness was conducted - but neither Mrs A nor her representative have provided detailed evidence about Mrs A's financial position in February 2013 or to show that the loan wasn't affordable for her at that time;
- Mrs A's representative has provided information about the loan from Barclays Partner Finance and pre-contract credit information that Mrs A received and Barclays Partner Finance has provided a statement for Mrs A's loan account dated in September 2023 which shows that the loan was repaid in March 2023;

- the loan was made to Mrs A in February 2013 and I've seen no evidence to show that she complained to Barclays Partner Finance that it was irresponsible for it to have lent to her or that it didn't properly assess her creditworthiness until August 2020, more than seven years later, and if she was concerned about those issues I consider that it would be reasonable to expect her to have complained about them sooner than she did;
- I'm not persuaded that there's enough evidence to show that it was irresponsible for Barclays Partner Finance to have made the loan to Mrs A in February 2013 or that the loan wasn't affordable for her at that time;
- I'm not persuaded that there's enough evidence to show that Mrs A'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 Mrs A and Barclays Partner Finance in these circumstances;
- Barclays Partner Finance didn't respond to the claim that was made to it in August 2020 so I can't say that its response to Mrs A's claim was fair and reasonable – but if it had properly responded to her claim I consider that it would have been fair and reasonable for it not to have upheld it;
- I sympathise with Mrs A for the issues that she and her husband have had with their membership points but I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclays Partner Finance to refund to her any of the money that she's paid under the loan agreement, to pay her any compensation or to take any other action in response to her complaint.

### **My final decision**

My decision is that I don't uphold Mrs A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 16 October 2023.

Jarrold Hastings  
**Ombudsman**