

The complaint

Mrs C complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, has rejected the claims that she's made to it under the Consumer Credit Act 1974. She's being represented in her complaint by a claims management company.

What happened

Mrs C and her husband entered into a purchase agreement in February 2009 to buy 3,000 holiday club membership points. The total price payable for those points was £3,990. Mrs C also entered into a credit card agreement with Barclays Partner Finance in February 2009 and she used £3,990 of the credit that was provided to her to pay for the points. The credit was on "*buy now – pay later*" terms so the purchase wasn't charged to her account until six months later. Mrs C repaid that credit in August 2009.

Mrs C and her husband entered into another purchase agreement in February 2010 to buy an additional 4,000 holiday club membership points. The total price payable for those points was £3,399 and Mrs C used the credit available to her under her existing credit card agreement with Barclays Partner Finance to pay for those points. Mrs C made repayments to Barclays Partner Finance between March and October 2010, when the credit was fully repaid.

Mrs C's representative made claims to Barclays Partner Finance under sections 75 and 140A of the Consumer Credit Act 1974 in May 2017. It said that the holiday company: was in breach of contract in that it didn't conduct a proper assessment of Mrs C's financial position and ability to repay "*the loan*"; applied considerable pressure to her to procure her agreement to "*the loan*"; breached EU Law; and accepted a commission from Barclays Partner Finance which rendered the agreement unfair pursuant to section 140A.

Barclays Partner Finance responded to those claims in June 2017 and set out the reasons that it said that it was unable to uphold them. Mrs C wasn't satisfied with its response so a complaint was made to this service.

Our investigator didn't recommend that Mrs C's complaint should be upheld. She thought that Barclays Partner Finance was entitled to rely on the timing of Mrs C's misrepresentation and breach of contract claims to turn them down and that Mrs C's claim under section 140A was made too late under the Limitation Act 1980. She also set out the reasons that she didn't consider that the level of commission risked making the relationship unfair under section 140A and she said that she couldn't consider Mrs C's complaint about unaffordable lending.

Mrs C's representative, on her behalf, has asked for this complaint to be considered by an ombudsman. It has raised its serious concerns about the way that the finance was sold to Mrs C and it has provided a generic submission from counsel about the holiday company and the unfair terms that it used. It has also provided further documentation in which it says that there's been a fundamental breach of contract by the holiday company.

Mrs C's husband also entered into a fixed sum loan agreement with Barclays Partner Finance in March 2007 for a loan to pay for a holiday club membership. Barclays Partner Finance says that the loan was settled in May 2014. The letter that was sent by Mrs C's representative to Barclays Partner Finance in May 2017 also made claims about her husband's loan agreement. I can't see that Barclays Partner Finance has responded to those claims and the complaint that was made to this service included a complaint relating to that loan. Mrs C wasn't a party to that loan so I'm not considering any complaint relating to that loan agreement in this decision and Mrs C's husband's complaint will be dealt with separately.

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 C'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;
- Mrs C's complaint is that Barclays Partner Finance turned down the claims that she'd made to it and I accept that she referred her complaint to this service within six years of that happening - but I need to consider whether the Limitation Act applies to her claims;
- Mrs C'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);
- Mrs C's claim under section 75 is that there's been a breach of contract by the holiday company and that the membership points that she and her husband bought in February 2009 and February 2010 were misrepresented to them 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;
- Mrs C's representative's letter to Barclays Partner Finance in May 2017 described the misrepresentations that it said had been made to Mrs C and her husband, including that they were advised that the only way that they could exit their membership was to purchase a fractional points membership and that they would be guaranteed to exit the fractional points membership after a finite number of years;
- the membership points that Mrs C and her husband bought in February 2009 and February 2010 weren't fractional points memberships and any representations made about buying a fractional points membership to exit their existing membership would

have been made after they'd bought the membership points in February 2009 and February 2010 so wouldn't have induced them into making those purchases;

- but even if misrepresentations had been made to them in February 2009 and February 2010, 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);
- Mrs C would have been able to make a claim to the holiday company or Barclays Partner Finance about any misrepresentations that could have induced her and her husband into buying the membership points no later than February 2010 as that was the latest time that any misrepresentations about those membership points would have been made to them and any loss would have been incurred as that was also the latest time that Mrs C used the credit provided by Barclays Partner Finance to make a purchase;
- I consider that Mrs C's cause of action would have accrued at that time, so she 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 2017, more than seven 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 her misrepresentation claim and I find that it wouldn't have been unreasonable for it to have rejected the claim;
- the time limit for a breach of contract claim is also six years from the date on which the cause of action accrued and I consider that Mrs C would have been able to make a claim to the holiday company or Barclays Partner Finance about the alleged breaches of contract that her representative described in its May 2017 letter in February 2010 after she and her husband had entered into the purchase agreement to buy the additional membership points;
- she would have had six years from February 2010 to bring a breach of contract claim against either the holiday company or Barclays Partner Finance – but a breach of contract claim wasn't made until May 2017, more than seven 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 her breach of contract claim and I find that it wouldn't have been unreasonable for it to have rejected the claim;
- Mrs C's representative says that there was an unfair relationship between Mrs C and Barclays Partner Finance - 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 Mrs C had repaid the credit by October 2010 and I've seen no evidence to show that she has used the credit card agreement since then so I consider that it ended in October 2010;
- she 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 2017, more than six 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 her section 140A claim and I find that it wouldn't have been unreasonable for it to have rejected the claim;

- our investigator said that she couldn't consider Mrs C's complaint about unaffordable lending but the credit was made available to Mrs C in February 2009 when she signed the credit card agreement so I find that I can consider Mrs C's complaint that the credit wasn't affordable for her;
- Mrs C's representative's May 2017 letter says that the holiday company didn't conduct a proper assessment of Mrs C's financial position and ability to repay "*the loan*" but it's provided no further evidence to show that the credit wasn't affordable for Mrs C in February 2009 when it was made available to her;
- Mrs C used £3,990 of that credit to pay for the membership points that she and her husband bought in February 2009 and she repaid that credit in August 2009, before the "*buy now – pay later*" period ended;
- she then used £3,399 of that credit to pay for the membership points that she and her husband bought in February 2010 and she made repayments of £500 in March 2010, £800 and £1,000 in July 2010, £800 in August 2010 and £301.84 in October 2010 (after the "*buy now – pay later*" period had ended so £2.84 of interest had been applied to her account);
- I've seen no evidence to show that the credit wasn't affordable for Mrs C when it was made available to her or that she asked Barclays Partner Finance for any information about its affordability assessment before May 2017 – as the credit was made available to her in February 2009 and was repaid in October 2010, I consider that it would be reasonable to expect her to have raised any concerns about the affordability of the credit before then;
- Barclays Partner Finance issued a substantive response to Mrs C's claims in June 2017 in which it set out the reasons that it said that it was unable to uphold them - I consider that it would have been fair and reasonable for it to have applied the provisions of the Limitation Act in response to those claims but I'm not persuaded that the outcome that it reached was unfair or unreasonable in these circumstances; and
- I sympathise with Mrs C for the issues that she and her husband have had with their membership points and the health issues that her husband 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 her any of the money that she paid under the credit card 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 C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 3 August 2023.

Jarrold Hastings
Ombudsman