

The complaint

Mrs W complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, won't refund to her the money that she paid for a holiday product. She's being represented in her complaint by a claims management company.

What happened

Mrs W entered into a fixed sum loan agreement with Barclays Partner Finance for a loan of £14,000 in February 2017 to pay for a holiday product. She agreed to make 120 monthly repayments of £173.63 to Barclays Partner Finance.

Mrs W's representative, on behalf of Mrs W, made claims to Barclays Partner Finance under sections 75 and 140A of the Consumer Credit Act 1974 in February 2021. Its claims included that: the product was mis-sold to Mrs W and, but for the misrepresentations made to her, she wouldn't have purchased it nor entered into the loan agreement; the holiday company was in liquidation so can't provide the service sold and is in breach of contract; the product was sold to Mrs W as an investment, contrary to the 2010 Timeshare Regulations, and under extreme sales pressure; the terms of the agreement are so egregious so as to be unfair and the payment of commission was hidden from view; and the holiday company didn't undertake a proper affordability check.

Barclays Partner Finance asked Mrs W to provide evidence so that it could continue with the investigation of her claims, including the original purchase documentation, evidence of maintenance fees paid, confirmation of the length of the holiday product, and evidence that her membership was valid at the time of the closure of the resort. Neither Mrs W nor her representative provided that evidence to Barclays Partner Finance and a complaint was made to this service.

Mrs W's complaint form says that: the product was mis-sold to her as an investment; Barclays Partner Finance paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure her; the product was misrepresented to her; and the holiday company is in liquidation so can't provide the goods and services sold to Mrs W and is in breach of contract; all rendering the loan agreement unfair pursuant to section 140A; and it said that the claim should also be considered under section 75.

Our investigator didn't recommend that Mrs W's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale and she said that she hadn't seen sufficient evidence to demonstrate that Mrs W still owned the holiday product at the time that the holiday company went into liquidation so she couldn't safely conclude that there had been a breach of contract. She said that she hadn't seen enough to suggest that the relationship between Mrs W 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 Mrs W.

Mrs W didn't agree with our investigator's recommendation and asked for her complaint to be referred to an ombudsman. Mrs W's representative says that it understood that Barclays Partner Finance had accepted that any complaint involving a purchase from the holiday company funded with a Barclays Partner Finance loan and brought within six years of the date of last loan payment would be upheld.

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 W's complaint shouldn't be upheld for these reasons:

- Mrs W and her husband bought a holiday product from the holiday company in February 2017 but the only document relating to that purchase that has been provided is the holiday company's customer compliance statement which shows that they'd purchased a membership at a specified resort for an apartment with a maximum occupancy of two;
- the only other document from that time that's been provided is the loan agreement that Mrs W signed in February 2017 which shows that Barclays Partner Finance lent £14,000 to her to pay for a *"Timeshare Resale"*;
- Mrs W's representative made claims to Barclays Partner Finance in February 2021 under sections 75 and 140A - 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 Mrs W'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 her claims was fair and reasonable in the circumstances;
- the February 2021 letter says the product was mis-sold to Mrs W and, but for the misrepresentations made to her, she wouldn't have purchased it nor entered into the loan agreement and that the product was sold to her as an investment;
- neither Mrs W 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 W and her husband before they bought the holiday product in February 2017;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs W and her husband that the holiday product was an investment, that the holiday product was mis-sold or misrepresented to them by the holiday company or that they were induced into buying the holiday product by any such misrepresentations;
- the February 2021 letter also says that the holiday company was in liquidation so can't provide the service sold and is in breach of contract and I understand that the holiday company went into liquidation in January 2020;

- I consider that the liquidation of the holiday company could be a breach of contract for which Barclays Partner Finance might be liable under section 75 - but Barclays Partner Finance asked Mrs W and her representative to provide evidence that Mrs W's membership was valid at the time of the closure of the resort and I understand that no such evidence has been provided;
- our investigator said that she hadn't seen sufficient evidence to demonstrate that Mrs W still owned the holiday product at the time that the holiday company went into liquidation so she couldn't safely conclude that there had been a breach of contract – and Mrs W's representative then said that it understood that Barclays Partner Finance had accepted that any complaint involving a purchase from the holiday company funded with a Barclays Partner Finance loan and brought within six years of the date of last loan payment would be upheld – but it didn't provide any evidence to show that Mrs W's membership was still valid at the time of the liquidation of the holiday company;
- I consider that it was fair and reasonable for Barclays Partner Finance to require Mrs W to provide evidence to show that her membership was still valid at the time of the liquidation of the holiday company, and as that evidence hasn't been provided, I'm not persuaded that there's enough evidence to show that there's been a breach of contract for which Barclays Partner Finance would be liable under section 75;
- I'm not persuaded that there's enough evidence to show that there's been any other breach of contract or regulation in these circumstances for which Barclays Partner Finance would be liable under section 75;
- the February 2021 letter also made a claim under section 140A and Mrs W's complaint form set out reasons that she said that her relationship with Barclays Partner Finance is unfair;
- the February 2021 letter says that the payment of commission was hidden from view and Mrs W's complaint form says that Barclays Partner Finance paid a commission to the holiday company which wasn't declared to her but none of Mrs W, her representative and Barclays Partner Finance has provided any evidence to show the commission, if any, that was paid by Barclays Partner Finance to the holiday company in connection with the loan that was made to Mrs W;
- 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 would have been sufficiently high to mean that Barclays Partner Finance should have appreciated that not disclosing the amount of the commission to Mrs W risked the relationship being unfair under section 140A;
- the February 2021 letter says that the holiday company didn't undertake a proper affordability check and Mrs W's complaint form says that the holiday company failed to conduct a proper assessment of her ability to afford the loan;
- Barclays Partner Finance hasn't provided any evidence about the affordability checks that were undertaken before it lent to Mrs W but she says that she's had difficulty paying the monthly loan instalments and has had to continue working after retirement age to finance them - but neither Mrs W nor her representative has provided any detailed information about Mrs W's financial situation in February 2017 or to show that a loan of £14,000 with a monthly repayment of £173.63 wasn't affordable for her at that time;

- the customer compliance statement that was provided to Mrs W and her husband said: *"Having carefully considered our financial commitments, we confirm we are able to meet the financial obligations being undertaken by us in respect of the Purchase Agreement/Membership Application and any financial commitments and repayments in any finance agreement"*;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mrs W in February 2017 when it was made to her;
- the February 2021 letter says that the product was sold to Mrs W under extreme sales pressure and Mrs W's complaint form says that the holiday company unduly pressured her into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure her;
- Mrs W and her husband would have had the right to withdraw from the purchase within 14 days without giving any reason and Mrs W would have had the right to withdraw from the loan agreement within 14 days without giving any reason – but I've seen no evidence to show that they 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;
- Mrs W and her husband bought the holiday product in February 2017 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 Mrs W claims was applied to them until her representative's February 2021 letter – if they'd been unduly pressured into the purchase and didn't want to buy the holiday product, 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 Mrs W and her husband were unduly pressured into entering into the purchase agreement or that Mrs W was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- the February 2021 letter says that the terms of the agreement are so egregious so as to be unfair but the purchase documents haven't been provided and Mrs W's representative hasn't said which of the terms it considers to be unfair;
- it would be for a court to determine whether or not any of the terms in the agreements were unfair but 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 W 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 W and Barclays Partner Finance;
- Mrs W says in her complaint form that the interest rate is quite high – but she signed the loan agreement which clearly set out the interest rate and APR, the total amount of interest and the number and amount of the monthly payments – if the interest rate was too high and wasn't acceptable for her, I consider that it would be reasonable to expect her not to have signed the loan agreement;
- I'm not persuaded that there's enough evidence to show that Mrs W'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 W and Barclays Partner Finance in these circumstances;

- Barclays Partner Finance didn't issue a substantive response to Mrs W's claims but it asked her to provide evidence so that it could continue with the investigation of her claims and I consider that it was fair and reasonable for it to have asked her to provide that information; and
- I sympathise with Mrs W for the issues that she and her husband have had with their holiday product and the other difficulties to which she's referred, 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 cancel 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 W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 7 February 2024.

Jarrold Hastings
Ombudsman