

## The complaint

Mr A complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, has rejected the claims that he's made to it for a refund of the money that he paid for a holiday ownership product. He's being represented in his complaint by a claims management company.

## What happened

Mr A and his wife entered into a purchase agreement to buy a holiday ownership product in October 2006. The purchase price was £16,193. I understand that Mr A also entered into a credit card agreement with Barclays Partner Finance and that he used £16,193 of the credit that was available to him to pay for the holiday ownership product. The credit was on "*buy now – pay later*" terms so the payment wouldn't be charged to his accounts until six months after the purchase. Barclays Partner Finance says that the credit was repaid in July 2008.

Mr A's representative, on behalf of Mr A, made claims to Barclays Partner Finance in February 2021 under sections 75 and 140A of the Consumer Credit Act 1974. Barclays Partner Finance said that Mr A was out of time to bring a misrepresentation claim under section 75 or a claim under section 140A. It also said that customers were able to book holidays and were able to list their property for resale subject to and in accordance with their agreement so it didn't agree that a breach of contract had occurred.

Mr A wasn't satisfied with its response so a complaint was made to this service. Mr A's complaint form says that: Barclays Partner Finance paid a commission to the holiday company which wasn't declared to Mr A; the holiday company failed to conduct a proper assessment of Mr A's ability to afford "*the loan*" (though it should have referred to "*the credit*"), unduly pressured him into entering the contracts and used aggressive commercial practices to pressure him; the product was misrepresented to him; and the holiday company was in liquidation so was in breach of contract as it can't provide the goods or service sold to Mr A; all rendering the agreement unfair pursuant to section 140. It said that the claim should also be considered under section 75.

Mr A also provided a client statement in support of his claims in which he also described other purchases of holiday products – but I consider it to be clear from his representative's February 2021 letter and his complaint form that his complaint is about the purchase that he made in October 2006 (and the only document from the time of the purchases that has been provided is the purchase agreement that he and his wife signed in October 2006). Mr A's wife has sadly passed away.

Our investigator didn't recommend that Mr A's complaint should be upheld. He thought that Barclays Partner Finance was entitled to rely on the timing of Mr A's misrepresentation claim under section 75 to turn it down. He said that the resorts at which Mr A had his holiday ownership product were continuing to offer their services regardless of the holiday company's liquidation so he didn't think that there had been a breach of contract. He thought that Mr A's section 140A claim was raised too late and he said that he hadn't seen any persuasive evidence to show that the credit was unaffordable for Mr A.

Mr A's representative, on behalf of Mr A, has asked for this complaint to be considered by an ombudsman. It said that it had instructed counsel to provide detailed submissions about the time bar, but no further information or submissions have been received.

### **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 A's complaint shouldn't be upheld 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;
- Mr A's complaint is that Barclays Partner Finance turned down the claims that he'd made to it and I accept that he referred his complaint to this service within six years of that happening - but I need to consider whether the Limitation Act 1980 applies to his claims;
- Mr A'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);
- Mr A's claim under section 75 is that the holiday company has gone into liquidation so is in breach of contract and that the holiday product was misrepresented to him and his wife and that they wouldn't have bought it if it 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 A could have made a claim to the holiday company or Barclays Partner Finance about the misrepresentations that he says induced him and his wife into buying the holiday ownership product in October 2006 as that was the latest time that any misrepresentations would have been made and any loss would have been incurred as that was when he also entered into the credit card agreement with Barclays Partner Finance;
- I consider that his cause of action 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 claim wasn't made under section 75 until February 2021, more than fourteen 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 claim and I find that it was reasonable for it to have rejected that

claim;

- the time limit for a breach of contract claim is also six years from the date on which the cause of action accrued – I understand that the holiday company went into liquidation in January 2020 and Mr A's representative made a breach of contract claim to Barclays Partner Finance in February 2021 so I consider that Mr A's breach of contract claim was made in time;
- our investigator said that the resorts at which Mr A had his holiday ownership product were continuing to offer their services regardless of the holiday company's liquidation so he didn't think that there had been a breach of contract – neither Mr A nor his representative has provided any further evidence in response to that finding to show that Mr A's use of his holiday ownership product has been adversely impacted by the liquidation of the holiday company;
- I'm not persuaded that there's enough evidence to show that Mr A's use of his holiday ownership product has been adversely impacted by the liquidation of the holiday company so I don't consider that it would be fair or reasonable for me to require Barclays Partner Finance to take any action under section 75 in response to the liquidation of the holiday company;
- Mr A's representative says that there was an unfair relationship between Mr A and Barclays Partner Finance because Barclays Partner Finance paid a commission to the holiday company which wasn't declared to Mr A and the holiday company unduly pressured him into entering the contracts and used aggressive commercial practices to pressure him;
- 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;
- I've been provided with a copy of a credit card account statement which shows that Mr A used £16,193 of credit from Barclays Partner Finance in October 2006 to pay for a holiday ownership product but I've not been provided with a copy of the credit card agreement;
- Barclays Partner Finance says that the credit was repaid in July 2008 and Mr A says that he took out a £50,000 mortgage which he used, in part, to repay the credit – he also says that this was very distressing for him as he only managed to repay the mortgage in 2020;
- I've not been provided with any evidence to show that the credit card agreement continued after July 2008 so I'm satisfied that the credit card agreement ended in July 2008;
- Mr A would have had six years from then to bring a claim under section 140A against Barclays Partner Finance but a claim wasn't made until February 2021, more than twelve 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 claim and I find that it was reasonable for it to have rejected that claim;
- Mr A's representative also says that the holiday company failed to conduct a proper assessment of Mr A's ability to afford the credit, Mr A says that he used a mortgage to repay the credit and Barclays Partner Finance says that the credit card agreement ended in July 2008;

- I've seen no evidence to show that the credit wasn't affordable for Mr A in October 2006 when it was made available to him and, although he says that it was very distressing for him as he only managed to repay the mortgage in 2020, I'm not persuaded that there's enough evidence to show that he's experienced any financial difficulties as a result of the credit that was provided to him;
- I've also seen no evidence to show that Mr A asked Barclays Partner Finance for any information about its assessment of his ability to afford the credit before his representative's February 2021 letter – as the credit was made available to him in October 2006 and was repaid in July 2008, I consider that it would be reasonable to expect him to have raised any concerns about that assessment or the affordability of the credit before then;
- I'm not persuaded that there's enough evidence to show that the credit wasn't affordable for Mr A in October 2006 when it was made available to him;
- I sympathise with Mr A for the loss of his wife and the issues that he's had with his holiday ownership product but I consider that Barclays Partner Finance's response to the claims that had been made to it was fair and reasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclays Partner Finance to refund to Mr A any of the money that he paid under the credit card 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 A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 October 2023.

Jarrod Hastings  
**Ombudsman**