

The complaint

Mrs W complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, has rejected the claim that she made to it for a refund of 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 W and her husband had entered into a purchase agreement in February 2010 with a holiday company to upgrade their holiday club membership points. The total price payable for those points was £5,750. They entered into another purchase agreement with the holiday company in November 2010 to buy 60,000 more holiday club membership points. The purchase price for the additional points was £7,050 and I understand that Mrs W entered into a credit card agreement with Barclays Partner Finance and used £7,050 of the credit that was provided to her to pay for those points. The credit was on "*buy now – pay later*" terms so the purchase wasn't charged to her account until six months later. Barclays Partner Finance says that Mrs W repaid the credit in May 2011.

Mrs W's representative made a claim, on behalf of Mrs W, to Barclays Partner Finance under section 140A of the Consumer Credit Act 1974 in October 2020 about the November 2010 purchase. It said that the points were misrepresented to Mrs W and her husband, the misleading statements and sales practices adopted by the holiday company were unlawful, unconscionable, unreasonable and unfair, there had been irresponsible lending and no affordability checks were carried out. As no response was received from Barclays Partner Finance a complaint was made to this service. Mrs W's complaint form referred to claims under sections 75 and 140A of the Consumer Credit Act.

This service provided details of the complaint to Barclays Partner Finance. It said that it hadn't been aware of Mrs W's claim and then issued a response to it. It said that Mrs W was out of time to bring any claim in respect of the issues that she claimed to have happened at the point of sale.

Our investigator didn't recommend that Mrs W's complaint should be upheld. He thought that Barclays Partner Finance was entitled to rely on the timing of Mrs W's claim under section 140A to turn it down and he said that he hadn't seen any persuasive evidence to suggest that the lending was unaffordable for Mrs W.

Mrs W's representative, on her behalf, has asked for this complaint to be considered by an ombudsman. It says, in summary and amongst other things, that: Mrs W first became aware that she had cause for complaint when she took legal advice in 2017; she complained within three years of becoming aware that she had cause to complain; and it's satisfied that this service does have jurisdiction to consider her complaint. It has also provided further reasons that it considers that Mrs W's relationship with Barclays Partner Finance was unfair.

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 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 W's complaint is about Barclays Partner Finance's response to the claim that she'd made to it and I accept that she referred her complaint to this service within six years of Barclays Partner Finance turning down that claim - but I need to consider whether the Limitation Act 1980 applies to her claim;
- Mrs W's claim was made under section 140A about the November 2010 purchase but her complaint form referred to claims under sections 75 and 140A - I'm not determining the outcome of her 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 the claim that was made to it 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);
- I understand that the claim under section 75 referred to in Mrs W's complaint form is that the membership points were misrepresented to her and her husband 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 a claim that was made to it 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);
- Mrs W 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 November 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 when Mrs W used the credit card agreement with Barclays Partner Finance (though I've not been provided with a copy of the credit card agreement and am relying on the information contained in a credit card account summary which shows a purchase in November 2010 for £7,050);
- I consider that Mrs W'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 under section 75 until October 2020, nearly ten years later which was outside of the time limits set out in the Limitation Act so I consider that Barclays Partner Finance would have a defence to any misrepresentation claim and I find that it wouldn't have been unreasonable for it to have rejected such a claim;

- Mrs W's representative says that Mrs W only became aware that they could make a claim to Barclays Partner Finance after she took legal advice in 2017 – but when she had the knowledge to bring a claim doesn't assist her for the purposes of the Limitation Act – the time limits for a claim under some sections of that Act are extended where a claimant doesn't have knowledge at the time when the cause of action accrued, but I don't consider that those sections are applicable to Mrs W's claims;
- Mrs W's representative says that there was an unfair relationship between Mrs W 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;
- the "*buy now – pay later*" period for Mrs W's November 2010 purchase ended in May 2011 and Barclays Partner Finance says that Mrs W repaid the credit in May 2011 - I've seen no evidence to show that the credit card agreement continued after May 2011 so I'm satisfied that the credit was repaid in May 2011 and that the credit agreement ended then;
- Mrs W would have had six years from May 2011 to bring a section 140A claim against Barclays Partner Finance – but a claim wasn't made until October 2020, more than nine 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 was reasonable for it to reject the claim;
- Mrs W's representative says that the lending was irresponsible and no affordability checks were carried out but it's provided no further evidence to show that the credit wasn't affordable for Mrs W in November 2010 or that it was irresponsible for Barclays Partner Finance to have provided her with credit at that time;
- Mrs W used £7,050 of the credit that was made available to her to pay for the membership points that she and her husband bought in November 2010 and she repaid that credit when the "*buy now – pay later*" period ended six months later in May 2011;
- I've seen no evidence to show that the credit wasn't affordable for Mrs W when it was made available to her or that she asked Barclays Partner Finance for any information about its affordability assessment before October 2020 – as the credit was provided to her in November 2010 and was repaid in May 2011, I consider that it would be reasonable to expect her to have raised any concerns about the affordability of the credit or about the lending being irresponsible before then;
- Barclays Partner Finance issued its response to Mrs W's claim in April 2021 and I consider that its response was fair and reasonable in the circumstances; and
- I sympathise with Mrs W 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 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 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 28 September 2023.

Jarrold Hastings
Ombudsman