DRN-4218263

The complaint

Mrs B complains through her representative, P, that Bank of Scotland plc trading as Halifax ("Halifax") didn't fairly or reasonably deal with her claims under Sections 75 and 140A of the Consumer Credit Act 1974 (the 'CCA') in relation to the purchase of a holiday product in October 2011. The purchase was in Mr and Mrs B's name but, as part of the price was paid on Mrs B's Halifax credit card, she is the eligible complainant. For simplicity in this decision I will refer to her as the sole purchaser.

What happened

Mrs B purchased a holiday product while on holiday in October 2011 from a company I will call D. The product was partially funded on Mrs B's credit card. In total she paid $18,900 for membership. This entitled her to a one-bedroom unit for one week in prime season with biennial membership. The contract was for 25 years.

Mrs B believed the product had been misrepresented in a number of ways. In January 2016 she made a claim under s75 CCA through P to Halifax. She further claimed that they were pressured into buying the product. Halifax rejected the claim and said it did not have sufficient evidence of either misrepresentation or a breach of contract. It noted an email exchange which showed D had offered accommodation.

A complaint was made to this service and it was considered by one of our investigators who didn't recommend it be upheld. She said that based on the evidence she didn't think the product had been misrepresented, or that there was anything in the sale or contract that might have created an unfair relationship. Nor could she identify and breach of contract.

Mrs B didn't agree and provided further information about the availability when she'd tried to book holidays. Our investigator said it didn't change her view.

P asked that the complaint be referred to an ombudsman.

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.

When doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account

the:

"(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time."

And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don't think this complaint should be upheld.

S.75 CCA

S. 75 of the CCA states that, when a debtor (Mrs B) under a debtor-creditor-supplier agreement has a claim of misrepresentation or breach of contract against the supplier that relates to a transaction financed by the agreement, the creditor (Halifax) is equally and concurrently liable for that claim – enabling the debtor to make a 'like claim' against the creditor should they choose to.

It's important to note that, as Halifax was the lender rather than the supplier, under the Act a claim is limited to one for misrepresentation or breach of contract, rather than general unhappiness with what was available under the contract.

Mrs B says that:

"*We were overwhelmed at the time, virtually locked in a room when my husband showed a little interest in what they were offering and they would not take no for an answer. It was a very pressured situation and very uncomfortable."*

She also said, "*They made everything they were offering so idyllic and at a very cheap cost to book*."

I can understand that these meetings often took several hours and the sales agents would have spent time extolling the virtues of the product. However I've not seen evidence that they couldn't leave if they wanted to. And it's a big step from saying the meeting took a long time and they felt uncomfortable to finding the sale was pressured.

I understand that Mrs B was unhappy with the type of accommodation and locations offered to them. I would assume she was given brochures. The information I've seen about the product is quite basic, so It's not really possible for me at this length of time since the presentation, to say that the documentation was inadequate or that things weren't explained to Mrs B satisfactorily. P has sent through some reviews of the product on a travel review website, but I've no way of knowing what relevance they have to the types of holiday Mrs B tried to book.

In response to our Investigator's view Mrs B refers to the fact that they were never able to book what they had been promised, and that thy were never able to book an apartment – just a room. But again although she refers to having tried to book a holiday numerous times,

I've not seen any supporting evidence of this. I'm unclear what Mrs B says they were promised, but the only documentary evidence of this would suggest that they were offered holiday alternatives.

Misrepresentation

Mrs B alleges that the holiday product was mispresented to her, in particular that:

- She was entitled to two weeks on a biennial basis but the contract only allows one week.
- The management fees would not increase throughout the course of the contract but they have increased year on year to a high amount.
- She could get flights up to 30% cheaper. The flights quoted for were more expensive than if she'd booked a package holiday through a travel agent.
- The all-inclusive price would remain the same, but it has increased to such a level that she can't afford it with the cost of flights.

Not having been present at the sale it's not possible for me to say exactly what was said, and in what circumstances. But the terms of the contract set out fairly clearly on one page the right to use the timeshare was for one week biennially.

I've seen the front page of the contract. It refers to terms and conditions being set out "on the next page", but we haven't been sent those terms and conditions. Nonetheless I've seen very little in terms of what was actually said at the sales meeting to show that any misrepresentation actually took place or was relied on to enter the contract. And as I don't know in what circumstances any representation would have been made, I can't uphold the complaint on the basis of the allegation in question.

With regard to the cost of flights, I can see that Mrs B attempted to book accommodation in 2014 for one holiday but couldn't book the holiday she wanted. But it does appear that some alternatives were offered. As to flights, they may have been up to 30% cheaper elsewhere, but I have no evidence that D promised the cheapest flights available. I also note that Mrs B was aware that she would have to pay separately for the flights.

As our investigator has said the sales representatives would have put the best gloss on the product and emphasised the benefits membership would offer, but that does not mean that this amounted to misrepresentation.

Overall it is difficult for me to conclude that any misrepresentations were made.

S.140A CCA

Only a court has the power to decide whether the relationships between Mrs B and Halifax were unfair for the purpose of s. 140A. But, as it's relevant law, I do have to consider it if it applies to the credit agreement – which it does.

However, as a claim under Section 140A is "an action to recover any sum recoverable by virtue of any enactment" under Section 9 of the LA, I've considered that provision here.

It was held in Patel v Patel [2009] EWHC 3264 (QB) ('Patel v Patel') that the time for limitation purposes ran from the date the credit agreement ended if it wasn't in place at the time the claim was made. The limitation period is six years and the claim was made within this period.

However, I'm not persuaded that Mrs B could be said to have a cause of action in negligence against Halifax anyway.

Mrs B's alleged loss isn't related to damage to property or to her personally, which must mean it's purely financial. And that type of loss isn't usually recoverable in a claim of

negligence unless there was some responsibility on the allegedly negligent party to protect a claimant against that type of harm.

Yet I've seen little or nothing to persuade me that Halifax assumed such responsibility – whether willingly or unwillingly.

P seems to suggest that NatWest owed Mrs B a duty of care to ensure that D complied with the 2010 Regulations. And P says that Halifax breached that duty by failing to carry out – before granting Mrs B credit and paying D – the due diligence necessary to ensure that the product purchased by Mrs B wasn't sold by D in breach of the 2010 Regulations. It should be noted that the purchase was made, in part, by credit card and Halifax had no oversight of what Mrs B chose to spend her money on.

According to the purchase agreement Mrs B bought a timeshare in an apartment outside Europe, so this would mean the sale is most likely governed by the laws of the country of sale and that disputes should be resolved before its courts.

It also means that The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 do not apply. Regulation 5 says that the Regulations apply if the contract is governed by the law of the UK or any part of it or if relevant accommodation is in the UK or an EEA state. Neither was the case here.

I appreciate Mrs B is dissatisfied with her purchase and she has my sympathies for this, but, in summary I cannot see why any of her claims were likely to have succeeded. So overall I think that Halifax acted reasonably in declining the claims under s.75 and s. 140A CCA.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 31 July 2023.

Ivor Graham
Ombudsman