

## The complaint

Mrs F complains that Lloyds Bank PLC (“Lloyds”) unfairly handled her claim under sections 75 and 140A of the Consumer Credit Act 1974 (“CCA”) in relation to a timeshare product she purchased using her credit card.

## What happened

While on holiday in or around October 2018, Mrs F and her husband attended a sales presentation by the supplier of timeshare and holiday products. During the presentation they agreed to purchase a timeshare product at a cost of US\$22,023.89. Initial payments were made using a Lloyds credit card in Mrs F’s sole name. The payment terms required further regular monthly payments throughout the term of the contract entered into.

In July 2020, using a claims management company (“the CMC”), Mrs F submitted a claim to Lloyds under sections 75 and 140A of the CCA. The CMC told Lloyds the product purchased had been misrepresented to Mrs F and the contract had been breached by the seller. In particular, the CMC said:

- Mrs F was told she was buying a holiday home;
- *“The product itself was of some substance [...] It is now clear the product is worthless and has no merit”;*
- the product was represented as an investment which would increase in value;
- Mrs F *“would be able to save a considerable sum of money, and gain access to exclusive accommodation”;* and
- they can’t use the holiday home whenever they choose and cannot visit with family and friends.

Lloyds said that the CMC hadn’t provided any physical evidence of the misrepresentations or documentation to indicate the terms and conditions had been breached, so rejected the claim.

The CMC complained to Lloyds about the claim outcome. In response, Lloyds reiterated their position and agreed with their initial decision to decline Mrs F’s claim. Unhappy with Lloyds’ response, the CMC referred Mrs F’s complaint to this service.

One of this service’s investigators considered all the information and evidence provided. In doing so, our investigator also couldn’t find any evidence to support the alleged misrepresentations or contract breach. And therefore, didn’t think Lloyds’ response to Mrs F’s claim was unfair or unreasonable given all the circumstances.

The CMC didn’t agree with our investigator’s findings and asked that Mrs F’s complaint be passed to an ombudsman for a final decision. In support, Mrs F said:

- she was pressured for over four hours by various people;
- she thought she was buying a holiday home for an investment that could be used at any time with family and friends; and
- having subsequently perused the contract Mrs F realised it didn’t reflect her understanding of what she’d purchased.

As an informal resolution couldn't be achieved, Mrs F's complaint has been passed to me to consider further. Having done that, while I was inclined to reach the same outcome as our investigator, I'd considered some issues which I don't feel were previously fully addressed. So, I issued a provisional decision on 5 October 2023 giving the parties to this complaint the opportunity to provide further comment, information or evidence before I reach my final decision.

In my provisional decision I said:

#### Relevant Considerations

When considering what's fair and reasonable, DISP<sup>1</sup> 3.6.4R of the FCA Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

Section 75 of the CCA ("S75") provides protection to consumers for goods or services bought using credit. Mrs F paid for the timeshare product using a credit card under a pre-existing regulated agreement. So it isn't in dispute that S75 applies here. This means that Mrs F is afforded the protection offered to borrowers like her under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.

Section 140A of the CCA ("S140A") looks at the fairness of the relationship between Mrs F and Lloyds arising out of the credit agreement (taken together with any related agreement). And because the product purchased was funded under the credit agreement, they're deemed to be related agreements. Only a court has the power to make a determination under S140A. But as it's relevant law, I've considered it when deciding what I believe is fair and reasonable.

It's relevant to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. The complaint being considered here specifically relates to whether I believe Lloyds' treatment of Mrs F's claim was fair and reasonable given all the evidence and information available to me. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we don't provide a legal service. And this service isn't able to make legal findings – that is the role of the courts. Where a consumer doesn't accept the findings of an ombudsman, this doesn't prejudice their right to pursue their claim in other ways.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made 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 evidence that's available from the time and the wider circumstances.

#### The claim for misrepresentation

In raising Mrs F's claim and subsequent complaint about the claim outcome, the CMC have confirmed that the representations were made directly to Mrs F orally. But the seller doesn't advertise online, and their website is only available to members and there's no information obtainable from the seller. But they did provide copies of articles and chat forums online which they say mirrors Mrs F's experience.

The difficulty I have is identifying what was actually said at the time of the sale. The CMC have provided limited details and evidence to support the misrepresentations Mrs F says the seller made, although I acknowledge she does say she was told these things. So, I've thought about this alongside the evidence that's available from the time of her purchase.

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<sup>1</sup> The FCA's Dispute Resolution: Complaints Sourcebook ("DISP")

I have seen a copy of the purchase agreement and contract from the time of the sale. So, I've carefully considered its contents to establish whether it supports the allegations made. The contract includes two annexes. Annex A describes the various service providers and provides a website link for further detailed information. Annex B provides a detailed description of the service package being purchased.

There appears to be no suggestion that the product purchased provided Mrs F with a defined property or investment opportunity. I think it's made clear that the product purchased is designed to provide access to a range of holiday accommodations and experiences at discounted rates over a contracted term of five years. There's a clear explanation of any booking restrictions - both in terms of availability and how far in advance bookings are made.

Ultimately, I don't think the contract can have been marketed and sold as an investment simply because there might have been some inherent value to it. And in any event, I've found nothing within the evidence provided to suggest the seller provided any assurances or guarantees about the future value of the product purchased. The seller would have had to have presented the product in such a way that used its investment element to persuade Mrs F to contract. Only then is this likely to lead me to suspect the product may have been sold as an investment.

I think it's also relevant that the CMC have not provided any evidence to demonstrate that Mrs F had attempted or was unable to make bookings (within the terms and restrictions of the contract). When considering the allegations, it's important I consider the documentary evidence from the time of the sale. Particularly where this may support or contradict any allegations in question. And on this basis, I can't reasonably conclude that the seller did misrepresent the product in the ways that have been alleged. And while I acknowledge what Mrs F says, the documentary evidence from the time of the sale doesn't appear to support her own recollections. Because of that, I can't say that Lloyd's response was unreasonable here.

#### The breach of contract claim

I haven't seen any evidence that the seller didn't comply with any of the terms and provisions contained within the purchase agreement and contract. And in any event, the CMC haven't explained how any alleged breach ultimately resulted in a loss for Mrs F. And on that basis, I can't say that Lloyd's response was unreasonable here.

#### The claim under S140A

The court may make an order under S140B in connection with a credit agreement if it determines that the relationship between the creditor (Lloyds) and the debtor (Mrs F) is unfair to the debtor because of one or more of the following (from S140A):

- a) any of the terms of the agreement or of any related agreement;
- b) the way in which the creditor has exercised or enforced any of the rights under the agreement or any related agreement;
- c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

In deciding whether to make a determination under this section the court shall have regard to all matters it thinks are relevant (including matters relating to the creditor and matters relating to the debtor).

As I've already said, only a court has the power to make a determination under S140A. But as it's relevant law, I've considered it when looking at the various allegations.

Although not specifically included within the original claim, Mrs F has said she was pressured for four hours with various people adding their comments. I acknowledge

what Mrs F has said about this. So, I can understand why it might be argued that the prolonged presentation might have felt like a pressured sale – especially if, as Mrs F approached the closing stages, she was going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date.

Against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mrs F agreed to the purchase when she simply didn't want to. I haven't seen any evidence to demonstrate that she went on to say something to the seller to suggest she'd agreed to it when she didn't want to. And Mrs F hasn't provided a credible explanation for why she didn't subsequently seek to cancel the purchase within the five-day cooling off period permitted within the contract.

With all of this in mind, I think it's unlikely a court might say the circumstances here led to a sufficiently extreme imbalance in knowledge to render the debtor-creditor relationship unfair.

### Summary

I would like to reassure Mrs F that I've considered everything that's been said and provided. I include in that the extensive documentation provided that the CMC believes illustrates the alleged experiences of other consumers. However, I don't think these help in establishing the specific facts relating to Mrs F's own experience and her resultant claim.

In the absence of any specific evidence to support Mrs F's claim, I'm unable to conclude that Lloyds' response was unfair or unreasonable. And because of that, I don't currently intend to ask them to do anything more.

### **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.

Lloyds responded to my provisional decision confirming that they have nothing more to add at this time. Despite this service's follow up attempts, neither Mrs F nor the CMC have responded to my provisional decision.

In these circumstances, I've no reason to vary from my provisional findings. So, I will not be asking Lloyds to do anything more.

### **My final decision**

For the reasons set out above, I don't uphold Mrs F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 1 December 2023.

Dave Morgan  
**Ombudsman**