DRN-3492273

The complaint

Mr and Mrs H complain that GE Money Consumer Lending Limited ("GE Money") unfairly turned down their claim under the Consumer Credit Act 1974 ("CCA").

What happened

Mr and Mrs H bought a points-based timeshare membership from a business, I'll call "Business C", in July 2004 ("the Time of Sale"). The cost of the membership was £42,336 and that was partly paid with a loan of £38,341 taken with First National Consumer Finance Limited (which later became GE Money). The loan was in joint names and set to run for 15 years. The proceeds of the loan weren't paid to Business C, but to a different business, I'll call "Business R".

At the Time of Sale, Mr and Mrs H said they were told that they would be able to book holidays based on the points they held, be offered luxury accommodation and hold their membership in perpetuity, enabling them to transfer it to their children with no additional costs. They said the membership was sold to them as a long-term family investment.

Mr and Mrs H alleged Business C misrepresented to them, at the Time of Sale, the availability of accommodation, the standard of the accommodation and their ability to transfer their membership. They said all of this meant Business C breached its agreement with them. Mr and Mrs H said that, had they known what Business C said wasn't right, they wouldn't have taken out the membership in the first place.

In January 2018, Mr and Mrs H, using a professional representative ("PR"), complained to GE Money. It responded to say it had limited information on its systems about Mr and Mrs H's loan due to the time that had passed. As the sale took place many years before the complaint, GE Money said that meant the complaint had been brought too late under the relevant provisions contained in the Limitation Act 1980 ("LA"). It also noted that the loan proceeds had been paid to Business R and not Business C, so it didn't think there were the right types of agreements in place for the CCA to apply to this complaint.

One of our investigators looked into the complaint and didn't think GE Money needed to do anything further. They said Mr and Mrs H weren't able to make a claim under s.75 CCA as the value of the timeshare meant that provision didn't apply. They considered the claim under s.140A CCA and thought it had been brought too late, so they didn't think GE Money needed to consider the substance of the claim.

PR responded to the view to say, on Mr and Mrs H's behalf, that it disagreed with the view. It said, amongst other things:

- the loan taken with GE Money had been paid off in July 2005;
- Mr and Mrs H had a separate claim under s.75A CCA as the purchase price was over £30,000;
- Mr and Mrs H had made a claim against the timeshare supplier in the Spanish court and the agreement had been declared 'null and void'. It followed that the agreement no longer existed; and

- why it thought the complaint had been brought in time under both the LA and the rules that govern how complaints are dealt with by our service.

As Mr and Mrs H didn't agree with the view, the complaint was passed to an ombudsman for a decision.

An ombudsman issued a provisional decision on Mr and Mrs H's complaint. She explained that she agreed that GE Money didn't need to do anything more, but for different reasons. So she set out why she thought that and asked for comments from both parties.

The ombudsman considered GE Money's argument that, as Business R were paid the loan proceeds rather than Business C, the provisions of the CCA cited in making the claims didn't apply. She thought it was possible a court would conclude there were the right arrangements in place to be able to make the claims, but she concluded that she didn't need to make a finding on that issue as, even if the provisions of the CCA did apply, she didn't think GE Money needed to do anything further.

The ombudsman noted that the cost of the membership bought was over £30,000, and so s.75 CCA couldn't apply to Mr and Mrs H's agreement. But she went on to consider the claim made under s.75A CCA, which can make the creditor (here GE Money) jointly liable for some breaches of contract where the price of the goods or services is above £30,000. Here it was said that Company C going into administration led to a breach of contract.

The ombudsman didn't think s.75A CCA assisted Mr and Mrs H though. She noted the fact that Company C has gone into administration didn't mean that there is an automatic breach of contract. Further, Mr and Mrs H hadn't pointed to anything specific they said they were entitled to under the membership that they were no longer entitled to after Company C's insolvency.

She also said that Mr and Mrs H pointed to a judgment in a Spanish court that they say meant their agreement with Company C has been nullified. She thought this meant they had rescinded their agreement with Company C and were to be put back in the position they would have been had they not entered into the contract. So she didn't think there was a contract in place to breach when Company C went into administration.

The ombudsman also considered Mr and Mrs H's claim under s.140A CCA, but that has now been considered in a different decision, so I won't comment on it further.

GE Money responded to say it agreed with what our ombudsman said. PR responded with further submissions. Those submissions are lengthy and it isn't possible to set them out in detail, but in summary it further set out concerns with Business C's corporate structure, how there was an actionable breach of contract and how limitation periods could be extended.

Unfortunately, the ombudsman who issued the provisional decision wasn't able to issue a final decision on the complaint. So I contacted both parties to explain that I had read and considered all of the available evidence and arguments and agreed with what the first ombudsman had said. I addressed some of the points raised by Mr and Mrs H's representative and invited any further comments they wanted me to consider before I issued a final decision. Both parties explained they had no further submissions to make.

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'm not going to tell GE Money to do anything further to resolve the matter and I've explained why below.

Where evidence is incomplete, inconclusive or contradictory, I reach my decision about the merits of this complaint on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I also have to take account of law and regulations, regulators' rules, guidance and standards, and codes of practice and good industry practice, when I make my decision. And I want to assure Mr and Mrs H, if I don't address every point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. But I'm going to concentrate in this decision on what I think is relevant and material to reaching a fair and reasonable outcome.

Were there the right arrangements in place for Mr and Mrs H to make a claim under the CCA?

Under s.75A CCA, a "debtor-creditor-supplier agreement" is a precondition to a claim under that provision. GE Money has said that here there was no such agreement in this case, as the supplier of the timeshare was Business C, but the loan proceeds went to a different business, Business R, so no claim could be brought.

Having considered all of the evidence and law, I don't think the position is as simple as GE Money suggests. The outcome would turn on the relationships between Business C and Business R and I think it's possible a court would conclude that there were the right arrangements in place that gave rise to Mr and Mrs H's claim under the CCA. But I've not gone on to make a finding on that point as, even if I did think there were the right relationships in place for the claim, I don't think GE Money needs to do anything for the reasons set out below.

The claim under s.75 CCA

Mr and Mrs H said that Business C misrepresented to them the nature and benefits of the timeshare agreement and breached its agreement with them, so they say GE Money is jointly liable under s.75 CCA.

The protections under s.75 CCA are only available where the cash price of the item supplied under the transaction financed by the credit agreement is between £100 and £30,000. Here the cost of membership was £42,336 and so s.75 CCA can't apply to Mr and Mrs H's agreement.

Mr and Mrs H's representatives have also pointed to s.75A CCA, which can make the creditor jointly liable for some breaches of contract where the price of the goods or services is above £30,000. Here it has said that Business C going into administration led to a breach of contract. Having considered everything I don't think this provision helps Mr and Mrs H for a number of reasons.

First, Mr and Mrs H's agreement ran between July 2004 and July 2005, but s.75A CCA wasn't enacted until February 2011. I can't see that s.75A CCA was ever intended to have retrospective effect, so I can't see how it applied to their agreement.

Secondly, the fact that Business C has gone into administration doesn't mean that there is an automatic breach of contract. Here, Mr and Mrs H have not pointed to what they say they were entitled to under the membership that they were no longer entitled to after Business C's

insolvency. So I don't know what specific term of the agreement was breached by Business C's insolvency.

Thirdly, PR set out in some detail deficiencies in the way the timeshare membership was set up, noting the club Mr and Mrs H joined was a dormant company. It was alleged that "*the Club and its manager are and always have been incapable of delivering the benefits paid for*". PR identified potential breaches of the contract that flowed from the way the club membership was arranged, but those alleged breaches would have been actionable from the date of sale. So even if s.75A CCA did apply, which I don't think it does, any breach of contract claim made in 2018 was several years out of time under the six year limitation period that applied for a such a claim.

Finally, Mr and Mrs H have pointed to a judgment in a Spanish court that they say means their agreement with Business C has been nullified. In other words, they have rescinded their agreement with Business C and say they are to be put back in the position they would have been had they not entered into the contract. In those circumstances I can't see how there can be a contract to breach, so I can't see that s.75A CCA assists them.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs H's complaint against GE Money Consumer Lending Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 3 August 2023.

Mark Hutchings
Ombudsman