DRN-4096394

The complaint

Mr G complains through his representative, PR, that Vacation Finance Limited ("VFL") didn't fairly or reasonably deal with his claims under Sections 75 and 140A of the Consumer Credit Act 1974 (the 'CCA') in relation to the purchase of a holiday product in March 2018. The product was purchased jointly with Mrs G, but as the loan was in Mr G's name he is the eligible complainant and I will refer to him as the sole owner in this decision.

What happened

In March 2018 Mr G purchased a holiday product from a company I will call A. It cost £14,928 and this was funded by a loan from VFL.

In August 2022 PR submitted a letter of claim to VFL. The details are known to both parties so in this decision I will set out a brief summary of the key points. PR claimed that:

- He was told that he had purchased an investment and that the timeshare would considerably appreciate in value.
- He was promised a considerable return on his investment.
- He was promised that in short term the timeshare would be listed for resale and sold at a profit.
- He was promised that the product would be sold for an amount which would not only pay off his loan but would also generate profit. Thus, he was assured that the duration of the loan agreement would only last until the timeshare was sold.
- He was not told in detail the terms and conditions of the loan.
- He was rushed through the signing process and signed without reading the documents with due consideration; he was merely shown where to sign or initial numerous documents without an explanation of what each document referred to.
- A had gone into liquidation and so the contract had been breached.
- The loan was arranged via an unauthorised broker.
- The agreement contained an unfair term whereby membership could be cancelled if maintenance fees were not paid.

VFL rejected the claim and set out in detail why it did not consider it had any merit. As a result PR brought a complaint to this service on behalf of Mr G. In addition to the points raised in the letter of claim PR said that the court had found A was an unauthorised broker and another lender had not carried out a suitable affordability assessment. It said the lending had been irresponsible and VFL had not disclosed the commission it paid to A. I would add that this note seems to be referring to another customer. I have also noted the letter of claim referred to both 'he' and 'she in a manner which suggested it may have been copied from

another claim.

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.

I should point out first of all that Mr G has provided very limited documentation in support of his claim. I do not, for example, have a copy of the purchase documents apart from a single page plus an unsigned copy of A's standard information form. However, this service has seen a number of complaints about A's sales from around the same time. As is to be expected, the sellers and VFL used largely standard contract wording. I have presumed that the same standard wording was used for Mr G's purchase. VFL has also provided some further detail.

S.75 CCA

S. 75 of the CCA states that, when a debtor (Mr G) 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 (VFL) is equally and concurrently liable for that claim – enabling the debtor to make a 'like claim' against the creditor should he choose to.

It's important to note that, as VFL 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.

Breach of Contract

I do not believe that the liquidation of A in 2020 led to a breach of contract. I gather new management companies were appointed, and Mr G was able to use the timeshare as usual after that date.

In July 2020 the trustee wrote to all the club members. Its letter said: "*The JLs are pleased to*

confirm that FNTC has taken over as the new manager of the Clubs and further confirm that, as a result, the Clubs will continue to operate for the benefit of members." I presume Mr G received a copy of this letter or something similar.

On the face of it, therefore, the services linked to Mr G's purchase of the points remain available to him and are unaffected by the liquidation. Indeed the agreements used by A usually allow for the liquidation of A and its replacement by another provider. That said, I cannot say if this was in Mr G's contract since I have not seen a copy of it.

Given I have not been persuaded that the product was sold as a financial investment I cannot conclude that the removal of a sales service by A can been regarded as a breach of contract.

Misrepresentation

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

PR has said that Mr G was told that his purchase was an investment. While I was not present I do not consider that I am able to conclude the product was misrepresented. I have seen no explanation of how that could be the case or why Mr G believed that the purchase of points would be an investment. If he had been told that – or had otherwise believed that to be the case – I would have expected him to ask for more information.

Although I am aware of the types of agreement used by A I cannot be certain what Mr G signed. PR has suggested that it is likely A sold the product as an investment, but I don't believe that is sufficiently persuasive to allow me to require VFL to refund the costs to Mr G. PR is asking that VFL refund a significant sum of money, but has not given sufficient evidence in support of its claims. I am aware that some sales representatives have referred to these products as investments in future holidays, but that does not mean they were sold as financial investments.

Furthermore, the paperwork usually explains that the products are not financial investments, but I cannot say what was contained in the agreement signed by Mr G as a copy has not been supplied. However, the further information provided by VFL and my knowledge of A's contracts suggests that the documentation would have stated that he was purchasing membership of a club and not real estate. I would add that I have seen no evidence that Mr G was seeking to, or actually tried to sell the product.

In short I do not believe I can say that there was misrepresentation such that I can uphold this complaint.

S. 140A claims

Only a court has the power to decide whether the relationships between Mr G and VFL 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 Mr G could be said to have a cause of action in negligence against VFL anyway.

Mr G's alleged loss isn't related to damage to property or to him 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 VFL assumed such responsibility – whether willingly or unwillingly.

In any event I do not consider I have been shown evidence which indicates there was an unfair relationship. PR seems to suggest that VFL owed Mr G a duty of care to ensure that A complied with the 2010 Timeshare Regulations and it argues at length that the payment of commission created an unfair relationship. VFL has confirmed it paid no commission.

PR also claims that Mr G was given too much paperwork to read and assimilate and also that he was not given key information, but it is not clear what he was allegedly not given. Apart for the fact that neither VFL nor I have been provided with the paperwork PR has not specified what key information was missing. I also note that he had a 14 day withdrawal period in which to consider his purchase and walk away from the contract if he so wished.

Nor have I been given evidence that the broker was unauthorised at the time of the sale. PR has referred to a court judgment for an earlier period relating to another lender. I do not consider that PR has supplied clear evidence that the loan was made by an unauthorised broker.

None of this allows me to conclude there was an unfair relationship. I would add that I cannot see any clear evidence that shows A breached the Timeshare Regulations. PR has simply made assertions rather than provide evidence.

As for the alleged unfair term I have not seen what Mr G signed, but my understanding is that the contracts used by A referred to this term being subsidiary to normal contract law which would make such an act unenforceable. PR has not said that Mr G have suffered as a result of this term and so I do not consider I have been given grounds which would allow me to uphold this complaint.

Affordability

PR says no or insufficient checks were carried out at the time of sale and this means the lending was irresponsible. VFL says it did carry out the appropriate checks.

When considering a complaint about unaffordable lending, a large consideration is whether the complainant has actually lost out due to any failings on the part of the lender. So, if VFL did not do appropriate checks (and I make no such finding), for me to say it needed to do something to put things right, I would need to see that Mr G lost out as a result of its failings. I gather Mr G has maintained payments which does not support the claim that it was unaffordable.

Conclusion

I appreciate Mr G is dissatisfied with his purchase and he has my sympathies for this, but, in summary I cannot see why any of his claims were likely to have succeeded. So overall I

think that VFL 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 Mr G to accept or reject my decision before 27 February 2024.

Ivor Graham
Ombudsman