DRN-3491885

The complaint

Mr J, who is represented by a professional representative ("PR") complains that National Westminster Bank Plc ("NatWest") didn't fairly and reasonably handle his claim under the Consumer Credit Act 1974 ("CCA") in relation to a payment he made using his credit card for the purchase of a timeshare product.

What happened

In August 2019 Mr J and his wife purchased a points based holiday product from a company I will call M. PR has not given much background information, but it seems that the purchase was made in the USA. M is a USA company and Mr J's credit card statement indicates he was in the USA at the time of the purchase. Mr J is the eligible complainant as the credit card account was in his name although the purchase was made in joint names. In this decision, for simplicity I will refer to Mr J as the purchaser.

The product cost some £20,000 and Mr J used his NatWest credit card to pay a deposit of £962.34. The balance was paid with a loan from a USA lender.

In July 2020 PR submitted a claim under s.75 CCA. It said that M's representative had told Mr J that maintenance payments for another timeshare with M could be paid in instalments, but this was not true. PR also claimed that Mr J had been told that there would be no annual maintenance fee for the product purchased in 2019. It claimed the product had been misrepresented and had no merit and asked that the total cost plus interest be refunded.

NatWest responded saying that it had not been given evidence in support of the claim and it was not able to give it further consideration. PR made a complaint to this service on behalf of Mr J. It was considered by one of our investigators who didn't recommend it be upheld. She noted that Mr J had signed the "Quality Assurance Checklist and initialled the section covering maintenance fees. She also said she had seen no evidence relating to fees for the other holiday product. Finally, she explained why she didn't think there had been an unfair relationship as set out in s.140A CCA.

PR didn't agree and said Mr J had given clear evidence and the other side had not done so. It added that it would like the relevant provisions of the contract assessed under s.140A CCA. Our investigator asked for clarification from PR as to the clear evidence it said had been submitted, but it did not respond to this request.

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 considering what's fair and reasonable, DISP1 3.6.4R of the Financial Conduct Authority ("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.

S. 75 provides protection to consumers for goods or services bought using credit. Where payment is made by Mr J using a credit card under a pre-existing credit card agreement, it possible that s. 75 applies – subject to any limitations and restrictions. So, this means that Mr J may be afforded the protection offered to borrowers like him under those provisions.

As a result, I've taken this section into account together with any other relevant sections of the CCA when deciding what's fair in the circumstances of this case.

It's important 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 NatWest's treatment of Mr J's claim was fair and reasonable given all the evidence and information available. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we do not provide a legal service.

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.

PR has made a number of claims, but has submitted little, if any evidence in support of them. I have not seen any testimony from Mr J about what was said at the time of purchases. PR has simply made several assertions which are not supported by the documentary evidence.

As our investigator has pointed out the documentation both signed and initialled by Mr J confirms that he was liable for maintenance fees and so while he may have recalled being told otherwise it was made clear in the paperwork he signed that fees would be payable. I cannot safely conclude that NatWest was wrong to decide this element of his claim was such that it could uphold it.

There is nothing in the paperwork regarding the other product he already owned. However, I would not expect there to be. I have not seen the documents for that purchase, but given Mr J was already paying maintenance fees I assume the agreement required him to do so. If those fees were to be ended following the 2019 purchase I would presume there would be some documentation confirming this. None has been provided. PR has claimed Mr J was told those fees would end, but I was not present at the time of the purchase and I cannot say what was said. As such, I cannot conclude that Mr J was told the fees would end and so I cannot say that NatWest was wrong to reject his claim.

S. 140A claim

Under s. 140A and s. 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments. In deciding whether to make an order, a court can have regard to any connected agreement; in this case, that could include the agreement for the sale of the holiday product.

PR has not identified anything in the purchase agreement or the loan agreement which makes either inherently unfair despite being invited to do so. I have reviewed the contracts and have not identified any basis for a claim under s.140A CCA.

PR has also said that the sale was in breach of the Timeshare Regulations 2010 (which applied at the time), but again there is little evidence of that or explanation of the effect on Mr

J of any breach. In any event this purchase was made in the USA and it falls outside the jurisdiction of these regulations.

I have no power to make an order under s. 140B, and it is not for me to say whether a court would make an order if invited to do so. In the circumstances, however, it is reasonable to think that a court would not do so.

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 J to accept or reject my decision before 8 November 2023.

Ivor Graham
Ombudsman