DRN-3881957

The complaint

Mr P and Mrs F complain that GE Money Consumer Lending Limited ("GE Money") unfairly declined their claims in relation to three timeshare purchases.

What happened

A different ombudsman at this Service issued her provisional decision on this complaint in October 2022. An extract from that provisional decision is set out below.

What I've provisionally 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.

Under the rules that govern how I assess complaints, I must take account of law and regulations, regulators' rules, guidance and standards, and codes of practice and good industry practice, when I make my decision.

I also focus on what I think is material and relevant to reach a fair and reasonable outcome. So, although I have read everything that has been supplied to me, I may not address every point that has been raised.

From my reading of Mr P and Mrs F's complaint, they have raised a number of claims and complaint points against GE Money in relation to the loans they took out to fund their timeshare purchases in 2007, 2008 and 2009. I will deal with each in turn and set out my provisional findings, based on the available evidence.

Section 75 of the CCA

Under section 75 of the CCA, in certain circumstances, if Mr P and Mrs F paid for goods or services using certain types of credit (even in part), and there was a breach of contract or misrepresentation by the supplier of those goods or services, the creditor (GE Money in this case) can also be held responsible.

Mr P and Mrs F's representative said that Business C misrepresented a number of points in relation to the timeshare agreements they purchased, and they didn't get what they were promised under the contract. I can't see that they specifically raised a claim under section 75 of the CCA directly with GE Money or within their letter when referring their complaint to our service. Indeed, their original letter of claim to GE Money only claimed that Business C wasn't authorised to arrange the loans. But I don't think I would be able to consider a complaint about GE Money's response to a section 75 claim in any event. I'll explain why. Before considering the merits of any complaint, I must first ensure I have the jurisdiction to consider the event Mr P and Mrs F are complaining about. The Financial Ombudsman Service isn't free to deal with every complaint it receives. It's bound by rules that set out the types of complaints it can look at. Those rules are set out in the FCA Handbook under the Dispute Resolution Rules ("DISP").

DISP 2 sets out the Financial Ombudsman Service's two jurisdictions: our compulsory jurisdiction and our voluntary jurisdiction. DISP 2.1.1(1)(a) says our compulsory jurisdiction covers: "certain complaints against firms (and businesses which were firms at the time of the events complained about)". A 'firm' was a business authorised by the FCA to undertake certain financial services work. So, the question I have to answer is whether GE Money Consumer Lending Limited was authorised by the FCA at the time of the event being complained about.

The event being complained about in these circumstances would be GE Money's response, or lack of response, to their section 75 claim. And GE Money only responded to Mr P and Mrs F's claims in July 2021. GE Money Consumer Lending Limited resigned from FCA authorisation on 6 December 2019 – which is the part of GE Money that provided all three loans to Mr P and Mrs F. This means GE Money were not a FCA regulated firm at the time of the event being complained about and, therefore, I cannot consider Mr P and Mrs F's complaint in relation to any claim under section 75 because it doesn't fall within the jurisdiction of the Financial Ombudsman Service.

I note in GE Money's final response letter they also said some parts of Mr P and Mrs F's complaint were made out of time under the DISP rules. But I understand they are no longer raising these concerns. Regardless, I'm satisfied there are no other issues as regards our jurisdiction to consider the rest of this complaint. I have therefore gone on to consider the other main complaint points.

The claims under section 140A of the CCA

Under this section of the CCA, a court may make an order under section 140B in connection with a credit agreement if it decides that the relationship between the debtor and the creditor arising out of the agreement is unfair. Only a court has the power to make such a determination, but I think it is relevant law, which I can take into account, if applicable.
Mr P and Mrs F claimed that the relationship between them and GE Money was unfair for a number of reasons. However, GE Money argued that any claim under section 140A would be time-barred. And GE Money would be entitled to rely on the LA as a defence to answering the claim if it was made outside of the relevant time limits set out in that Act. So, I must also consider the LA as relevant law.

To be clear, I'm not deciding if any right Mr P and Mrs F may have to bring this claim has expired under the LA (that's a matter for the courts). In this decision I'm considering whether GE Money acted fairly and reasonably by refusing to consider their section 140A claim.

It was held in Patel v. Patel [2009] EWHC 3264 (QB) that when considering section 140A of the CCA, the time for limitation purposes ran from the date that the credit agreement ended if it was not still running at the time the claim was made.

GE Money said they were unable to locate a record of any of the loan accounts that Mr P and Mrs F took out with them in 2007, 2008, and 2009. They said this means that the accounts have been closed for more than six years, in line with their data retention policy. Given Mr P and Mrs F first contacted GE Money in December 2020, they said this means the loans were most likely closed by December 2014 at the latest. I note the 2007 loan was set to run for 12 months, so was most likely closed a long time before this.

I appreciate there is no evidence to show when the credit agreements ended in this case. But Mr P and Mrs F haven't disputed that the loans were closed by December 2014 as GE Money said, or provided any evidence to show that they remained open past this time. Rather, they have argued that other sections of the LA apply, which mean the time limits should be extended in the circumstances.

Given the loans were taken out more than ten years ago, and based on what we know about GE Money's data retention policies, on balance, I think it's more likely than not that the loans closed more than six years before Mr P and Mrs F raised their claims to GE Money. Therefore, I also think that it's most likely their section 140A claims were made out of time under the LA. This means I don't think GE Money acted unreasonably by refusing to consider their claims.

Mr P and Mrs F's representative argued that section 32 of the LA would apply in the circumstances, which states that in cases of fraud, concealment or mistake, the limitation period only starts to run from when a claimant discovers the fraud, concealment or mistake (or could have discovered it using reasonable diligence). But, like the investigator, I'm not persuaded by this as they haven't pointed to any specific fraud or concealment, and I can't see that there was any. Mr P and Mrs F's representative provided a copy of a judgment from the Spanish Court of Appeal, which they said showed the structure employed by Business C's group was akin to fraud and unlawful. But they haven't explained how this applies to Mr P and Mrs F's claim or complaint. And, in any event, even if there was a concealment, I think Mr P and Mrs F probably had enough information about the terms of the agreements to start the clock running not long after they purchased the timeshares. So, I'm not persuaded they could rely on section 32 to extend the time limits under the LA in these circumstances.

Mr P and Mrs F's representative also said their claim is in a claim in 'specialty', which would mean that a 12 year time limit applies under section 8 of the LA. However, it is clear in this case that Mr P and Mrs F are seeking repayment of funds and not a declaration of unenforceability. And, like the investigator, I'm satisfied that in the case of a claim for repayment of monies recoverable by statute, the six year time limit set out under section 9 of the LA applies.

Overall, for the reasons I've explained above, I don't think Mr P and Mrs F raised their section 140A claim in time, so GE Money would be entitled to rely on the LA as a defence to answering that claim in these circumstances. This means I also don't think GE Money acted unreasonably by refusing to consider their section 140A claim and I don't intend to ask GE Money to do anything further in response.

Was Business C 'authorised' to arrange the loans?

Mr P and Mrs F haven't provided any evidence to show that Business C wasn't properly authorised to arrange the loan in the way their representative says. And, as our investigator explained, our records indicate that Business C was authorised at the time Mr P and Mrs F's loans were arranged, albeit not by the FCA.

The FCA only took over the regulation of consumer credit businesses on 1 April 2014. Prior to this, such businesses were regulated by the OFT, including Business C. I've not seen anything to suggest that our records are wrong on this point. So, I don't think there's sufficient evidence to show Business C breached the general prohibition (section 19 of FSMA), and I don't intend to uphold this part of their complaint on this basis.

Were the proper checks carried out when GE Money agreed to lend to Mr P and Mrs F?

Mr P and Mrs F says GE Money failed to carry out proper credit checks when lending to them. Even if I were to conclude that GE Money or its agents didn't carry out the proper checks for creditworthiness and affordability when arranging a loan for Mr P and Mrs F, I would still need to be satisfied that the lending was unaffordable for them and/or that they

lost out as a result, in order to uphold this part of their complaint.

Mr P and Mrs F's representative hasn't provided any further information around this, despite the investigator pointing out that this would be needed. So, as it stands, I don't intend to uphold this part of their complaint either as there's insufficient evidence to show that the lending was irresponsible or unaffordable for Mr P and Mrs F at the time.

My provisional decision

For the reasons explained above, I don't intend to uphold Mr P and Mrs F's complaint about GE Money Consumer Lending Limited.

Further comments or evidence

The ombudsman who wrote that provisional decision has now left this Service and the complaint has been referred to me to make a final decision.

I explained to all of parties that having read the papers and the previous ombudsman's provisional decision, I was in agreement with it but, given the change of ombudsman, I gave them a little more time to provide any further comments or evidence they wanted me to consider.

No further comments or evidence were provided.

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.

I've not found any reason to change the provisional decision. That provisional decision now becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr P to accept or reject my decision before 12 October 2023.

Phillip McMahon
Ombudsman