DRN-4555728

The complaint

Mr and Mrs C complain that a timeshare product was misrepresented to them and that the seller is in breach of contract. The purchase was partly financed with credit provided by Vacation Finance Limited ("VFL"). Because of that, Mr and Mrs C say they have a claim against VFL in the same way they have a claim against the timeshare company.

Mr and Mrs C have been represented in this complaint by a claims management business, which I'll call "F". Any reference to Mr and Mrs C's submissions and arguments, therefore, includes those made on their behalf.

What happened

Mr and Mrs C have been timeshare owners since around 2011, having bought timeshare products from companies in the Azure Group.

In October 2018 Mr and Mrs C were on holiday in Malta. While there, they attended a sales presentation, at the end of which they bought a timeshare product from Azure Resorts Limited, a company registered in the Group. They bought 44,550 XP points and Level 5 membership of the Azure XP club at a total cost of £95,299. XP points could be exchanged for holiday accommodation and experiences, including sailing trips, motor home hire, and driving experiences.

The sale document recorded that Mr and Mrs C paid a deposit of £32,500. The balance of the purchase price, £62,799, was financed with a loan from VFL.

In 2020 two of the Azure companies, Azure XP Limited and Azure [Resorts] Limited, were placed into liquidation. F says they are therefore unable to provide the services which Mr and Mrs C bought and that the seller is in breach of contract.

In July 2021 Mr and Mrs C complained to VFL through F. They said, in summary: they had been pressured into buying the XP points; the product had been misrepresented to them; the points had been sold as an investment; the lending had been irresponsible; the loan created an unfair relationship; and commission had not been disclosed as it should have been.

VFL did not accept the complaint, and Mr and Mrs C referred the matter to this service. Our investigator did not recommend that the complaint be upheld. Mr and Mrs C did not accept that recommendation and asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

General comments

I would observe first of all that Mr and Mrs C have provided almost no documentation in support of their claim. The only document I have evidencing a sale is a one-page summary, which does not even identify which Azure company was the seller. Nor do I have a complete copy of the loan agreement. The loan statement indicates however that Mr C was the sole borrower – which, if correct, means that Mrs C is not a customer of VFL and so cannot bring a complaint about it.

This service has seen a number of complaints about Azure timeshare sales from around the same time, as has F. We know that the sale documentation was extensive and was in a largely standard format, so I would have expected rather more reference to it – especially since the main thrust of Mr and Mrs C's claim is that they were misled about what they were buying.

In addition, Mr and Mrs C allege that they were not provided with all the information required under The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010. Since they have only provided me with a tiny proportion of the sale documents they would have received, however, I do not believe that I can properly accept what they say about that.

I note as well that part of the claim refers to a determination made under section 28A of the Financial Services and Markets Act 2000. There was such a determination made in connection with Azure timeshares, but it concerned a different lender, not VFL.

Affordability

Lenders are required to ensure that loans are affordable and appropriate. What that means in practice will vary from case to case.

I have not however seen any evidence to suggest that the loan was not affordable for Mr C. He does not appear to have indicated at any time that he was having difficulty making payments. The loan statements that I have seen indicate that payments have been made in full and on time.

The fact that a borrower has not missed any payments or fallen into arrears does not necessarily show that the lender did carry out appropriate checks before agreeing the loan. It does indicate in this case however that Mr C has suffered no undue loss as a result of taking the loan out. It also indicates that, even if more detailed checks had been made, it's likely the loan would have been granted in very similar terms in any event.

Sections 56, 75 and 75A of the Consumer Credit Act

Under section 56 of the Consumer Credit Act 1974 statements made by a broker in connection with a consumer loan are to be taken as made as agent for the lender.

In addition, one effect of sections 75 of the Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions include that the price attached to any single item which is the subject of the contract is not more than £30,000. The price attached to the timeshare product in this case was more than £95,000.

Section 75A of the Consumer Credit Act includes similar provisions where the borrower has a claim for breach of contract and the cash price is more than £30,000. It does not apply however where the linked credit agreement is for more than £60,260, as it was here.

It follows that sections 75 and 75A of the Consumer Credit Act do not apply in this case. I do not therefore need to discuss specifically Mr and Mrs C's arguments that they have claims in misrepresentation or for breach of contract against the seller.

Section 140A claims

Under section 140A and section 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 considering whether a credit agreement creates an unfair relationship, a court can have regard to any linked transaction. I believe that the sale agreement was a "linked transaction" within the meaning of section 19 of the Consumer Credit Act.

An ombudsman does not have the power to make an order under section 140B. I must however take relevant law into account in deciding what I consider to be fair and reasonable. And I have the power to make a wide range of awards – including, for example, requiring a borrower to refund interest or charges, and to write off or reduce the balance of a loan. I am not persuaded however that I should do so here.

I believe there were links between VFL and the Azure companies, but I do not believe this led to a conflict of interest in respect of their relationship with Mr C. The seller was selling club membership and a timeshare product. To the extent it or another Azure company introduced finance options, it was not acting as Mr C's financial adviser or agent and was under no obligation to make an impartial or disinterested recommendation or to give advice or information on that basis.

F says that VFL did not disclose the commission paid to Azure. VFL says it did not pay any, and I have no reason to doubt that. I note in any event that, before alleging that an unfair commission had been paid, F does not appear to have taken any steps to ask whether any had been paid or, if so, what it was. That does not suggest that the issue of commission was a real concern to Mr C, either at the point of sale or subsequently.

Mr and Mrs C say too that the sale was pressured. They haven't really expanded on that, although I accept they may not have been able to read all the documents in detail before agreeing to the sale.

Mr and Mrs C did however have 14 days in which to review the documents and withdraw from both the sale and the loan agreements. If they thought they had agreed to anything as a result of undue pressure, it is not clear to me why they didn't take advantage of the option to withdraw. The 14-day cooling-off period was introduced under an EU Directive and the 2010 Timeshare Regulations in part to address the problem of timeshare customers not being able to consider things fully at the point of sale.

Mr and Mrs C say the timeshare product was sold as an investment, contrary to relevant regulations. There is no evidence of that, however, other than a bald assertion made on their behalf. And, at the relevant time, Azure's standard documents included a Compliance Statement which customers were asked to sign and which itself included:

"The primary purpose of our Membership is to access holiday accommodation and is not a financial investment for a return…"

If, as Mr and Mrs C now say, they paid more than £95,000 for an investment, I would expect them, or those advising them, to explain when bringing this complaint why they signed a statement saying the very opposite.

I indicated that I was not minded to uphold the complaint and gave the parties until 11 January 2024 to provide me with any further arguments and evidence they wanted me to consider. That deadline has now passed, but I haven't received 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.

In my provisional decision I referred to a loan statement which named only Mr C – indicating that he was the sole borrower and, therefore, the party eligible to bring the complaint. I do note however that VFL's correspondence, including its final response, clearly refers to a loan made to both Mr and Mrs C; and the statement appears to relate to an earlier loan. Neither party has specifically addressed the issue, however, so I have proceeded on the basis that the loan was in joint names; that is the basis on which Mr and Mrs C brought the complaint, and the basis on which VFL responded to it.

Be that as it may, I have received no further information or arguments, and so I see no reason to reach a different conclusion from that set out in my provisional decision. I stress that, in reaching that conclusion, I have considered afresh all the evidence and arguments from the outset.

My final decision

For these reasons, my final decision is that I do not uphold the complaint and do not require Vacation Finance Limited to do anything more to resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 12 February 2024.
Mike Ingram
Ombudsman