DRN-4575136

The complaint

Mrs O complains that Lloyds Bank PLC ("LB") unfairly declined her claim under section 75 of the Consumer Credit Act 1974 ("CCA") in relation to a payment she made using her credit card to purchase a timeshare product.

What happened

In or around June 2018, Mrs O was on holiday using her timeshare when she was invited to a meeting with her timeshare provider - who I'll refer to as "A". Mrs O says that as a consequence of this meeting, she agreed to upgrade her existing timeshare product to a points-based product supplied by A. The purchase price agreed was £8,950 which was funded, in part, using a credit card provide by LB in Mrs O's sole name.

In March 2022, using a professional representative ("the PR"), Mrs O submitted a claim to LB under section 75 of the CCA ("S75"). The PR alleged that Mrs O purchased the timeshare product having relied upon representations made by A which turned out not to be true. And under section 75 of the CCA ("S75"), LB are jointly liable for those misrepresentations. In particular, the PR allege A had misrepresented the product as *"an excellent investment"* that *"could be sold at a profit whenever* [Mrs O] *wished as part of A's re-sale scheme".* The PR further allege Mrs O was told she *"would be able to rent out the timeshare and make a profit from the rental income".* But Mrs O wasn't able to do that.

The PR also said that A *"are now in liquidation. They cannot provide the service sold. They are in breach of contract".*

The PR went on to included further allegations including:

- that Mrs O was aggressively target and pressured into entering into the agreement;
- selling a timeshare product as an investment is contrary to Regulation 14 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the TRs");
- A had breached The Consumer Protection from Unfair Trading Regulations 2008 ("CPUT") through the use of aggressive commercial practices; and
- maintenance fees have continued to increase.

In order to consider Mrs O's claim further, LB asked the PR to provide various information and documentation including evidence to support the allegations made and evidence that the payment Mrs O made was specifically linked to the timeshare purchase. However, having not received the required information, LB said they were *"unable to proceed with* [Mrs O's] *claim".*

Unhappy with LB's response, the PR referred Mrs O's claim to this service as a complaint. One of this service's investigators considered all the information and evidence available. Having done so, our investigator didn't find any evidence to support the various allegations. And because of that, they didn't think LB needed to take any further action.

The PR disagreed with our investigator's findings and asked that Mrs O's complaint be referred to an ombudsman to review further. In doing so, they provided a written statement of events from Mrs O together with their own assessment and interpretation of the relevant legislation they believe applies to Mrs O's claim here.

As an informal resolution couldn't be reached, Mrs O's complaint was passed to me to consider. Having done that, while I was inclined to reach the same outcome as our investigator, I considered a number of issues which I don't feel were previously fully addressed or explained. So, I issued a provisional decision on 14 December 2023 giving both sides the chance to respond.

In my provisional decision I said:

> Relevant considerations
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> When considering what's fair and reasonable, DISP[1] 3.6.4R of the FCA[2] 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.
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> S75 provides consumers with protection for goods or services bought using credit. Mrs O paid for the timeshare product, in part using her LB credit card. So it isn't in dispute that S75 applies here. This means Mrs O is afforded the protection offered to borrowers like her under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.
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> Some of the allegations made wouldn't ordinarily fall under S75. Section 140A of the CCA ("S140A") looks at the fairness of the relationship between Mrs O and LB arising out of the credit card agreement (taken together with any related agreements). And because the product purchased was funded under the credit card agreement, they're deemed to be related agreements. However, I can't see that the PR have specifically submitted a claim under S140A. And in any event, only a court has the power to make a determination under S140A. That said, as it's relevant law, I acknowledge the allegations included by the PR, so have considered S140A when deciding what I believe is fair and reasonable.
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> It's important to distinguish between the complaint being considered here and the legal claim. The complaint this service is able to consider specifically relates to whether I believe LB's failure to uphold Mrs O's claim was fair and reasonable given all the evidence and information available to me, rather than actually deciding the legal claim itself.
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> It's also relevant to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we don't provide a legal service. And as I've already said, this service isn't able to make legal findings – that is the role of the courts. Where a consumer doesn't accept the findings of an ombudsman, this doesn't prejudice their right to pursue their claim in other ways.
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> 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. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.
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> Was the timeshare product misrepresented?
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> For me to conclude there was misrepresentation by A in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available

[1] Dispute Resolution: The Complaints sourcebook (DISP)
[2] Financial Conduct Authority

evidence, that A made false statements of fact when selling the timeshare product. In other words, that they told Mrs O something that wasn't true in relation to the allegations raised. I would also need to be satisfied that any misrepresentation was material in inducing Mrs O to enter into the contract. This means I would need to be persuaded that she reasonably relied upon false statements when deciding to buy the timeshare points.

From the information available, I can't be certain about what Mrs O was specifically told (or not told) about the benefits of the products she purchased. It was, however, indicated that she was told these things. So, I've thought about that alongside the evidence that is available from the time. Although not determinative of the matter, I haven't seen any documentation which supports the assertions in Mrs O's claim, such as marketing material or documentation from the time of the sale that echoes what the PR says she was told. In particular relating to the product being represented as an investment that could be sold or rented out for a profit. There's simply no reference to this within any of the documentation provided.

I think it's unlikely the product can have been marketed and sold as investment contrary to The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the TRs") simply because there might have been some inherent value to it. And in any event, I've found nothing within the evidence provided to suggest A gave any assurances or guarantees about the future value of the product Mrs O purchased. A would had to have presented the product in such a way that used any investment element to persuade her to contract. Only then would they have fallen foul of the prohibition on marketing and selling certain holiday products as an investment, contrary to Regulation 14(3) of the TRs.

Furthermore, I haven't seen any evidence to suggest that A were contractually bound to provide a timeshare resale or rental service. And even if they were, I've seen nothing that suggests they gave any guarantee of a successful sale or rental. Or that a profit could be achieved. While Mrs O may well have intended to purchase the timeshare product as a financial investment, I can't reasonably say that intention was due to anything A said to her. And based upon her testimony, it was clear that she did intend to use the timeshare product for holidays. So again, this appears to contradict the financial investment intention alleged.

In Mrs O's statement, she goes on to explain that she had various minimum requirements from the product purchased. These related specifically to the facilities that would be available using her points. However, I can't see that any of these aspects formed part of the claim the PR submitted to LB. So, I can't reasonably consider these further.

Based upon the specific evidence available in Mrs O's case, I can't say, with any certainty, that A did misrepresent the product in the manner alleged.

The breach of contract claim under S75

I understand that whilst A may have entered an insolvency process, the current management company have confirmed that timeshare owners remain able to fully utilise their timeshare products subject to the associated agreements. So, in the absence of any specific explanation or evidence to support why Mrs O believe there's been a breach of contract which resulted in a loss for her, I haven't seen anything that would lead me to conclude there was such a breach.

Within Mrs O's claim, the PR have suggested they *"reserve* [Mrs O's] *right to claim breach of contract for any elements of written timeshare agreement that were specifically breached* (sic)*".* But from the information provided, I'm not aware of any further allegations (substantiated or not) which show that Mrs O suffered any loss as a consequence of any alleged contract breach.

Further allegations

As I've explained above, some of the allegations detailed in the claim submitted by the PR wouldn't ordinarily be captured under S75. However, they could be considered under S140A, albeit I can't see that a specific claim has been submitted under this part of the CCA.

The court may make an order under S140B in connection with a credit agreement if it determines that the relationship between the creditor (LB) and the debtor (Mrs O) is unfair to the debtor because of one or more of the following (from S140A):

a) any of the terms of the agreement or of any related agreement;

b) the way in which the creditor has exercised or enforced any of the rights under the agreement or any related agreement;

c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

In deciding whether to make a determination under this section the court shall have regard to all matters it thinks are relevant (including matters relating to the creditor and matters relating to the debtor). And I think it's relevant to acknowledge Mrs O's existing membership and relationship with A. She'd previously purchased a product from A, so I think it's reasonable to conclude she had a reasonable awareness about the product she'd purchased, how it operated and any associated costs. I also think it's reasonable to conclude Mrs O would be familiar with A (as a timeshare supplier) the format of their meetings and sales presentations, and their documentation. Particularly as the purchase in June 2018 wasn't her first.

- The pressured sale and process

The claim suggests Mrs O was pressured into purchasing the product through the use of aggressive commercial practices.

I acknowledge what the PR have said about this. So, I can understand why it might be argued that any prolonged presentation might have felt like a pressured sale – especially if, as Mrs O approached the closing stages, she was going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date.

Against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mrs O agreed to the purchase in 2018 when she simply didn't want to. I haven't seen any evidence to demonstrate that she went on to say something to A, after the purchase, suggesting she'd agreed to it when she didn't want to. And neither the PR nor Mrs O have provided a credible explanation for why she didn't subsequently seek to cancel the transaction within the 14-day cooling off period normally permitted here.

If Mrs O only agreed to the purchase because she felt pressured, I find this aspect difficult to reconcile with the allegation in question. I haven't seen anything substantive to suggest she was obviously harassed or coerced into the agreement. And because of that, I'm not persuaded that there's sufficient evidence to demonstrate that Mrs O made the decision to proceed because her ability to exercise choice was – or was likely to have been – significantly impaired contrary to the Consumer Protection from Unfair Trading Regulations ("CPUT").

Other considerations

In responding to our investigator's findings, the PR have made reference to the alleged experiences of other consumers. In particular suggesting similarities with their experience when purchasing product from A. They believe this demonstrates

systemic breaches and practices by A when selling timeshare products. In considering Mrs O's complaint, I'm required to look at the facts and evidence as they relate to her own specific experience. So, I don't believe the (alleged) experiences of other consumer help me in establishing the facts of what actually happened in her case.

Summary

I would like to reassure Mrs O that I've carefully considered everything that's been said and provided. Having done so, I haven't found any evidence from the time of the sale to support the allegations included within her claim. This appears to support LB's response to her claim. So, I can't say that their response was unfair or unreasonable.

LB have undertaken to re-open Mrs O's claim in the event that further evidence can be provided. I think this is a reasonable response. But as things stand, I don't currently intend to ask them to do 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.

LB responded to my provisional decision confirming they have nothing further to add. The PR acknowledged receipt, but despite follow up by this service, haven't provided any new information or evidence for me to consider.

In the circumstances, I've no reason to vary from my provisional findings. So, I won't be asking LB to do anything more here.

My final decision

For the reasons set out above, I don't uphold Mrs O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 20 February 2024.

Dave Morgan
Ombudsman