

The complaint

Ms C complains through her representative, ("PR"), that Lloyds Bank PLC ("Lloyds") didn't fairly or reasonably deal with her claims under sections 75 and 140A of the Consumer Credit Act 1974 (the 'CCA') in relation to the purchase of a holiday product in 2014. The purchase was in Ms C and Ms T's name but, as it was funded in part by a payment made by Ms C using her Lloyds credit card, she is the eligible complainant. For simplicity, in this decision I will refer to her as the sole purchaser.

What happened

In 2014 Ms C took what she says was a cheap holiday. During that holiday she was taken to another resort where she was pressurised to purchase a holiday product. She says she was told that it could be sold back to the Seller after a year. The process took some three hours and only when she was reassured that it could be sold back did she agree to make the purchase. Ms C said that she wasn't given the chance to read the documents she initialled and signed. She paid a deposit by credit card and signed a promissory note for the balance. Ms C said she wasn't told about the maintenance fees until after the contract had been signed. After a year she tried to sell it back but was unable to and her emails and calls went unanswered.

In March 2020 PR submitted a letter of claim to Lloyds under s. 75 CCA. It said the product was misrepresented and was worthless. It also claimed there had been a breach of contract by the Seller since Ms C was unable to sell it back. The claim was rejected as was the subsequent complaint. Lloyds said PR and Ms C had not submitted evidence in support of the claim to support Ms C's testimony.

PR brought a complaint to this service. It said that Lloyds had not properly assessed Ms C's ability to afford the loan. It claimed Lloyds had paid commission to the Seller without declaring it to Ms C. Finally it claimed the Seller had applied pressure to Ms C.

The complaint was considered by one of our investigators who didn't recommend it be upheld. He noted Ms C's testimony, but without any supporting evidence he didn't think Lloyds had been wrong to refuse the claim. Although PR had not raised the issue of an unfair relationship under s.140a CCA with Lloyds he didn't believe there were any grounds to support this claim.

PR didn't agree and said it had no information as to what contractual terms had been reviewed and our investigator's view was vague and opaque. It said no weight had been given to Ms C's testimony and it was unacceptable to presume she was lying.

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. It would appear that two of the three points of complaint brought by PR to this service have no relevance. Lloyds did not grant a loan to Ms C. She used her credit card account to make a payment to the Seller and so the issue of affordability was not something Lloyds had reason to consider in respect of this transaction. Nor does the allegation that payment of commission by Lloyds have any relevance.

I have noted PR’s response in which it says it does not know what was considered by our investigator. I have considered all the material provided by it and Lloyds, but would point out that no contract or agreement has been supplied. The claim is based on the assertions made by Ms C.

Strictly, the only complaint for me to consider is that of the alleged unfair relationship, but this was not something which PR raised with Lloyds. However, despite the inconsistencies between PR’s claim and the complaint I consider it best if I address the claim made under s.75 and also the point raised with this service concerning s.140A.

S.75 CCA

S. 75 of the CCA states that, when a debtor (Ms C) 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 (Lloyds) is equally and concurrently liable for that claim – enabling the debtor to make a ‘like claim’ against the creditor should they choose to.

It’s important to note that, as Lloyds 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.

Misrepresentation

On Ms C’s behalf PR alleges that the holiday product was misrepresented to her as she had been told she could sell it back after a year. Regrettably PR has submitted little in the way of documentary evidence of what was purchased. In its submission to this service it provided a copy of a promissory note, an email from the finance company regarding the promissory note and a copy of a sales certificate. In its response to the claim Lloyds said that it had insufficient evidence to support the claim and I gather it too did not have the full paperwork.

Not having been present at the sale it’s not possible for me to say exactly what was said,

and in what circumstances. I have noted Ms C's testimony but I have no supporting evidence and no records have been supplied of her attempt(s) to sell the product or the Seller's refusal to buy it back.

Lloyds is being asked to make a significant payment to Ms C and I consider it reasonable that it seeks supporting evidence. Other than Ms C's testimony it has no grounds on which it can uphold the claim.

In any event I can imagine that the sales representatives would have put the best gloss on the product and emphasised the benefits membership would offer, but that does not mean that this amounted to misrepresentation.

Overall it is difficult for me to conclude that any misrepresentations were made.

Breach of Contract

As our investigator has explained under s.75 of the CCA, we can only consider whether the Seller failed to perform one or more of the contract's terms – thereby breaching the contract. I have not seen evidence that this occurred which makes it difficult for me to conclude there has been one or more breaches.

S.140A CCA

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

Ms C's alleged loss isn't related to damage to property or to her 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 Lloyds assumed such responsibility – whether willingly or unwillingly.

I appreciate Ms C is dissatisfied with her purchase and she has my sympathies for this, but, in summary I cannot see why any of her claims were likely to have succeeded. So overall I think that Lloyds acted reasonably in declining the claim under s.75 and would have been entitled to do so for a claim under s. 140A CCA if one had been made.

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 Ms C to accept or reject my decision before 24 November 2023.

Ivor Graham
Ombudsman