DRN-4634854

The complaint

Mr S complains that Santander UK Plc ("Santander") unfairly declined his claim under section 75 of the Consumer Credit Act 1974 ("CCA") in relation to a payment he made using his credit card to purchase a timeshare product.

What happened

In or around October 2019, Mr S was on holiday using his existing timeshare when he was invited to a meeting with his timeshare provider - who I'll refer to as "A". Mr S says that as a consequence of this meeting, he agreed to purchase a points-based timeshare product supplied by A. The purchase price agreed was £7,500 which was funded, in part, using a credit card provide by Santander in Mr S's sole name.

In June 2021, using a professional representative ("the PR"), Mr S submitted a claim to Santander under section 75 of the CCA ("S75"). The PR alleged that Mr S 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"), Santander are jointly liable for those misrepresentations.

In particular, the PR allege A had misrepresented the product purchase by telling Mr S he would be purchasing an investment that could be sold at a profit through A's re-sale scheme. But Mr S has been unable to sell the points-based product. Further, the PR allege that A told Mr S he was being offered a special deal, but only if purchased that day.

The PR went on to included further allegations including:

- Mr S 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
- annual maintenance fees have increased sharply each year.

Santander didn't uphold Mr S's claim. Primarily because they didn't think the evidence supported the existence of the required Debtor-Creditor-Supplier relationship ("DCS") under the CCA, such that a valid claim could be made. They also didn't think there was any evidence to support the alleged misrepresentations based upon the information provided.

The PR didn't' agree with Santander's findings. So, referred Mr S'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 also didn't find any evidence to support the various allegations. And because of that, they didn't think Santander needed to take any further action.

The PR didn't agree with our investigator's findings and asked that Mr S's complaint be passed to an ombudsman to consider further. The PR provided a detailed explanation of why they disagreed with the various findings. In particular, they:

- suggested the timeshare product had been consistently marketed by A as a

mechanism for removing consumers from their existing timeshare ownership, in line with various testimonies they'd seen. And this was the main reason Mr S went ahead;

- allege it was represented that the product would provide consumers with easy access to a wide range of luxury holidays, but Mr S found it impossible to book suitable holidays he'd previously enjoyed with previous purchases form A;
- provided details of timeshare products Mr S had previously purchased from A in 2008, 2009, 2012 and 2014;
- assert that representations made by A in relation to earlier purchases are relevant to the opinion Mr S formed when deciding to purchase the point- based product – in particular that Mr S was purchasing an investment;
- Mr S's recollections are plausible and consistent with the sales process seen in other sales by A; and
- provided evidence that Mr S had attempted to sell his previously purchased timeshare(s).

As an informal resolution couldn't be reached, Mr S'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 23 January 2024 giving both sides the chance to respond before I reach a final decision.

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. Mr S paid for the timeshare product, in part, using his credit card with Santander. So it isn't in dispute that S75 applies here. This means Mr S is afforded the protection offered to borrowers like him 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 be caught under the provisions of S75. Section 140A of the CCA ("S140A") looks at the fairness of the relationship between Mr S and Santander 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 that provision. That said, I acknowledge the allegations included by the PR, so have considered these 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 Santander's failure to uphold Mr S's claim was fair and reasonable given all the evidence and information available to me, rather than actually deciding the legal claim itself.

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

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.

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.

Was the timeshare product misrepresented?

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 evidence, that A made false statements of fact when selling the timeshare product. In other words, that they told Mr S 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 Mr S to enter into the contract. This means I would need to be persuaded that he reasonably relied upon false statements when deciding to buy the timeshare points.

From the information available, I can't be certain about what Mr S was specifically told (or not told) about the benefits of the products he purchased. It was, however, indicated that he 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 Mr S's claim, such as marketing material or documentation from the time of the sale that echoes what the PR says he was told. In particular relating to the product being represented as an investment that could be sold 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 Mr S purchased. A would had to have presented the product in such a way that used any investment element to persuade him 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 service. And even if they were, I've seen nothing that suggests they gave any guarantee of a successful sale. Or that a profit could be achieved. While Mr S 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 him. And given the PR has also highlighted difficulties experienced by Mr S when trying to book suitable holidays, I think it's clear he did intend to use the timeshare product for that purpose. So again, this appears to contradict the financial investment intention alleged.

Based upon the specific evidence available in Mr S's case, I can't say, with any certainty, that A did misrepresent the product in the manner alleged. And while the PR has referenced the alleged recollections and experiences of other consumers, I don't think these help in establishing the facts of what specifically happened in Mr S's case.

In responding to our investigator's findings, the PR have suggested that alleged representations made by A in relation to Mr S's earlier purchases contributed to his decision to purchase the points-based product. I've seen no evidence to support those allegations. And in any event, I can't see that Santander had any involvement in funding any of the earlier purchases. So, I can't reasonably hold them responsible for anything allegedly said or done prior to the purchase in question.

Further, the PR have subsequently raised an allegation regarding Mr S's ability to make suitable holiday bookings using the points he purchased. But as this doesn't appear to have formed part of the claim submitted to Santander, this isn't something they've been given the opportunity to consider. And because of that, It wouldn't be appropriate for me to look at that aspect further.

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.

I think it's relevant to acknowledge Mr S's existing membership and relationship with A since 2008. He'd previously purchased products from A, so I think it's reasonable to conclude he had an awareness about the products he'd previously purchased, how they operated and any associated costs. I also think it's reasonable to conclude Mr S 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 October 2019 clearly wasn't his first.

- The pressured sale and process

The claim suggests Mr S 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 Mr S approached the closing stages, he 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 Mr S agreed to the purchase in 2019 when he simply didn't want to. I haven't seen any evidence to demonstrate that he went on to say something to A, after the purchase, suggesting he'd agreed to it when he didn't want to. And neither the PR nor Mr S have provided a credible explanation for why he didn't subsequently seek to cancel the transaction within the 14-day cooling off period normally permitted here.

If Mr S only agreed to the purchase because he felt pressured, I find this aspect difficult to reconcile with the allegation in question. I haven't seen anything substantive to suggest he was obviously harassed or coerced into the agreement. And because of that, I'm not persuaded that there's sufficient evidence to demonstrate that Mr S made the decision to proceed because his ability to exercise choice was – or was likely to have been – significantly impaired contrary to the Consumer Protection from Unfair Trading Regulations 2008 ("CPUT").

- The annual maintenance fees

The PR suggests these have been rising sharply each year. But I've not been provided with any of the detailed purchase agreement documentation relating to Mr S's timeshare purchase. Further, the PR haven't demonstrated what maintenance fees have actually been invoiced and paid and how and if they differ from what was contractually included within the purchase agreement.

It's not unusual for such agreements to include provisions for recalculation of the maintenance fees payable each year. So, I wouldn't consider increases to be out of the ordinary in themselves. Further, given Mr S was already an existing member of A's timeshare scheme, I think it's reasonable to conclude he already had some awareness of the charges associated with his timeshares at the time of the purchase in October 2019. And in any event, in the absence of any supporting evidence, it's not possible to reasonably assess the fairness (or otherwise) of their calculation and application here.

Was there a valid Debtor-Creditor-Supplier ("DCS") arrangement?

Under S75, a DCS agreement is a precondition to a claim under that provision. As the purchase agreement may suggest that payments under that agreement had to be made to a trustee rather than the supplier directly, it's now possible that there was no such agreement in place following the High Court's judgment in the case of Steiner v National Westminster Bank PLC [2022].

However, given the facts and circumstances of this complaint and my overall outcome with those in mind, I don't think it's necessary to make a formal finding on the DCS arrangement for the purpose of this decision, because I don't think the complaint should succeed on its merits anyway.

Summary

I would like to reassure Mr S 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 his claim. This appears to support Santander's response to his claim. So, based upon this, I can't currently say that their response was unfair or unreasonable.

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.

Santander acknowledged receipt of my provisional decision and confirmed they had nothing further to add. Despite follow up by this service, no response has been received from with the PR or Mr S. So, having received nothing new to consider, I've no reason to vary from my provisional findings.

My final decision

For the reasons set out above, I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 March 2024.

Dave Morgan
Ombudsman