DRN-4988191

The complaint

Mrs A, who is represented by a professional representative ('PR') complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') rejected her claims under s. 75 and s.140A Consumer Credit Act ('CCA') in respect of a holiday product purchase.

What happened

In May 2010 Mrs A along with her husband purchased a timeshare product which gave them 1,100 points at a cost of £18,894 from a company I will call C. This was funded by a loan taken out by Mrs A of £16,365 and a trade in of a previous product. This previous trial product had been purchased in 2009. The loan was open as of July 2024. As the loan was in Mrs A's name, she is the eligible complainant and for simplicity in this decision I will refer to her as the sole owner. BPF has said that she took one holiday and made six other reservations which were later cancelled.

In February 2024 PR submitted a letter of claim to BPF. Both parties are aware of the details of the claims so I will set out a brief summary in this decision. PR said that the product had been misrepresented and:

- Mrs A was subject to pressure at the time of sale.
- The timeshare was sold as an investment which could be transferred to her children.
- She was told she was acquiring access to exclusive luxury accommodation.
- Maintenance fees would not escalate.
- She had been promised increased points
- There was an unfair relationship as set out in s.140A.
- She had not been told the loan charged a high rate of interest.
- Mrs A had been led to believe she could easily book holidays, but this was not true.

BPF did not respond to the claim and in April 2024 PR brought a complaint to this service. BPF later said the claim made under s.75 was made out of time. It also disputed the s. 140A claims made by PR.

The complaint was considered by one of our investigators who didn't recommend it be upheld. He believed that the s.75 claim had been made out of time. Furthermore, he didn't consider that BPF's rejection of the s.140A claim to have been unreasonable.

PR didn't agree and said that false representations were made to Mrs A and she had only made the purchase having been assured she was purchasing an investment. She had not been told it was unlawful to sell this product and that it would not make a profit. C had failed

to disclose the maintenance fees would increase. It also said that our investigator had placed too high a burden on Mrs A as a lay person to understand what she had purchased. It said Mrs A had made a statement of misrepresentation which showed she had been misled. It also argued that the s. 75 claim had not been made out of time as the sale had been fraudulent and there was nothing which alerted Mrs A to the fact she had grounds to complain.

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. I will explain why.

I would also add that although PR has referred to a statement from Mrs A this has not been submitted to this service. I have seen extracts which do not read like the words of a lay person.

Was Mrs A's s 75 complaint made in time?

Under the Limitation Act an action (that is, court action) based on misrepresentation cannot generally be brought after six years from the date on which the cause of action accrued. A misrepresentation is, in very broad terms, a statement of fact or law made by one party to a contract which is untrue and which induces the other party into that contract. PR has simply said that Mrs A feels promises made to her were not kept. So it is not clear there was any misrepresentation. However, if there was any misrepresentation it was made on or before 26 May 2010, so that is the date on which any cause of action arose.

It has been suggested that Mrs A would not have known about any claims until some years after the contract was made and that she has three years from the date of knowledge in which to bring a claim. That reflects our own rules about time limits but does not reflect the position under the Limitation Act. For contract claims, the usual six-year limit runs from the date on which any cause of action accrued, whether or not the claimant knew about it.

No claim was made until PR contacted BPF in February 2024, many years later. I think it

very likely therefore that a court would conclude that any claim was made outside the time limits in the Limitation Act. It follows in my view that it was reasonable for BPF to decline to consider the misrepresentation and breach of contract claims under s. 75 and the claims under s. 56.

S 32 Issues

Typically s.32 applies to fraudulent misrepresentation but it does extend to concealment. In cases where that has been alleged, it can extend the time the consumer has to raise a claim. However, Mrs A has raised a number of issues with the product in her claim/complaint and those issues could have been discoverable earlier, so I consider that she had discovered or ought to have been able to discover that something had gone wrong and if that was in excess of 6 years before claim, so I do not believe that s.32 extends the time limit.

S.140 A

Only a court has the power to decide whether the relationships between Mrs A and BPF 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 s. 140A is "an action to recover any sum recoverable by virtue of any enactment" under s. 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 Mrs A could be said to have a cause of action in negligence against BPF anyway.

Her 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 BPF such responsibility – whether willingly or unwillingly.

As I was not present at the sales meeting I cannot say what was actually said by the sales representative. It is known for these products to be sold as investments in future holidays which is not the same as financial investments.

Mrs A says that she was pressured by C into purchasing the timeshare membership at the Time of Sale. I acknowledge that she may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by C during the sales presentation that made her feel as if she had no choice but to purchase the membership when she simply did not want to. She was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel her membership during that time.

And with all of that being the case, there is insufficient evidence to demonstrate that Mrs A made the decision to purchase the membership because her ability to exercise that choice was significantly impaired by pressure from C.

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between C and Mrs A when she purchased the timeshare membership. But she and PR suggest that C failed to provide her with all of the information she needed to make an informed decision such as the potential for maintenance fees to increase.

Failing to provide information or there being unfair terms are things that could have been breaches of the Timeshare Regulations or UTCCR.

One of the main aims of the Timeshare Regulations and the UTCCR was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the CRA being breached, and, potentially the credit agreement being found to be unfair under s. 140A of the CCA.

However, the Supreme Court made it clear in *Plevin* that it does not automatically follow that regulatory breaches create unfairness for the purposes of s.140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

Given the facts and circumstances of this complaint, I am not persuaded that C's alleged breaches of the Timeshare Regulations, the CPUT Regulations] and the CRA are likely to have prejudiced Mrs A's purchasing decision at the Time of Sale and rendered her credit relationship with the Lender unfair to her for the purposes of s. 140A of the CCA.

Mrs A and her husband signed and initialled the Member's Declaration which sets out the key elements of the agreement. These include:

- *We understand that currently the annual Membership Fee is EURO 252 i for 2010. In addition the annual individual Management Charge is EURO 0.8452 per Point purchased for 2010 and that an invoice will be sent for these within 3 months of full payment of the Agreement and thereafter by 1st January each year The basis of these dues is set out in the Memorandum and Articles of Association together with the Scheme Rules and Regulations of the Company.*

- *We understand that [C] does not and will not run any resale or rental programmes and will not repurchase Vacation Club Points Other than as a trade in against future property purchases (see Paragraph 5 below)*

- *We understand that the purchase of our membership in vacation club is for the primary purpose of holidays and is neither specifically for direct purposes of a trade in nor ss an investment in real estate, and that CLC makes no representation as to the future price or value of the Vacation Club Holiday product. We understand that if we consider trading in some of our Points and t is not possible because of circumstances or due to availability of suitable properties, we still hold our points 10 use on holiday reservations.*

I appreciate Mrs A recalls the product being sold as an investment, but considering the document she signed which makes it clear it is not sold as an investment it is difficult to conclude that BPF should accept her claim. I appreciate she is a lay person, but the above notes individually signed are not drafted in a way that is not understandable by an average consumer. Nor have I seen any supporting evidence which would, allow me to conclude the product was sold as an investment. Mrs A acquired points and not a share in property and

she used these to make holiday bookings.

Nor can I see how or why Mrs A would have expected the points she purchased to have increased in later years. There may have been some misunderstanding, but I cannot say that C's sales representatives can be held responsible for that.

Mrs A was able to make seven reservations and completed one holiday. I cannot see that there is any evidence to support the claim that she found it difficult to make the bookings she wanted.

Finally I have noted the loan agreement clearly states that the APR is 17.5% and the total charge for credit is also clearly set out so I cannot see why she was unaware of the rate charged or the monthly payments and total sum due.

Conclusion

It is not for me to decide whether Mrs A has a claim against C, or whether she might therefore have a "like claim" the Consumer Credit Act. Nor can I make orders under s. 140A and s. 140A of the same Act – by which a court can decide that a credit agreement creates an unfair relationship and make orders amending it.

However, for the reasons I've already given, I don't think BPF treated her unfairly in relation to this matter. I haven't seen anything to suggest that s. 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

My final decision is that I do not uphold this claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 30 December 2024.

Ivor Graham
Ombudsman