

## **The complaint**

Mr M's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

## **What happened**

Mr M was a member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought, together with his wife Mrs M, on 11 June 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,340 fractional points at a cost of £3,000 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr M paid for his Fractional Club membership by taking finance of £3,000 from the Lender (the 'Credit Agreement') in his sole name.

Mr M – using a professional representative (the 'PR') – wrote to the Lender on 27 June 2023 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The complaint was ultimately referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint about unaffordable lending and that the Lender ought to have accepted a claim made under Section 75 of the CCA. The Investigator felt the complaint that there was an unfair credit relationship under Section 140A hadn't been made in time as per the rules this service must follow and that it couldn't be considered.

Mr M initially disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. Since then, the PR has accepted the Investigator's findings on this service's remit to consider the complaint, and seeks only to challenge the Investigator's findings on its remaining merits.

## **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.

Having done so, I conclude that the complaint should not be upheld. I'll explain why.

## **Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr M's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr M could make against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mr M entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr M first notified the Lender of his Section 75 claim on 27 June 2023. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender not to accept Mr M's concerns about the Supplier's alleged misrepresentations.

The PR has argued that the limitation period can be extended in cases of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances. However, I don't think the PR's arguments assist the claim because, for example, the PR's allegation of concealment of the product being an investment is inconsistent with another of the PR's allegations that the Supplier promoted the product to Mr M as an investment.

### **Section 75 of the CCA: the Supplier's Breach of Contract**

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I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr M says that he could not holiday where and when he wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr M states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he may not have been able to take certain holidays. But I have not

seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr M any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

### **Mr M's Lending Complaint**

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I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr M was actually unaffordable before also concluding that he lost out as a result. But from the information provided I am not satisfied that the lending was unaffordable for him.

### **My final decision**

For these reasons, my final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 March 2026.

Nimish Patel  
**Ombudsman**