DRN-4736492

The complaint

Mr and Mrs T's complaint is, in summary, that Shawbrook Bank Limited ('the Lender'), acted unfairly and unreasonably by:

(1) Being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 ('CCA').

(2) Deciding against paying a claim made under Section 75 of the CCA.

(3) Providing the loan through an unauthorised credit intermediary.

(4) Lending to Mr and Mrs T irresponsibly.

What happened

Mr and Mrs T purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 12 April 2015 (the 'Time of Sale'). Mr and Mrs T paid for their Fractional Club membership by taking finance from the Lender (the 'Credit Agreement'). Mr and Mrs T paid off the loan, and their credit relationship with the Lender ended, on 26 November 2015.

Mr and Mrs T – using a professional representative (the 'PR') – wrote to the Lender on 11 January 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender responded to the claim, rejecting it, on 25 February 2022. Mr and Mrs T, through the PR, then contacted the Financial Ombudsman Service on 7 July 2022. The Lender issued its final response rejecting the complaint on 20 September 2022. The PR confirmed on 30 September 2022 that Mr and Mrs T remained dissatisfied and wanted the Financial Ombudsman Service to look at the complaint.

The complaint was assessed by one of our Investigators who, having considered the information on file, said that the complaint about an unfair credit relationship was outside of the jurisdiction of the Financial Ombudsman Service, and the remainder of the complaint should not be upheld.

Mr and Mrs T disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I previously issued a decision setting out what parts of the complaint I can consider, being only points (2), (3) and (4) above. This final decision deals with the merits of those parts of the complaint.

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.

I've decided not to uphold this complaint for similar reasons to our Investigator. Before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made. It is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Complaint about the Lender's rejection of Mr and Mrs T's Section 75 claim

I don't think it would be fair or reasonable to uphold this complaint. 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 'Limitation Act'). This is because 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 and Mrs T's Section 75 claim was time-barred under the Limitation Act before they put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer 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 Limitation Act).

But a claim under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the Limitation Act. 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 and Mrs T entered into the purchase of their timeshare at that time based on the alleged misrepresentations of the Supplier – which they say they relied on. And as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr and Mrs T first notified the Lender of their Section 75 claim on 11 January 2022. And as more than six years had passed between the Time of Sale and when they first put their claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr and Mrs T's concerns about the Supplier's alleged misrepresentations.

Complaint about the credit being brokered by an unauthorised credit intermediary

The PR alleges that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement.

However, Mr and Mrs T knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for Mr and Mrs T, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that caused Mr and Mrs T a financial loss, such that it would be fair and reasonable to tell the Lender to compensate Mr and Mrs T – even if the loan wasn't arranged properly.

Complaint about irresponsible lending

The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs T. I haven't seen anything to persuade me that was the case in this complaint given its circumstances, nor that the money lent to Mr and Mrs T was actually unaffordable for them. So, from the information provided, I am not satisfied that the lending was irresponsible at the Time of Sale.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 28 August 2025.

Phillip Lai-Fang
Ombudsman