

The Complaint

Mr and Mrs M's complaint is, in essence, that Shawbrook Bank Limited ('Shawbrook') acted unfairly and unreasonably by (1) participating in an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

Background to the Complaint

Mr and Mrs M purchased an asset-backed timeshare on 30 December 2014 (the 'Time of Sale') from a third party (the 'Supplier'). And they used a restricted-use loan from Shawbrook (the 'Credit Agreement') to help pay for the timeshare before repaying the Credit Agreement in full on 9 March 2015.

Mr and Mrs M – using a professional representative ('PR') – wrote to Shawbrook on 7 October 2022 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim under Section 75 of the CCA.
2. Shawbrook's participation in an unfair credit relationship under the Credit Agreement and related timeshare agreement for the purposes of Section 140A of the CCA.

Mr and Mrs M's Section 75 Complaint

Mr and Mrs M say that the Supplier made a number of misrepresentations at the Time of Sale – namely that:

1. Their timeshare had a guaranteed end date when that wasn't true.
2. They were buying an interest in a specific piece of "real property" when that wasn't true.
3. Their timeshare was an "investment" when that wasn't true.
4. Their timeshare was part of an exclusive club when that also wasn't true.

Mr and Mrs M's Section 140A Complaint

The Letter of Complaint set out a number of reasons for why Mr and Mrs M say the credit relationship between them and Shawbrook was unfair to them. It isn't practical or necessary to set out those reasons in detail here. But in summary, they include the following:

1. Mr and Mrs M found it difficult to book the holidays they wanted when they were given assurances at the Time of Sale over availability; and they were unhappy with the standard of accommodation after July 2015.
2. Mr and Mrs M weren't told by the Supplier at the Time of Sale that their annual management charges could increase.
3. The membership term of Mr and Mrs M's timeshare along with the obligation to pay annual management charges for the duration of their membership amounted to unfair contract terms under Regulation 5 of the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
4. The Supplier's sales presentation at the Time of Sale included misleading actions and

omissions under Regulations 5 and 6 of the Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.

5. Mr and Mrs M discovered that they were paying a significantly higher rate of interest under the Credit Agreement than other lenders were charging. And at no stage prior to entering into the Credit Agreement was "any" assessment done to determine their creditworthiness. What's more, Mr and Mrs M weren't given an adequate explanation as to the features of the Credit Agreement that may have made the credit unsuitable for them given the length of the Agreement, their age, and the high interest rate they had to pay.
6. The acts and/or omissions of the Supplier at the Time of Sale were "deceitful, oppressive or otherwise unfair or improper, whether unlawful or not" under paragraph 2.3 of the Office of Fair Trading's Irresponsible Lending Guidance 2010 (the 'OFT's Irresponsible Lending Guidance').

Shawbrook dealt with Mr and Mrs M's concerns as a complaint and issued its final response letter on 22 December 2022 rejecting it on the basis that there was a defence to the complaint under the Limitation Act 1980 (the 'LA').

As a result, the complaint was referred to the Financial Ombudsman Service on 16 January 2023. It was then looked at by an investigator who saw no reason to uphold it. But as PR disagreed with the investigator's assessment and asked for an ombudsman's decision, it was passed to me.

I issued a Provisional Decision ('PD') on 1 March 2024 in which I was minded to conclude that:

1. Mr and Mrs M's complaint about a credit relationship with Shawbrook that was unfair to them is not within our jurisdiction because it wasn't made within the time limits set out in DISP 2.8.2 R (2).
2. Mr and Mrs M's complaint about Shawbrook's decision to reject their concerns about the Supplier's alleged misrepresentations under Section 75 of the CCA was made in time under DISP 2.8.2 R (2). But Shawbrook didn't act unfairly or unreasonably by coming to the decision it did.

As neither side have added anything new to the complaint in response to my PD, it was passed back to me for the purpose of finalising my thoughts. So, this is the second of two decisions I'm issuing in order to do that.

The first Decision, which I issued earlier today, was focused on Mr and Mrs M's complaint about an unfair credit relationship with Shawbrook and the Financial Ombudsman Service's jurisdiction to consider it. This Final Decision, on the other hand, focuses on the merits of Mr and Mrs M's complaint about Shawbrook's handling of their Section 75 claim.

My Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, I still don't think Mr and Mrs M's complaint about Shawbrook's handling of their Section 75 claim should be upheld.

As I said in my PD, 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 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 and Mrs M's Section 75 claim was likely to be time-barred under the LA by a court when they put it to Shawbrook.

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 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 and Mrs M 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 Shawbrook was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr and Mrs M first notified Shawbrook of their Section 75 claim on 7 October 2022. And as more than six years had passed between the Time of Sale and when they first put their claim to Shawbrook, I still don't think it was unfair or unreasonable of Shawbrook to reject Mr and Mrs M's concerns about the Supplier's alleged misrepresentations.

My Final Decision

For the reasons set out above, I don't uphold Mr and Mrs M's complaint about Shawbrook's handling of their Section 75 claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 28 June 2024.

Morgan Rees
Ombudsman