DRN-4980453

The complaint

Mr C complains that a loan provided by Shawbrook Bank Limited ("Shawbrook") is unenforceable, as the credit intermediary who arranged it wasn't authorised to do so.

What happened

In December 2019 (the "Time of Sale"), Mr C (jointly with his wife) purchased a timeshare product from a timeshare supplier (the "Supplier") for an agreed price of £8,450. The full purchase price was funded under a fixed sum loan agreement (the "Credit Agreement") with Shawbrook over 60 months in Mr C's sole name. The loan was then fully repaid on 27 January 2020.

In March 2024, using a professional representative (the "PR"), Mr C submitted a complaint to Shawbrook. The PR said that whilst the Supplier was responsible for the sale of the timeshare product to Mr C, the Credit Agreement was arranged by a different party related to the Supplier. They said the Credit Agreement showed that the "Related Party" was named as the bank's Credit Intermediary (the "BCI"). But the BCI was not authorised to act as a credit broker by the Financial Conduct Authority ("FCA"). The PR also provided evidence to show they could find no record of the BCI in either the Spanish company registry or at UK Companies House.

The PR went on to say that because the BCI wasn't regulated/authorised, they had breached the general prohibition set out in section 19 of the Financial Services and Markets Act 2000 ("FSMA"). And under section 27 of FSMA, the Credit Agreement is unenforceable, such that Mr C is entitled to compensation for any loss. In particular, all monies paid under the Credit Agreement plus interest and maintenance fees paid so far.

In response, Shawbrook said that it was the Supplier who had sold the timeshare product. And the Supplier was authorised by the FCA at the Time of Sale, enabling them to carry on the regulated activity of credit broking. So, they didn't agree that the provisions of section 27 applied here and didn't uphold Mr C's complaint.

The PR didn't accept Shawbrook's decision, so referred Mr C's complaint to this service. In particular, whilst they accepted that the Supplier was authorised to broker credit by the FCA, they argued that the Credit Agreement shows the Related Party was the BCI here. And the Credit Agreement also records a different address for the BCI to that of the Supplier suggesting they were not the same entity.

Having considered all the evidence and information, one of this services investigators didn't think Mr C's complaint should be upheld. The PR didn't agree with our investigator's findings and asked that Mr C's complaint be passed to an ombudsman. They reiterated many of their previous comments and further referred to the evidence previously provided together with recent case law on the subject. They argued that the Supplier and the BCI were distinct and separate entities, the latter of which was clearly not authorised by the FCA to broker credit by the FCA.

Mr C's complaint was then passed to me to consider.

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 considering what's fair and reasonable, DISP[1] 3.6.4R of the FCA 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.

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.

Authorisation of the BCI

Consumer credit broking is, and was in 2019, a regulated activity under FSMA. Entities carrying out consumer credit brokering must be properly authorised by the regulator – the FCA. A consumer credit agreement which is brokered by an unauthorised party may be unenforceable albeit the lender can apply to the FCA if they wish to enforce it.

The PR said that the BCI named in the Credit Agreement wasn't on the FCA's register. However, this allegation refers to the Related Party rather than the Supplier. This service's records show that the Supplier was properly authorised at the Time of the Sale, and the PR have acknowledged that.

I've seen various documentation from the Time of the Sale which clearly shows the name of the Supplier. However, the Credit Agreement shows the Related Party named as the BCI. And the PR suggest that there's no record of the Related Party recorded in any company register they've inspected.

I'm familiar with the documentation provided in Mr C's case. And I've seen instances where the BCI referred to here is also detailed in the credit agreements associated with those cases. It's my understanding that the BCI details referred to in those agreements in fact relates to the address of the location used at the Time of Sale rather than the introducing entity. This would explain why the PR have been unable to trace an entity in that name. I'm persuaded that no such entity exists and, as such it would therefore be impossible for the Related Party to hold its own FCA authorisation under FSMA. Nor would it be required.

The PR acknowledges that it was the Supplier who presented the timeshare product to Mr C. And it was the Supplier who ultimately agreed the sale and was party to the purchase agreement. The loan provided by Shawbrook was also presented and agreed at the Time of the Sale. So, on balance, I'm persuaded that it's more likely than not that it was actually the Supplier who acted as the BCI in Mr C's case. And while I acknowledge that the BCI name on the Credit Agreement was slightly different to the name of the Supplier, I believe this part of the Credit Agreement was populated that way by Shawbrook's systems using the Supplier's sales address designation.

It isn't the role of this service to ask a business to alter its policies, procedures or systems. Nor is it our role to impose improvements on the level of service offered to their customers. These aspects fall firmly within the remit of the regulator – in this case, the FCA. Further, this service isn't afforded powers enabling it to decide whether a credit agreement is unenforceable under FSMA. Again, that is the role of the FCA. But it is our role to examine and decide whether a business has been fair and reasonable in the manner in which those policies and procedures are applied in the individual circumstances of Mr C's experience with them.

[1] Dispute Resolution: The Complaints sourcebook (DISP)

The PR suggest that any error in the production of the Credit Agreement resulted in detriment for Mr C. Mr C took the loan them later repaid it. He knew he had that loan, the amount he'd borrowed and what it was for – the timeshare purchase. There's no suggestion that Mr C didn't receive the timeshare product he paid for using the loan provided by Shawbrook. So, even if I was to find it had been improperly brokered - and I make no such finding here - I can't see why it caused something that requires compensation. In any event, the provisions of section 28A of FSMA are clear that it's for the FCA to decide whether compensation is payable. And, if so, the amount.

I do appreciate that Mr C will be very disappointed, but based upon all the information available, I've not found any evidence that he suffered detriment as a consequence of entering into the Credit Agreement. And because of that, I won't be asking Shawbrook to do anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 October 2024.

Dave Morgan
Ombudsman