DRN-5147103

The complaint

Mr T has complained about a loan that he took out with Fractional Investment Ltd ("FI") to pay for a timeshare membership.

What happened

In 2017, Mr and Mrs T took out a timeshare membership from a timeshare supplier ("the Supplier") costing £600, paid for using a card payment. But on the same day, they traded in that membership for a different type of membership costing £14,370.68. After trading in their first membership, Mr T took out a loan with FI for £13,770.68 to be repaid over ten years for the balance.

In 2023, FI was wound up and, in March 2024, Mr T used a professional representative ("PR") to make a complaint to FI. Amongst other things, it said Mr T had complaint based on alleged breaches of the Financial Services and Markets Act 2000 ("FSMA"). It argued that the Credit Intermediary that arranged the loan was not regulated by the Financial Conduct Authority ("FCA") to broker credit at the time the loan was arranged, leading to a breach of ss.19 and 27 FSMA.

In September 2024, PR referred the complaint to our Service after FI's liquidator turned down the complaint.

One of our investigators considered the complaint, but did not think the Credit Intermediary needed FCA authorisation as it operated outside of the UK.[1] PR disagreed, noting that the loan agreement and timeshare agreement were governed by English law, and that the developer and manager of the resort were registered in the Isle of Man. Given this, it argued that there was a requirement for the broker to be regulated by the FCA.

As the parties did not agree with our Investigator, the complaint has been passed to me for a decision.

What I have 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 am required under DISP 3.6.4 R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

The relevant provisions that relate to this issue are in FSMA. In short, s.19 FSMA is 'the general provision' and states that "*[n]o person may carry on a regulated activity in the United Kingdom" unless they are "an authorised person*". This prohibition is called the "general prohibition".

S.27 FSMA states that an agreement, such as Mr T's credit agreement, that was "*made in*

[1] The Investigator considered other matters that have been dealt with in a separate decision

consequence of something said or done by another person ("the third party") in the course of…a regulated activity carried on by the third party in contravention of the general prohibition" is unenforceable against the borrower. Further, consumers such as Mr T, would be entitled to recover any money paid under the loan agreement and to compensation for any loss suffered as a result of making such payments.

PR says that the loan was arranged by a business not authorised by the FCA to broker loans, which was a breach of the general prohibition. That meant, under s.27 FSMA, Mr T was entitled to recover anything paid under the loan, plus further compensation.

Here, the key issue for me to determine is whether the Credit Intermediary carried out the credit brokering of the credit agreement, a regulated activity, within the United Kingdom. On the face of it, that business did not as the loan was arranged in Spain.

The business named on the credit agreement as the credit intermediary had an address in Spain. But the Supplier, which was a similarly named and linked business, had an address on the Isle of Man (which does not form park of the United Kingdom for the purposes of FSMA).

S.418 of FSMA sets out six cases where an activity would be deemed as having taken place within the United Kingdom where they would not otherwise have been regarded as doing so. Each of these cases depends, in one way or another, on the entity carrying on the regulated activity having its registered office, head office or an establishment in the United Kingdom. But here, the Credit Intermediary was a Spanish business with no such links to the United Kingdom, so I cannot see any of these cases apply to this sale.

The FCA also set out in its Handbook guidance on the territorial scope of s.19 FSMA in PERG 2.4 – "Link between activities and the United Kingdom". But, in the circumstances of this complaint, I cannot see that PERG 2.4 expands the scope of s.19 and s.418 of FSMA beyond what I have already set out above.

It follows that I do not think the Credit Intermediary needed to be FCA authorised to broker loans in Spain, as it had no UK presence. That meant it did not breach the general prohibition when arranging the credit agreement and, in turn, s.27 FSMA is not engaged. So I do not think FI is required to repay anything paid under the credit agreement due to the Credit Intermediary not being authorised by the FCA.

My final decision

I do not uphold Mr T's complaint against Fractional Investment Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 June 2025.

Mark Hutchings
Ombudsman