

The complaint

Mrs L and the estate of Mr B's complaint is, in essence, that First Holiday Finance Ltd (the Lender) acted unfairly and unreasonably by (1) being party to an unfair credit relationship with Mrs L and the late Mr B 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.

Although the purchase in question here was made in the joint names of Mrs L and Mr B, Mr B sadly died in February 2020, so the complaint is being made jointly by his estate and Mrs L.

What happened

Mrs L and the late Mr B were existing members of a points-based timeshare with a timeshare provider (the 'Supplier').

On 3 August 2015 (the 'Time of Sale') Mrs L and the late Mr B traded in their existing membership towards a different type of timeshare from the Supplier (the 'Fractional Club'). This new membership was paid for with a loan from the Lender for £12,911 (the 'Credit Agreement'). The outstanding balance of this loan was cleared by a lump-sum payment on 18 May 2018.

Mrs L and the estate of Mr B, using a professional representative (the 'PR'), wrote to the Lender on 27 May 2024 (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 dealt with their concerns as a complaint and issued its final response letter on 10 June 2024, rejecting it on every ground. It said it had a defence to the claims under the Limitation Act 1980 (the 'LA') as they related to events which had occurred more than six years prior to the Letter of Complaint.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who thought, in summary, that:

- The complaint of an unfair credit relationship under Section 140A of the CCA had been made too late under the rules set by the regulator, so it was not in the jurisdiction of this Service.
- The claim under Section 75 of the CCA was made in time, so was in the jurisdiction of this Service, but ought not to be upheld, as the Lender had a defence to the claim under the LA.
- The complaint that the Supplier was not correctly authorised to broker credit ought not to be upheld.
- No commission had been paid by the Lender to the Supplier so there was no unfairness caused for this reason.

The PR did not accept this. In addition to explaining why the complaint wasn't made earlier, it also provided more evidence showing why it thought the credit relationship was unfair, meaning their complaint under Section 140A of the CCA ought to be upheld.

As no agreement could be reached, the matter has come to me to consider.

Having considered everything that had been submitted, I set out in a separate decision that the complaint that there was an unfair debtor-creditor relationship under Section 140A of the CCA had been made too late so was not in the jurisdiction of this Service. I thought that Mrs L and the estate of Mr B had made the complaint more than six years after the events they were complaining about, and more than three years after they were aware, or ought reasonably to have been aware they had cause to complain, and there were no exceptional circumstances to take into account when considering the delay.

However, it does not seem to be in dispute that this Service has jurisdiction to consider Mrs L and the estate of Mr B's complaint about the Lender's handling of the claims under Section 75 of the CCA, along with the complaints that the Supplier was not correctly authorised to broker the Credit Agreement, and that undisclosed commission was paid to the Supplier. So, I will deal with the merits of those complaints here.

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.

And having considered everything, I agree with the outcome reached by the Investigator, for broadly the same reasons. I do not think the Lender was unfair or unreasonable when it declined to accept Mrs L and the estate of Mr B's claims under Section 75 of the CCA. I also do not think their complaints that the broker of the Credit Agreement did not have the correct authorisation or licence, or that undisclosed commission was paid to the Supplier, ought to be upheld. I'll explain.

Mrs L and the estate of Mr B's claim of misrepresentation by the Supplier

Mrs L and the estate of Mr B allege that the Supplier made a number of misrepresentations at the Time of Sale, and Mrs L and the late Mr B were induced into their purchase of the Fractional Club membership due to these misrepresentations. As such, she and the estate of Mr B made a claim to the Lender under Section 75 of the CCA, which it rejected. Mrs L and the estate of Mr B's complaint to this Service is about how the Lender handled this claim.

The LA imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we'd usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier. The limitation period to make such a claim against the Lender for alleged misrepresentations by the Supplier expires six years from the date on which Mrs L, the late Mr B or his estate had everything they needed to make such a claim.

As the Letter of Complaint to the Lender makes clear, Mrs L and the late Mr B entered into the purchase of the timeshare on 3 August 2015 based on the alleged misrepresentations of the Supplier, which it is said they relied on. And as the credit arrangement from the Lender

was used to help finance the purchase, it was when Mrs L and the late Mr B entered into the Credit Agreement that they suffered a loss – which means it was at that time that they had everything they needed to make a claim.

Mrs L and the estate of Mr B first notified the Lender of their claim for alleged misrepresentations by the Supplier on 27 June 2024. As that was more than 6 years after Mrs L and the late Mr B entered into the Credit Agreement and related timeshare agreement, I don't think it was unfair or unreasonable of the Lender to reject their concerns about the Supplier's alleged misrepresentations.

As such, given the facts and circumstances of this complaint, I don't think there's anything more that the Lender needs to do to put things right in respect of Mrs L and the estate of Mr B's Section 75 claim for misrepresentation.

Mrs L and the estate of Mr B's claim of a breach of contract by the Supplier

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.

Mrs L and the estate of Mr B say that she and the late Mr B could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

The Letter of Complaint does not make it clear when Mrs L says she and the late Mr B were unable to book the holiday(s) they wanted due to a lack of availability, and this point is not addressed at all in Mrs L's statement. So, whilst the LA can give the Lender a defence to a claim of a breach of contract (as it does for misrepresentation), on the evidence provided I am unable to say whether this defence would have been available to the Lender. However, for reasons I will go on to explain, I do not think this matters here.

With the Fractional Club, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. But the particular type of Fractional Club Mrs L and the late Mr B purchased was called the '*Signature Collection*'. This type of membership provided Mrs L and the late Mr B guaranteed accommodation in their Allocated Property for their set week(s). They were also able to use their points to stay in other accommodation instead, and some of the sales paperwork likely to have been signed by Mrs L and the late Mr B states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. So while I accept that they may not have been able to take certain holidays, 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 Mrs L and the estate of Mr B 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.

Did the broker have the correct authorisation to arrange the Credit Agreement?

The PR has alleged 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. But I don't agree. Having checked, the Supplier, as named on the Credit Agreement as the entity brokering the credit, has the correct authorisation by the Financial

Conduct Authority (the 'FCA') to do so. And as the Supplier was authorised and regulated by the FCA to broker credit, I'd find it surprising if the Credit Agreement was arranged by another business that wasn't authorised or regulated by the FCA to do so. Indeed, that seems to me to be inherently unlikely given the circumstances.

However, even if I am wrong about that, it looks to me like Mrs L and the late Mr B 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 them, 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 led to a financial loss.

And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate Mrs L and the estate of Mr B, even if the loan wasn't arranged properly.

Was undisclosed commission paid by the Lender to the Supplier?

The PR says in the Letter of Complaint that the Supplier was paid commission by the Lender as a result of it arranging the Credit Agreement, and that this commission payment was not disclosed to Mrs L and the late Mr B. But the PR has submitted no evidence to support this allegation, and the Lender has told both this Service and the PR that no commission was paid by it to the Supplier, which would seem likely to be the case given the Lender was the Supplier's in-house credit provider. So, I am not persuaded that any commission was paid in this case.

Conclusion.

I do not think the Lender was unfair or unreasonable in the way it dealt with Mrs L and the estate of Mr B's section 75 claims, and I see no other reason why the Lender should compensate them.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and the estate of Mr B to accept or reject my decision before 9 September 2025.

Chris Riggs
Ombudsman