DRN-5323571

The complaint

Mr and Mrs F's complaint is, in essence, 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 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr and Mrs F purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 22 December 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £16,585 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs F more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs F paid for their Fractional Club membership by taking finance of £16,585 from the Lender in both of their names (the 'Credit Agreement').

Mr and Mrs F made a complaint to the Lender using a professional representative (the 'PR') – who wrote to the Lender on 2 August 2018 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. The Credit Agreement being unenforceable because it was not arranged by a credit broker regulated by the Financial Conduct Authority (the 'FCA') to carry out such an activity.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mr and Mrs F said that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told them that Fractional Club membership was an "investment" when that was not true.
2. told them the product was not a timeshare when that was not true.
3. told them that Fractional Club membership had a guaranteed end date when that was not true.

Mr and Mrs F say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to

Mr and Mrs F.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out why Mr and Mrs F say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA.

Namely, that the contractual terms, in particular those which set out that the Supplier could terminate membership and keep any money paid so far if Mr and Mrs F failed to make a payment due under the agreement, were unfair contract terms under the Consumer Rights Act 2015 ('CRA').

The Lender dealt with Mr and Mrs F's concerns as a complaint and issued its final response letter on 1 February 2019 (the 'final response letter'), rejecting it on every ground.

Mr and Mrs F then referred their complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued a jurisdiction decision on 27 January 2025 outlining the aspects of the complaint that I thought our Service could and couldn't consider. I thought that Mr and Mrs F's complaint of unfairness under Section 140A of the CCA and their complaint about the Lender's response to their first Section 75 claim for misrepresentations had been referred to us too late and so could not be considered by this Service.

On that same date I also issued a provisional decision which dealt with the merits of the remaining aspects of Mr and Mrs F's complaint that I deemed were in the jurisdiction of this Service. Those aspects were that that the Lender was not fair and reasonable in its handling of their second claim under Section 75 of the CCA, and that the Credit Agreement was unenforceable as it was arranged by an unregulated credit broker.

In that decision, I said:

"***Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale***

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs F could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr and Mrs F at the Time of Sale, the Lender is also liable.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the allegation that the Supplier told them Fractional Club membership was an "investment" when that was not true. But, in my view, the membership clearly did have an investment element to it, in the form of the Allocated Property and their share in the net proceeds of that property when it was sold at the end of the membership term. So, even if the Supplier told Mr and Mrs F this at the Time of Sale (and I make no such finding here on whether that is the case), this would not have been untrue.

Mr and Mrs F also say they were told by the Supplier at the Time of Sale that Fractional Club membership had a guaranteed end date when that was not true. No further evidence has been provided beyond the bare allegation made here, but in any event, I can't see that what the Supplier is alleged to have said here was actually untrue. I've not seen anything which makes me think that the Allocated Property would not be able to be sold at the conclusion of the contract period. The Terms and Conditions generally set out that the title to the property is held by independent trustees, the sale of the Allocated Property can only be carried out by the Trustees on or after the proposed sale date, and the Allocated Property cannot be removed from the trust before that sale date. What's more, the sale date can only be delayed by the unanimous written consent of all fractional owners, in which Mr and Mrs F are included.

Lastly, Mr and Mrs F have said that the Supplier told them the product was not a timeshare when that was not true. But, on my reading of Mr and Mrs F's testimony about what happened at the Time of Sale, this isn't what they've described. What they've described is that the sales agent simply didn't mention at any point the product was a timeshare, which is different. And, they've also said that at no point did the sales agent make reference to anything to do with timeshares. So, I'm not persuaded that any such misrepresentation i.e., a false statement of existing fact, was made in this regard to Mr and Mrs F at the Time of Sale.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mr and Mrs F by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons they allege.

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs F any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

The complaint about the Credit Agreement being unenforceable because it was arranged by a credit broker that was not regulated by the FCA to carry out that activity

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

The PR has referred to 'Club La Costa' here and said that they only became authorised by the FCA for credit broking on 24 March 2016 i.e., after the brokering of Mr and Mrs F's loan.

But I don't agree. I can see that the entity named on the Credit Agreement as the broker was Club La Costa Resorts and Hotels, which was a trading name of Club La Costa (UK) Plc.

And, having looked at the Financial Ombudsman Service's internal records and the FCA register, I can see that Club La Costa (UK) Plc was, at the Time of Sale, authorised by the FCA for credit broking (and had been since 1 April 2014, when the FCA took over the regulation of these activities). And, prior to that, it held a Consumer Credit Licence issued by

the Office of Fair Trading. So, I am not persuaded that the Credit Agreement was arranged by an unauthorised credit broker."

So, overall, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs F's second Section 75 claim, and I was not persuaded that the Credit Agreement was brokered by an unauthorised credit broker.

The Lender didn't add anything further in response to my provisional decision. The PR did not accept my provisional decision and provided some further comments, which I'll address below.

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 done that, and having reconsidered everything in light of the PR's latest submissions, I've reached the same overall conclusion as I did in my provisional decision. I do not uphold this complaint.

But before I explain why, I want to again make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, 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.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

In their response to my provisional decision, the PR made submissions about our Service's ability to look into certain elements of the complaint, which I've considered. But, those comments are largely a repetition of arguments they had already provided. And, as outlined above, those points were already addressed in the jurisdiction decision I issued on 27 January 2025 which outlined which elements of the complaint our Service could and could not consider. The majority of the PR's further submissions relate to elements of the complaint I remain satisfied we can't consider (for the reasons already given to both parties in that previous jurisdiction decision). I'll now address their further submissions which relate to those elements of the complaint our Service can consider.

In relation to Mr and Mrs F's second Section 75 claim for misrepresentations, the PR only commented further on the allegation that Mr and Mrs F were told by the Supplier at the Time of Sale that membership was an investment when that was not true.

They've said that statement which they allege was made by the Supplier can't be true because a return from the membership wasn't guaranteed. And, they said Mr and Mrs F didn't acquire any property rights.

However, Mr and Mrs F's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.

And, that share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it.

So again, such a statement (if made – which I again make no finding on here) would not have been untrue. It follows that I still do not think the Lender acted unfairly or unreasonably when it dealt with that Section 75 claim.

In relation to the point about the credit broker, the PR provided some brief further comments relating to the broker using a trading name and said that the Lender should have applied for a validation order.

I already acknowledged in my provisional decision that the entity named on the Credit Agreement as the broker was Club La Costa Resorts and Hotels, but explained that this was a trading name of Club La Costa (UK) Plc. But, this appears to simply be an administrative error.

Further, the Supplier was suitably authorised, and I cannot see a reason why an unauthorised entity would have brokered this particular Credit Agreement, when the sale was completed by the representative of a duly authorised entity, and the same sales company was responsible for and had completed all the other parts of the sale.

That aside, if Mr and Mrs F's Credit Agreement was found to be unenforceable – and I make no such finding – it would normally mean that whilst the obligations under the agreement remain in existence, one or both parties to the agreement can't enforce compliance in the courts. So, if the Lender took steps against Mr and Mrs F to enforce the agreement, they might have a defence. However, I don't think this is relevant in Mr and Mrs F's case because no such steps to enforce the agreement appear to have occurred.

In reality, Mr and Mrs F took the finance from the Lender and were repaying it. Mr and Mrs F knew they had the finance, the amount borrowed and what it was for (the Fractional Club purchase). So, even if the loan was found to be improperly brokered, I still haven't seen anything that persuades me that it resulted in something that would require the payment of compensation.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs F's Section 75 claim, and I am not persuaded that the Credit Agreement was brokered by an unauthorised credit broker. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

For the reasons given, I do not uphold Mr and Mrs F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 11 March 2025.

Fiona Mallinson
Ombudsman