DRN-5705145

The complaint

Mr and Mrs T's complaint is, in essence, that Shawbrook Bank Limited ('the Lender'), acted unfairly and unreasonably by (1) deciding against paying a claim made under Section 75 of the Consumer Credit Act 1974 ('CCA'), (2) being party to an unfair credit relationship with them under Section 140A of the CCA, (3) providing credit to pay for a timeshare contract that is null and void, and (4) providing credit that was brokered by an unauthorised credit intermediary.

What happened

Mr and Mrs T purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 24 June 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,440 fractional points at a cost of £12,349 (the 'Purchase Agreement').

Fractional Club membership gave Mr and Mrs T more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs T paid for their Fractional Club membership by taking finance of £12,349 from the Lender (the 'Credit Agreement').

Mr and Mrs T – using a professional representative (the 'PR') – wrote to the Lender on 13 December 2021 (the 'Letter of Complaint') to raise several 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 Mr and Mrs T's concerns as a claim and rejected it on 1 February 2022.

The PR, on behalf of Mr and Mrs T, referred the matter to the Financial Ombudsman Service on 8 March 2022. We informed the Lender of the complaint, and it issued its final response on 22 June 2022. This said that:

> 1. The Section 75 claim was made too late, considering the provisions of the Limitation Act 1980 (the 'Limitation Act'), so it had a valid defence to the claim.
>
> 2. The complaint about an unfair relationship under Section 140A is outside of our jurisdiction because the Credit Agreement was paid off (and therefore the credit relationship ended) on 5 September 2014, and the complaint was not made until more than six years after this.

One of our Investigators investigated the complaint and concluded that the complaint about and unfair relationship under Section 140 is outside of our jurisdiction. And the remainder of the complaint was in our jurisdiction but was rejected on its merits.

Mr and Mrs T did not accept this, so I was asked to make a decision. I issued a decision

explaining that Mr and Mrs T's complaint about an unfair relationship under Section 140A is not within the jurisdiction of the Financial Ombudsman Service because it wasn't made within the time limits set out in the Dispute Resolution ('DISP') Rules of the Financial Conduct Authority Handbook, specifically DISP 2.8.2 R (2). And that the remainder of the complaint was made in time under DISP 2.8.2 R (2), but I provisionally decided not to uphold it.

The Lender responded to say it accepted my provisional decision. Neither the PR nor Mr and Mrs T responded by the deadline I gave. So, this final decision is in line with my provisional one.

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.

In line with my provisional decision, I have decided not to uphold this complaint.

Section 75 complaint

I don't think it would be fair or reasonable to uphold this complaint for reasons relating to Mr and Mrs T's Section 75 claim.

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 Limitation Act as it wouldn't be fair to expect creditors to investigate 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 T's Section 75 claim was time-barred under the Limitation Act before they put it to the Lender.

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 Limitation Act).

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 Limitation Act. 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 T 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 the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr and Mrs T first notified the Lender of their Section 75 claim in December 2021. And as more than six years had passed between the Time of Sale and when they first put their claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr and Mrs T's concerns about the Supplier's alleged misrepresentations.

Mr and Mrs T's complaint about the timeshare contract being null and void

The PR argues that, because the Purchase Agreement was unlawful under Spanish law, I should treat the Purchase Agreement and the Credit Agreement as rescinded by Mr and Mrs T and award them compensation – in keeping with the judgment of the UK's Supreme Court in Durkin v DSG Retail [2014] UKSC 21 ('Durkin').

However, the Spanish court judgement provided by the PR does not relate to the Purchase Agreement, but to later timeshare contracts entered into by Mr and Mrs T. So, it does not directly impact the validity of the Purchase Agreement.

As far as I am aware the Lender wasn't party to any court proceedings in Spain in relation to the Purchase Agreement, and as I can't see that the Supplier (i.e. the company that entered into the Purchase Agreement) is the subject of a Spanish court judgment in Mr and Mrs T's favour in relation to the Purchase Agreement, it seems to me that there is an argument for saying the Purchase Agreement is valid under English law for the purposes of Durkin.

I also note that the Purchase Agreement is governed by English law. So, it isn't clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in Diamond Resorts Europe and Others (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

What's more, as Mr and Mrs T have gone some way to taking advantage of the Purchase and Credit Agreements, an English court might hesitate to uphold a claim for rescission of either Agreement because there are equitable reasons to do so.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, I'm not persuaded that it would be fair or reasonable to uphold this complaint for this reason.

Mr and Mrs T's complaint about the credit broker being unauthorised

The PR suggests 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. However, the credit intermediary named on the Credit Agreement was, at the Time of Sale, a registered trading name of a company that was authorised and regulated by the Financial Conduct Authority. The Financial Conduct Authority's Interim Permission Register shows that the credit intermediary held interim permission as a credit broker until 29 February 2016, after which it had full authorisation until 30 October 2021. So, based on the information available, I am satisfied that the credit was arranged by an authorised broker.

In any case, also appears that Mr and Mrs T 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 Mr and Mrs T, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see why that caused Mr and Mrs T a financial loss – such that I could say that it would be fair or reasonable for me to tell the Lender to compensate them.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to

accept or reject my decision before 15 September 2025.

Phillip Lai-Fang
Ombudsman