DRN-5725705

The complaint

Mr B'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 him under Section 140A of the Consumer Credit Act 1974 ('CCA').

(2) Deciding against paying a claim made under Section 75 of the CCA.

(3) Providing the loan through an unauthorised credit intermediary.

(4) Lending to Mr B irresponsibly.

What happened

Mr B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 29 October 2012 (the 'Time of Sale'). Mr B paid for his Fractional Club membership by taking finance from the Lender (the 'Credit Agreement'). Mr B paid off the loan, and his credit relationship with the Lender ended, on 16 January 2014.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 26 January 2022 (the 'Letter of Complaint') to raise several 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 considered Mr B's concerns, rejecting them in a letter dated 11 March 2022. On 16 August 2022 the PR referred the complaint to the Financial Ombudsman Service on behalf of Mr B. The Lender issued a final response to the complaint, rejecting it, on 2 May 2023. Mr B remained dissatisfied with this.

The complaint was assessed by one of our Investigators who, having considered the information on file, said that the complaint about an unfair credit relationship was outside of the jurisdiction of the Financial Ombudsman Service, and the remainder of the complaint should not be upheld.

Mr B disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. The PR provided some comments on why it felt the unfair relationship complaint was within our jurisdiction, about the merits of that complaint, and why it felt the credit intermediary was unauthorised.

I issued a jurisdiction decision explaining that I could not look at the complaint about the Lender being party to an unfair credit relationship with him under Section 140A of the CCA, but that I could look at the remainder of the complaint. As such, this final decision deals with complaint points (2), (3) and (4) as summarised above.

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.

I've decided not to uphold this complaint. Before I explain why, I want to 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.

Complaint about the Lender's rejection of Mr B's Section 75 claim

I don't think it would be fair or reasonable to uphold this complaint. 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 1980 (the 'Limitation Act'). This is because it wouldn't be fair to expect creditors to look into 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 B's Section 75 claim was time-barred under the Limitation Act before he 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 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 B entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says he relied on. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr B first notified the Lender of his Section 75 claim on 26 January 2022. And as more than six years had passed between the Time of Sale and when he first put his claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr B's concerns about the Supplier's alleged misrepresentations.

Complaint about the credit being brokered by an unauthorised credit intermediary

The PR alleges 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, Mr B knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for Mr B, 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 caused Mr B a financial loss – such that it would be fair and reasonable to tell the Lender to compensate Mr B, even if the loan wasn't arranged properly.

Complaint about irresponsible or unaffordable lending

The PR says that the right checks weren't carried out before the Lender lent to Mr B. I haven't seen anything to persuade me that was the case in this complaint given its circumstances, nor that the money lent to Mr B was actually unaffordable So, from the information provided, I am not satisfied that the lending was irresponsible or unaffordable at the Time of Sale.

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 B to accept or reject my decision before 28 August 2025.

Phillip Lai-Fang
Ombudsman