

The complaint

Mr and Mrs P'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 ('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 and Mrs P irresponsibly.

What happened

Mr and Mrs P purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 28 May 2012 (the 'Time of Sale'). Mr and Mrs P paid for their Fractional Club membership by taking finance from the Lender (the 'Credit Agreement'). Mr and Mrs P paid off the loan, and their credit relationship with the Lender ended, on 15 August 2012.

Mr and Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 15 November 2021 (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 dealt with Mr and Mrs P's concerns as a complaint and issued its final response on 23 September 2022, rejecting it on every ground.

The complaint was referred to the Financial Ombudsman Service on 26 October 2022. It was assessed by an Investigator who, having considered the information on file, said that the complaint about an unfair credit relationship and about the Lender lending irresponsibly was outside of the jurisdiction of the Financial Ombudsman Service, and the remainder of the complaint should not be upheld.

Mr and Mrs P 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 further comments as to why it felt the whole complaint is within the jurisdiction of the Financial Ombudsman Service. And why the PR felt the timeshare was sold as an investment.

I issued a decision explaining that I can't look into complaint points (1) and (4) above due to the complaints being made too late under the rules I must apply. So, this decision deals with the merits of parts (2) and (3) above, which I can consider.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii)

regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context 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.

I've decided not to uphold this complaint.

Complaint about the Lender's rejection of Mr and Mrs P'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. 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 and Mrs P'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 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 P entered 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 P first notified the Lender of their Section 75 claim on 15 November 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 P'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, the credit intermediary named on the Credit Agreement was a trading name of company that held a Consumer Credit License from the Office of Fair Trading (the regulator

at the time) at the Time of Sale, which allowed it to act as a credit brokerage¹. So, it appears the credit intermediary held the relevant authorisation.

In any case, Mr and Mrs P 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 P, 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 P a financial loss – such that it would be fair and reasonable to tell the Lender to compensate Mr and Mrs P.

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 P and Mrs P to accept or reject my decision before 24 September 2025.

Phillip Lai-Fang
Ombudsman

¹ The FCA Register shows the named credit intermediary is a trading name of the company which appears on the Financial Conduct Authority ('FCA')'s Consumer Credit Interim Permission Register as having a credit brokerage license from December 1995 and then interim permission from the FCA until February 2016.