

The complaint

Mr and Mrs H'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) Providing lending to pay for a contract that is null and void.
- (5) Lending to Mr and Mrs H irresponsibly.

What happened

Mr and Mrs H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 31 May 2015 (the 'Time of Sale'). Mr and Mrs H paid for their Fractional Club membership by taking finance from the Lender (the 'Credit Agreement') on 1 June 2015. Mr and Mrs H paid off the loan, and their credit relationship with the Lender ended, on 3 August 2015.

On 10 July 2020, Mr and Mrs H obtained a judgement in the Spanish Courts which said the Purchase Agreement was nullified and the Supplier should refund them.

Mr and Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 8 February 2022 (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 Mr and Mrs H's concerns in a letter dated 1 April 2022, rejecting the claim. The PR then submitted a complaint, and the Lender issued its final response on 25 May 2023, rejecting it due to the claim being made too late under the provisions of the Limitation Act.

The complaint was referred to the Financial Ombudsman Service on 20 June 2023. It was assessed by an Investigator who, having considered the information on file, said that the complaint about an unfair credit relationship and irresponsible lending was outside of the jurisdiction of the Financial Ombudsman Service, and the remainder of the complaint should not be upheld.

Mr and Mrs H 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 saying that I cannot look at the complaints about an unfair relationship and irresponsible lending, but that I can consider the merits of the complaints

about the Lender deciding against paying a claim made under Section 75 of the CCA, providing the loan through an unauthorised credit intermediary and providing lending to pay for a contract that is null and void. The final decision deals with the merits of those parts of the complaint 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. 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 and Mrs H's Section 75 claim

I don't think it would be fair or reasonable to uphold this complaint. Generally, 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 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 H'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 H 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 H first notified the Lender of their Section 75 claim on 8 February 2022. 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 H'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 PR acknowledges that the credit intermediary named on the Credit Agreement held the necessary authorisation at the Time of Sale. Despite this, PR makes an argument that the way the individuals who brokered the Credit Agreement on behalf of the named credit intermediary were employed means they were not properly authorised. But I am not persuaded by this argument. The individuals involved were clearly working on behalf of the named credit intermediary, who was responsible for brokering the credit.

In any case, Mr and Mrs H 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 H, 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 and Mrs H a financial loss – such that it would be fair and reasonable to tell the Lender to compensate Mr and Mrs H, even if the loan wasn't arranged properly.

Complaint about the Purchase Agreement being null and void

The PR argues that, because the Purchase Agreement was unlawful under Spanish law considering certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mr and Mrs H and award them compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 ('Durkin').

However, as the Lender wasn't party to any court proceedings in Spain 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 at all 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 H 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.

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 Mrs H and Mr H to accept or reject my decision before 13 October 2025.

Phillip Lai-Fang
Ombudsman