DRN-5824421

The complaint

Mr K and Mrs S have complained that First Holiday Finance Ltd ("FHF"), acted unfairly and unreasonably by deciding against paying a claim under s.75 of the Consumer Credit Act 1974 ("CCA").

What happened

In November 2011 ("the Time of Sale"), Mr K and Mrs S took out a timeshare membership with a timeshare provider ("the Supplier"). The membership cost £35,587, but after trading in another membership, they were left with a balance of £17,587 to pay. This was paid, in part, by taking out a loan for £17,087 with a British Virgin Islands based company called First Holiday Finance Ltd ("FHFBVI"). In 2015, FHFBVI transferred its open loan book to the British based company FHF – this included Mr K and Mrs S's loan. Mr K and Mrs S paid off their loan in November 2015.

In July 2024, Mr K and Mrs S used a professional representative ("PR") to make a complaint to FHF about the purchase and associated loan. In short, it was alleged:

- the Supplier promoted and sold the membership as an investment, in breach of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations").
- Mr K and Mrs S had been unable to book the holidays they wanted due to availability issues.
- the Supplier failed to tell them that the membership could continue longer than it originally said and that their children could inherit their ongoing liabilities under the membership.

All of this led to unfair credit relationships as defined by s.140A CCA, as had been held in the judgment in *R (on the application of Shawbrook Bank Ltd) v. Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v. Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ("*Shawbrook & BPF v. FOS*"). Further, the Supplier had misrepresented matters to them during the sales and that FHFBVI did not undertake a proper assessment of Mr K and Mrs S's ability to repay the loan when it decided to lend to them under the Financial Conduct Authority's Consumer Credit sourcebook ("CONC").

FHF responded to say that any claims or complaints that could have been made under ss.75 or 140A CCA had been made too late and that it had undertaken the right credit checks at the Time of Sale.

Unhappy with FHF's response, PR referred a complaint to our service on Mr K and Mrs S's behalf. In doing so, it provided a questionnaire filled in by Mr K and Mrs S, setting out more details of the alleged misrepresentations made by the Supplier during the sales. It also argued that the complaint had been brought within three years of when Mr K and Mrs S had realised they had cause for complaint.

One of our investigators considered the complaint, but did not think FHF needed to do

anything further. She thought the claim that there were misrepresentations under s.75 CCA had been made too late under provisions of the Limitation Act 1980 ("LA"). She also thought that any complaint that FHF was a party to an unfair debtor-creditor relationship, as defined by s.140A CCA, and had lent money irresponsibly had been made too late for our service to consider.

PR responded on behalf of Mr K and Mrs S to say it disagreed with what our Investigator had said. It argued that they could only have realised they had purchased an investment after the judgment in *Shawbrook & BPF v. FOS* had been handed down in May 2023. It also pointed to two other judgments that it said were relevant when thinking about the time Mr K and Mrs S had to make their complaints. So, PR asked for an ombudsman to review the complaint.

In this decision I will deal solely with the complaint that FHF did not fairly deal with Mr K and Mrs S's claim under s.75 CCA. The remainder of their complaint will be dealt with in a separate decision.

What I have 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.

Mr K and Mrs S said that the Supplier misrepresented the nature of the membership when they bought it and that they have a claim for misrepresentation against the Supplier.

Under s.75 CCA, FHF could be jointly liable for the alleged misrepresentations made by the Supplier. But FHF argued that any claim brought by Mr K and Mrs S for any alleged misrepresentations was made too late. I have considered that argument and, having done so, I agree with what FHF has said. For the avoidance of doubt, I have not decided whether the limitation period has expired as that would be a matter for the courts should a legal claim be litigated. Rather, I have considered whether FHF acted fairly in turning down the claim.

Our service normally thinks it would be fair and reasonable for a creditor to rely on the LA as an answer to a claim under s.75 CCA. This is because it would not normally be fair to expect lenders to look into a claim that has been made outside of the limitation periods, so long after the liability arose and after a limitation defence would have become available in court. So I think it is relevant to consider whether FHF has a limitation defence under the LA when thinking about a fair answer to Mr K and Mrs S's complaint.

It was held in *Green v. Eadie & Ors* [2011] EWHC B24 (Ch) that a claim under s.2(1) of the Misrepresentation Act 1967 is an action founded on tort for the purposes of the LA; therefore, the limitation period expires six years from the date on which the cause of action accrued (s.2 LA). Here Mr K and Mrs S brought a like claim against FHF under s.75 CCA and the limitation period for the corresponding like claim would be the same as the underlying misrepresentation claim. Therefore, the limitation period for the s.75 claim expires six years from the date on which the cause of action accrued.

The date on which a 'cause of action' accrued is the point at which Mr K and Mrs S entered into the agreement to buy the timeshares. It was at that time that they entered into an agreement based, they say, on the misrepresentations of the Supplier and suffered a loss. They say, had the misrepresentations not been made, they would not have bought the timeshare. And it was on that day that they suffered a loss, as they took out the loan agreement that they were bound to and say they would have never taken out but for the misrepresentations. It follows, therefore, that the causes of action accrued in November 2011, so Mr K and Mrs S had six years from then to bring a claim. But they did not make a

claim against FHF until July 2024, which was outside of the time limits set out in the LA. So, I think FHF acted fairly in turning down this misrepresentation claim.

The LA provides for extensions of the time limits in certain circumstances. However, having considered everything, I cannot see any reason for the limitation period to be extended. PR has pointed to s.32 LA, and associated case law, which extends the time to start litigation in certain circumstances. In particular, it says matters were deliberately concealed from Mr K and Mrs S, arguing that it was concealed that the timeshare membership ought not to have been marketed as an investment. But I can't see how that was a matter that went to any claim Mr K and Mrs S may have for misrepresentation, so I cannot see how s.32 LA helps them.

Further, even if I were to find that Mr K and Mrs S had longer to bring a claim under s.75 CCA, it would inevitably fail for another reason. S.75 CCA only applies to purchases between £100 and £30,000, however here the cost of the membership was £35,587. So s.75 CCA simply did not apply to this transaction in the way put forward by PR.

Given all of this, I cannot see any reason why it would be fair or reasonable to direct FHF to do anything further to resolve this complaint.

My final decision

First Holiday Finance Ltd acted fairly in turning down Mr K and Mrs S's claim under s.75 CCA and I do not direct it do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs S to accept or reject my decision before 23 October 2025.

Mark Hutchings
Ombudsman