DRN-5859186

The complaint

Mr and Mrs J'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 (as amended) (the 'CCA'), (2) deciding against paying a claim under Section 75 of the CCA, (3) providing credit through an unauthorised credit broker, (4) lending to them irresponsibly, and (5) providing credit to pay for a Collective Investment Scheme.

What happened

Mr and Mrs J were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 28 August 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,820 fractional points at a cost of £13,704 (the 'Purchase Agreement') after trading in their existing timeshare.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs J 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 J paid for their Fractional Club membership by taking finance of £21,088 from the Lender (the 'Credit Agreement'), the extra amount being used to pay off a loan (taken through a different credit provider) used to pay for their previous timeshare that they were trading in.

Mr and Mrs J – using a professional representative (the 'PR') – wrote to the Lender on 12 March 2021 (the 'Letter of Complaint') to raise a number of different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs J's concerns as a complaint and issued its final response letter on 28 April 2021, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint that the Lender hadn't properly considered a claim made under Section 75 of the CCA on its merits. The Investigator felt that the complaint that there was an unfair credit relationship under Section 140A hadn't been made in time as per the rules that this service must follow and that it couldn't be considered.

Mr and Mrs J disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I previously issued a decision explaining that the complaints about an unfair credit relationship under Section 140A of the CCA and about irresponsible lending were outside of

my jurisdiction, due to being made too later under the rules I must apply.

I provisionally decided not to uphold the complaints about the Lender providing the loan through an unauthorised credit broker, providing lending to pay for a Collective Investment Scheme, and deciding against paying a claim under Section 75 of the CCA.

The PR responded on behalf of Mr and Mrs J. It only provided comments on the complaint about the Lender deciding against paying a claim for misrepresentation under Section 75 of the CCA. It said, in summary, that the six-year time limit in the Limitation Act should not apply, as Mr and Mrs J were not aware of the misrepresentation until some years after the Time of Sale.

This final decision deals with the merits of those parts of the complaint I can consider.

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.

For the same reasons set out in my provisional decision, which I repeat below, I have decided not to uphold this complaint.

Mr and Mrs J's complaint that the credit broker was not authorised

The PR has argued that 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, it looks to me like Mr and Mrs J 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. So, 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 led to Mr and Mrs J's financial loss. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.

Complaint that Fractional Club membership was a Collective Investment Scheme

The PR says that Fractional Club membership was a Collective Investment Scheme as defined by the Financial Services and Markets Act ('FSMA'), and as such the Purchase Agreement was null and void.

However, the FSMA (Collective Investment Schemes) Order 2001/1062 included Schedule 001 Arrangements Not Amounting to a Collective Investment Scheme, Paragraph 13 of which states that arrangements do not amount to a Collective Investment Scheme "if the rights or interests of the participants are rights under a timeshare contract or a long-term holiday product contract".

Bearing in mind that Fractional Club membership was a timeshare contract, it does not appear that it can also have been a Collective Investment Scheme.1

Mr and Mrs J's Section 75 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’) as 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 J’s Section 75 claim for misrepresentation was time-barred under the Limitation Act before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a “like” claim against the creditor. It essentially mirrors the claim Mr and Mrs J 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 J entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which they say were relied upon. 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 J first notified the Lender of his Section 75 claim on 28 April 2021. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don’t think it was unfair or unreasonable of the Lender to reject Mr and Mrs J’s concerns about the Supplier’s alleged misrepresentations.

The PR referred to Section 14A of the Limitation Act and suggested this would give Mr and Mrs J more time to make their Section 75 claim. But Section 14A only applies where a claim is brought for negligence – which is not the type of claim Mr and Mrs J have made, nor is it one they could make under Section 75 of the CCA.

The PR also suggests that it is unfair to apply the time limits in the Limitation Act to Mr and Mrs J’s claim. But I think it would be unfair to ignore those time limits, given in this case that the Limitation Act would give the Lender a defence to Mr and Mrs J’s Section 75 claim, such that if they took the claim to court, they would be unlikely to succeed.

The PR appears to conflate the time limits in the Limitation Act, which in this case apply to a Section 75 claim, with the time limits under the Financial Conduct Authority’s Dispute Resolution Rules, which deal with the jurisdiction of the Financial Ombudsman Service. In this case, the complaint about the Lender’s rejection of Mr and Mrs J’s Section 75 claim is in time for the purposes of our jurisdiction, but the complaint fails because the Section 75 claim was made too late, which means the Lender did not act unfairly or unreasonably by rejecting the claim. So, the PR’s comments do not persuade me to dpart from my provisional decision, and I do not uphold this complaint.

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 J and Mrs J to accept or reject my decision before 31 October 2025.

Phillip Lai-Fang
Ombudsman