DRN-5959295

## The complaint

Mrs F and Mr F'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') and (2) deciding against paying a claim under Section 75 of the CCA.

## What happened

Mrs F and Mr F were members of a timeshare provider (the 'Supplier') – having purchased 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'.

On 2 June 2015 (the 'Time of Sale 1') they entered into an agreement with the Supplier to buy 1,010 fractional points at a cost of £15,989 ('Purchase Agreement 1'), having traded in an existing timeshare product. On 8 November 2015 (the 'Time of Sale 2'), they entered into a further agreement to purchase 1,380 fractional points ('Purchase Agreement 2'), albeit a detailed copy of that agreement confirming the purchase price agreed has not been provided. I shall refer to both sale dates collectively as the 'Time of each Sale'.

Fractional Club membership was asset backed – which meant it gave Mrs F and Mr F more than just holiday rights. It also included a share in the net sale proceeds of a property named on each Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mrs F and Mr F paid for their Fractional Club membership by taking finance:

- of £18,877 in June 2015 from the Lender ('Credit Agreement 1'), including an amount sufficient to repay existing outstanding finance with another financial business). All amounts due under Credit Agreement 1 were repaid in December 2015; and
- of £24,699 in November 2015 from the Lender ('Credit Agreement 2'). All amounts due under Credit Agreement 2 were also repaid in December 2015.

Mrs F and Mr F – using a professional representative (the 'PR') – wrote to the Lender on 6 April 2023 (the 'Letters 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 Mrs F and Mr F's concerns as a complaint and issued its final response letter on 7 September 2023, rejecting it on the basis it had been submitted too late under the provisions of the Limitation Act 1980 (the 'LA').

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, thought:

- the complaint suggesting the Lender's participation in a credit relationship that was unfair to Mrs F and Mr F and that the decisions to lend were irresponsible was not within the Financial Ombudsman Service's jurisdiction because it wasn't made in time under the limits set out in Rule 2.8.2 R (2) of the Financial Conduct Authority's (the "FCA") Dispute Resolution Rules ("DISP");

- the complaint about the Lender's decision not to accept Mrs F and Mr F's concerns about the supplier's alleged misrepresentations was made in time under DISP 2.8.2 R (2). But the Lender didn't act unfairly or unreasonably by not upholding it;
- there was no evidence to support the allegation that the Supplier didn't hold the necessary regulatory authorisation to introduce the Credit Agreements with the Lender; and
- the complaint that due to the liquidation of the supplier, Mrs F and Mr F are unable to recover any sums awarded by a Spanish court does not fall under the various provisions of the CCA that apply.

**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.

Having done that, I decided that the Financial Ombudsman Service's jurisdiction does not permit me to consider the merits of Mrs F and Mr F's complaints about the Lender's participation in an unfair relationship and the Lender's alleged failure to complete affordability checks because they weren't referred to this service within the time limits set out in DISP 2.8.2 R (2). I've explained my reasons for that in a separate decision.

However, I decided that Mrs F and Mr F's complaint under Section 75 of the CCA was made in time for the purpose of the rules on this service's jurisdiction. I've also explained my reasons for that in the aforementioned decision. However, having considered that part of Mrs F and Mr F's complaint further, I will not be upholding it.

Mrs F and Mr F's misrepresentation complaint under Section 75

As a rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claims have been time-barred under the LA. It wouldn't be fair to expect creditors to look into such claims so long after the liability first arose and after a limitation defence would be available in court. So, it's relevant to consider whether Mrs F and Mr F's Section 75 claims were time-barred under the LA before being put to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mrs F and Mr F 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 LA).

But a claim under Section 75, like this one, is also *"an action to recover any sum by virtue of any enactment"* under Section 9 of the LA. 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 here was the Time of each Sale. I say this because Mrs F and Mr F entered into the purchase (and upgrade) of the Fractional Club membership at those times based upon the alleged misrepresentations of the Supplier – which Mrs F and Mr F say they relied upon. And as the Credit Agreements with the Lender provided funding to help finance those purchases, it was when they entered into the Credit Agreements that they allegedly suffered the loss.

The PR first notified the Lender of Mrs F and Mr F's Section 75 complaint in April 2023. And as more than six years had passed between the Time of each Sale and when the complaint was first put to the Lender, I don't think it was ultimately unfair or unreasonable of the Lender to reject their concerns about the Supplier's alleged misrepresentations.

Could the limitation period be postponed?

The PR argues that the limitation period should be extended under Section 32 of the LA because facts relevant to Mrs F and Mr F's claims were deliberately concealed.

Section 32(1)(b) applies when *"any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant"* [my emphasis]. But the PR hasn't provided me with any persuasive evidence to demonstrate that the Supplier deliberately concealed anything in relation to the various allegations that Mrs F and Mr F wouldn't have realised well before the they submitted the claims. And as I still can't see why, given the allegations fuelling the claims, these particular issues prevented Mrs F and Mr F from making a claim or - at the very least - raising a complaint earlier, my view is that this particular argument by the PR doesn't help Mrs F and Mr F's cause.

Based upon my findings above, I'm not persuaded that there's any reason why a court might decide time could be extended in keeping with the provisions of Section 32 of the LA.

The credit broker's authorisation

The PR believes that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Mrs F and Mr F 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 (and upgrade) Fractional Club membership. So, even if the Credit Agreements were 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 Mrs F and Mr F suffering financial loss – such that I can say that it would be fair or reasonable to tell the Lender to compensate them, even if the loans weren't arranged properly.

Insolvency of the Supplier and its implications under the Credit Agreement

The PR argues that, because the Supplier, together with various associated businesses, entered into a liquidation procedure in December 2020, Mrs F and Mr F are not able to recover any amount that is expected to be awarded by a Spanish court.

However, as the Lender hasn't been party to any court proceedings in Spain, and as I can't see that the Supplier (i.e., the company that entered into the Purchase Agreement) is itself the subject of a Spanish court judgment in Mrs F and Mr F's favour, it seems to me that there is an argument for saying that the Purchase Agreement remains valid under English law for the purposes of the ruling set out in *Durkin v DSG Retail* [2014] UKSC 21.

I also note that the Purchase Agreements are governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreements 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 was 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.

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, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason.

## Conclusion

I've decided that Mrs F and Mr F's complaint under Section 75 of the CCA does fall within this services jurisdiction to consider. However, having done that, I don't think the Lender acted unfairly or unreasonably in rejecting it. I have also found no other reason why Mrs F and Mr F's complaint should be upheld.

## My final decision

For the reasons set out above, I do not uphold Mrs F and Mr F's complaint about Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 16 December 2025.

Dave Morgan
**Ombudsman**