

The complaint

Ms A and Mr R'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) lending to them irresponsibly, (3) deciding against paying claims under Section 75 of the CCA and (4) providing a loan through an unauthorised credit broker.

What happened

Ms A and Mr R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 10 February 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,500 fractional points at a cost of £17,848 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Ms A and Mr R 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.

Ms A and Mr R paid for their Fractional Club membership by taking finance of £17,848 from the Lender (the 'Credit Agreement').

Ms A and Mr R – using a professional representative (the 'PR') – wrote to the Lender on 19 June 2024 (the 'Letter of Complaint') to raise several different concerns. 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 Ms L and Mr R's concerns as a complaint and issued its final response letter on 21 June 2024, 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, said:

1. We could not consider the complaints about an unfair relationship under Section 140A of the CCA and irresponsible lending because they were made too late under the relevant rules.
2. We could consider the complaints about the Lender's response to the Section 75 claims and about the credit being arranged by an unauthorised broker, but those complaints should not be upheld.

Ms A and Mr R 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 confirming that I can only consider the complaints about the Lender's response to the Section 75 claim and about the loan being arranged through an unauthorised credit broker.

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 in detail 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 have decided not to uphold this complaint.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

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 'LA') 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 Ms A and Mr R's Section 75 claim for misrepresentation was time-barred under the LA 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 Ms A and Mr R 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, 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 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 was the Time of Sale. I say this because Ms A and Mr R 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.

I've considered Section 32 of the Limitation Act, but I am not persuaded that it provides more time for Ms A and Mr R to make the claim.

Ms A and Mr R first notified the Lender of his Section 75 claim on 19 June 2024. 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 Ms A and Mr R's concerns about the Supplier's alleged misrepresentations.

Section 75 of the CCA: the Supplier's Breach of Contract

Section 75 means that if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Ms A and Mr R say that they could not holiday where and when they wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Ms A and Mr R states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday and later upgraded their membership. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Ms A and Mr R any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

Complaint about the Credit Agreement being arranged by an unauthorised broker

The PR says 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 Ms A and Mr R 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 them, 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 Ms A and Mr R experiencing a 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.

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 Ms A and Mr R to accept or reject my decision before 6 January 2026.

Phillip Lai-Fang
Ombudsman