

The complaint

Mr and Mrs A'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) irresponsible lending, and (3) deciding against paying claims under Section 75 of the CCA.

What happened

Mr and Mrs A were members of a timeshare provider (the 'Supplier') – having purchased several 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 14 August 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,740 fractional points at a cost of £9,605 (the 'Purchase Agreement') after trading in their existing timeshare membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs A 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 A paid for their Fractional Club membership by taking finance of £9,605 from the Lender (the 'Credit Agreement').

Mr and Mrs A paid off the Credit Agreement, and the relevant credit relationship between them and the Lender ended on 6 June 2014.

In 2020, the Lender responded to a complaint referred to it on Mr and Mrs A's behalf from a different professional representative, concerning pressure and misleading information allegedly provided to Mr and Mrs A by the Supplier at the Time of Sale.

Mr and Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 21 April 2023 (the 'Letter of Complaint') to raise several 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 didn't issue a final response to Mr and Mrs A, so they referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said the following aspects of the complaint were outside of our jurisdiction because they were referred too late:

- Complaint about an unfair relationship under Section 140A of the CCA.

And that the remainder of the complaint was rejected on its merits.

Mr and Mrs A disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued a provisional decision explaining that:

1. Mr and Mrs A's complaints about a credit relationship with the Lender that was unfair to them and about irresponsible lending are not within our jurisdiction.
2. I can consider Mr and Mrs A's complaint about the Lender's decision to reject their concerns about the Supplier's alleged misrepresentations and breach of contract. But I don't think this complaint should succeed.

The Lender said it accepted my provisional decision.

The PR, on behalf of Mr and Mrs A, did not. It said, in summary, that:

- Mr and Mrs A had more time to make their unfair relationship complaint because they could not have known the Supplier should not have sold or marketed Fractional Club membership as an investment until they contacted the PR in 2023.
- The credit relationship did not end because the unfairness caused by it persisted beyond Mr and Mrs A paying off the loan.
- The limitation period for a claim under Section 140A of the CCA can be extended under Section 32(1)(b) of the Limitation Act 1980.

I then issued a jurisdiction decision confirming that I can only consider the complaint about the Lender's decision to reject their concerns about the Supplier's alleged misrepresentations and breach of contract. This final decision is on the merits of that complaint.

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 ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But I would add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual

or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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 so, including considering the relevant relationships, arrangements and payments between the Lender and the Supplier, I've 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 Mr and Mrs A'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 Mr and Mrs A 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 Mr and Mrs A 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 LA, but I am not persuaded that it is applicable to Mr and Mrs A's claim or that it gives them more time to make the claim.

Mr and Mrs A first notified the Lender of their Section 75 claim on 21 April 2023. 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 A's concerns about the Supplier's alleged misrepresentations.

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

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

As noted above when looking at the claim there was an unfair credit relationship, Mr and Mrs A 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 Mr and Mrs A states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. 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 Mr and Mrs A 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.

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 A and Mr A to accept or reject my decision before 5 February 2026.

Phillip Lai-Fang
Ombudsman