DRN-6099240

The complaint

Mr and Mrs D'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

Mr and Mrs D were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the products at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 18 August 2015 (the 'Time of Sale').

They entered into an agreement with the Supplier to buy two Signature Collection weeks as follows:

1. 1,500 annual fractional points
2. 1,480 bi-annual fractional points

The cost of Mr and Mrs D's purchase was £40,271. After trading in an existing fractional timeshare arrangement, the net cost to Mr and Mrs D was £29,741 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs D 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 D paid for their Fractional Club membership by taking finance of £29,741 from the Lender (the 'Credit Agreement'). Mr and Mrs D's loan was repaid in April 2016.

Mr and Mrs D – using a professional representative (the 'PR') – wrote to the Lender on 13 June 2022 (the 'Letter 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 initially dealt with Mr and Mrs D's concerns as a claim under Section 75 of the CCA and subsequently and issued its final response letter on 30 January 2023, 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, did not uphold the complaint.

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

I set out my thoughts on this complaint in a provisional decision. I have dealt with whether

our Service has jurisdiction to consider Mr and Mrs D's complaint that the credit relationship between them and the Lender was unfair under Section 140A of the CCA in a separate decision.

My provisional decision set out my reasons for not intending to uphold the remaining aspects of Mr and Mrs D's complaint concerning their Section 75 claim to the Lender; their complaint about the Credit Agreement being arranged by an unauthorised credit broker; the allegation that the Lender did not carry out affordability checks before lending to them and the allegation that the Supplier breached Spanish Law.

Neither party had anything further to add in response to my provisional decision, so the complaint has come back to me.

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 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.

And having done that, I do not think this complaint should be upheld.

Neither party has commented on the findings I made in my provisional decision, nor have they provided further submissions for me to consider. Consequently, I see no reason to deviate from the conclusions I reached on the matter in my provisional decision. I set those out below.

However, before I do so, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. One of those conditions is that the cash price of the goods or services must not exceed £30,000. The purchase price of Mr and Mrs D's timeshare (shown on the pricing summary sheet) was £40,271.

The Section 75 claim for misrepresentation is not within the financial limits set by the CCA and so such a claim made to the Lender cannot be successful. And that means that I don't think that the Lender acted unreasonably or unfairly when it did not uphold this particular Section 75 claim.

In this specific case, Mr and Mrs D bought two separate timeshare weeks at two different resorts and have been provided with two purchase agreements as a result. I don't consider these should be considered as separate purchases – which would have the effect of bringing the purchase price for both within the £30,000 limit. But even if I'm wrong about that, ultimately this does not assist Mr and Mrs D. I'll explain why.

The misrepresentations set out to form the basis of Mr and Mrs D's Section 75 claim occurred in August 2015 – at the Time of Sale. However, the actual activity being complained about is the Lender's refusal to accept and pay Mr and Mrs D's claim.

Mr and Mrs D's claim was made to the Lender on 13 June 2022 and the Lender's response was issued on 18 September 2022 and their final response letter on 31 January 2023. The PR referred this complaint to this Service on 6 March 2023. As such, Mr and Mrs D's claim was referred to the Financial Ombudsman Service in time.

However, like our Investigator, I don't think it would be fair and reasonable to uphold this complaint for reasons relating to Mr and Mrs D's Section 75 claim. 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 '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 D's Section 75 claim was time-barred under the LA before they put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer 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. That's because Mr and Mrs D entered into the Purchase Agreement at that time based on the alleged misrepresentations of the Supplier – which they say they relied on. 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 D first notified the Lender of their Section 75 claim on 13 June 2022. Notwithstanding what I've already said about the financial limit to a claim under Section 75, as more than six years had passed between the Time of Sale (15 August 2015) and when they first put their claim to the Lender, I don't think it would have been unfair or unreasonable of the Lender to reject Mr and Mrs D's concerns about the Supplier's alleged misrepresentations in any case.

The other aspects of Mr and Mrs D's complaint

It seems possible that the complaint Mr and Mrs D have made that the Lender did not carry out the right checks before it lent to them would also be out of time. However, in any event, I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs D was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs D.

Connected to this is the suggestion by the PR 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 D 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 Mr and Mrs D's financial loss – such that I can say that the credit relationship in question was unfair on them as a result. 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.

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr and Mrs D in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded and award them compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 ('*Durkin*').

However, as the Lender hasn't been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

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

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it did not accept Mr and Mrs D's Section 75 claim. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

For the reasons set out above, I do not uphold this complaint about Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 19 February 2026.

Claire Poyntz
Ombudsman