

The complaint

Mr P'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, and (3) paying the Supplier commission without fully disclosing this to Mr P.

What happened

Mr P purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 20 August 2014 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 690 fractional points at a cost of £10,729 (the 'Purchase Agreement') after trading in their Trial Membership.

Fractional Club membership was asset backed – which meant it gave Mr P 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 P paid for their Fractional Club membership by taking finance of £14,789 from the Lender (the 'Credit Agreement'). The additional amount was used to pay off a loan from another credit provider which was used to pay for Trial Membership.

Mr P – using a professional representative (the 'PR') – wrote to the Lender on 19 August 2021 (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 dealt with Mr P's concerns as a complaint and issued its final response letter on 4 October 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 on its merits.

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

I provisionally decided that:

1. Mr P's complaints about a credit relationship with the Lender that was unfair to him and about irresponsible lending are not within our jurisdiction because they were not made within the time limits set out in DISP¹ 2.8.2 R (2).

¹ The Dispute Resolution Rules of the Financial Conduct Authority Handbook.

2. The rest of Mr P's complaint – about the Lender's decision to reject his concerns about the Supplier's alleged misrepresentations under Section 75 of the CCA and commission that was not fully disclosed – were made in time under DISP 2.8.2 R (2). But for the reasons I give below, I don't think these aspects of the complaint should succeed.

Following this, the Lender said it had nothing to add.

The PR initially responded with some further comments about our jurisdiction but has since confirmed it does not seek to challenge my provisional findings on this or the commission complaint. So, this final decision deals with the merits of the complaint about the Lender deciding against paying a claim under Section 75 of the CCA. In respect of this, the PR made some further comments which I consider below.

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've reached the same decision as outlined in my provisional decision. A copy of my provisional findings is below, and I am not departing from these. As such, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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 P'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 P 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 P entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr P first notified the Lender of his Section 75 claim on 19 August 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 P's concerns about the Supplier's alleged misrepresentations.

In reaching my conclusions above I have considered Section 32 of the CCA. But I am not persuaded that this provides more time for Mr P to make his Section 75 claim.

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional findings

In summary, the PR's further comments in response to the provisional decision which are relevant to the complaint about the Section 75 claim said that:

1. I had not properly applied the principles of the Limitation Act 1980, since Section 32(1)(b) provides more time to make the claim where the Supplier has concealed the misrepresentation.
2. Rule CONC 7.3.4R in the Financial Conduct Authority Handbook means that the Lender has a duty to treat customers fairly and consider evidence of fraud or misrepresentation – and this means the Lender should've investigated the claim rather than rejecting it.
3. I had failed to apply "*FOS technical guidance on linked lender liability, which requires that lender make reasonable enquiries rather than summarily dismissing such claims.*"

The PR's additional comments do not persuade me to depart from my provisional findings. It says that the Supplier concealed that "*the timeshare's alleged "asset-backed" nature was false*". But, as mentioned above, Mr P's Fractional Club membership was asset-backed in that it was linked to the Allocated Property. That seems to have been made clear at the Time of Sale – both during the presentation Mr P was likely to have been given, and in the documents provided to him at the time. So, I do not think this was "false", as the PR alleges. And I can't see that Section 32 of the Limitation Act provides more time for Mr P to make the claim to the Lender.

As for the PR's second point, CONC 7.3.4R says:

"A firm must treat customers in or approaching arrears or in default with forbearance and due consideration."

I cannot see that this means what the PR says, nor that it is relevant to Mr P's Section 75 claim. While there is a duty to treat customers fairly, I am not persuaded that the Lender unfairly rejected Mr P's Section 75 claim.

Finally, the PR has not specified what technical guidance it is referring to. But I am satisfied I have followed our usual approach when deciding this complaint. As such, for the reasons given in my provisional findings above, 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 P to accept or reject my decision before 25 February 2026.

Phillip Lai-Fang
Ombudsman