

The complaint

Mrs W's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship¹ 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) providing a loan through an unauthorised credit broker.

What happened

Mrs W was a member of a timeshare provider (the 'Supplier') – having purchased several products from it over time. But the product at the centre of this complaint is her membership of a timeshare that I'll call the 'Fractional Club' – which she bought on 1 April 2014 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,620 fractional points at a cost of £8,437 (the 'Purchase Agreement') after trading an existing timeshare.

Fractional Club membership was asset backed – which meant it gave Mrs W 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.

Mrs W paid for their Fractional Club membership by taking finance of £8,437 from the Lender (the 'Credit Agreement'). She paid off the loan on 22 July 2014.

Mrs W – using a professional representative (the 'PR') – wrote to the Lender on 11 July 2022 (the 'Letter of Complaint') to raise a number of 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 Mrs W's concerns as a complaint and issued its final response letter on 5 September 2023, rejecting it on every ground.

The PR referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator, who concluded that we could only consider complaints about the Lender (2) deciding against paying a claim under Section 75 of the CCA and (3) providing a loan through an unauthorised credit broker – and that those complaints should not be upheld.

The PR has confirmed that it accepts the Investigators conclusions on our jurisdiction, and that Mrs W's concerns about undisclosed commission² so not require a detailed decision. As such, this decision deals with the merits of the complaints under points (2) and (3) above.

¹ As part of this complaint (1) the PR mentioned concerns about whether the Lender did appropriate checks before lending to Mrs W. A standalone complaint about that was likely made too late under our rules – and in any case I see no reason it would succeed, given Mrs W paid off the loan so quickly. Essentially, there is nothing to suggest the loan was unaffordable for her.

² In this case the commission was 10% of the amount borrowed and 5% of the total charge for credit.

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.

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

Mrs W first notified the Lender of his Section 75 claim on 11 July 2022. 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 Mrs W's concerns about the Supplier's alleged misrepresentations.

I have considered Section 32 and Section 14 of the LA, but I am not persuaded that either provided Mrs W with more time to make the claim.

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 Mrs W knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for her, 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 Mrs W 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 Mrs W to accept or reject my decision before 2 March 2026.

Phillip Lai-Fang
Ombudsman