

The complaint

Mr and Mrs B'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) providing credit through an unauthorised intermediary.¹

What happened

Mr and Mrs B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 7 May 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,494 fractional points at a cost of £11,404 (the 'Purchase Agreement') after trading in their existing timeshare.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs B 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 B paid for their Fractional Club membership by taking finance of £11,404 from the Lender (the 'Credit Agreement').

Mr and Mrs B paid off the loan, and the credit relationship arising from the Credit Agreement ended on 12 June 2014.

Mr and Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 11 November 2020 (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 Mr and Mrs B's concerns as a complaint and issued its final response letter on 11 November 2020, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who rejected the complaint on its merits.

Mr and Mrs B 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 saying that:

1. Mr and Mrs B's complaints about a credit relationship with the Lender that was unfair to them and about irresponsible lending are not within our jurisdiction because they weren't made within the time limits set out in DISP² 2.8.2 R (2).

¹ The PR also raised concerns with undisclosed commission (in this case 10% of the amount borrowed) and the loan being used to fund an Unregulated Collective Investment Scheme. But it has since accepted that these complaint points would not succeed.

2. The rest of Mr and Mrs B's complaint – about the Lender's decision to reject their concerns about the Supplier's alleged misrepresentations under Section 75 of the CCA and the credit being provided by an unauthorised broker – were made in time under DISP 2.8.2 R (2). But these aspects of the complaint should not succeed.

The Lender accepted my provisional decision.

The PR on behalf of Mr and Mrs B said it accepted in relation to our jurisdiction but asked for a final decision on the merits of those parts of the complaint we can consider. The PR provided nothing further for me to consider when reaching my final decision.

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 decided not to uphold this complaint. As I have been provided with nothing further to consider, I repeat my provisional findings as follows.

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 B'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 B 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 B 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.

Mr and Mrs B first notified the Lender of his Section 75 claim on 11 November 2020. 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 B's concerns about the Supplier's alleged misrepresentations.

Complaint about the Credit Agreement being arranged by an unauthorised broker

² The Dispute Resolution Rules of the Financial Conduct Authority Handbook.

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.

I think this complaint is within my jurisdiction to consider because Mr and Mrs B would not have known (nor ought they reasonably to have known) they had cause to complain about this until contacting the PR in 2020.

However, it looks to me like Mr and Mrs B 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 B 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 B and Mr B to accept or reject my decision before 16 March 2026.

Phillip Lai-Fang
Ombudsman