

## **The complaint**

Mrs H'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

## **What happened**

Mrs H purchased membership of a timeshare (the 'Signature Collection') from a timeshare provider (the 'Supplier') on 1 June 2015 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 2,090 fractional points at a cost of £35,059 (the 'Purchase Agreement'). But after trading in an existing timeshare she paid £19,459.

Signature Collection membership was asset backed – which meant it gave Mrs H 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 her membership term ends.

Mrs H paid for her Signature Collection membership by taking finance of £19,459 from the Lender (the 'Credit Agreement').

Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 14 July 2023 (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 did not respond to the Letter of Complaint and 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 that the Lender hadn't properly considered a claim made under Section 75 of the CCA on its merits. The Investigator felt that the complaint that there was an unfair credit relationship under Section 140A hadn't been made in time as per the rules that this service must follow and that it couldn't be considered.

Mrs H disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed 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, in many ways, 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 in detail 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.

Having done that, I do not currently think this complaint should be upheld.

However, before I explain why, 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.

The PR has recently withdrawn its objection to the investigator's assessment that Mrs H's complaint about the Lender's participation in an allegedly unfair relationship was brought too late under the Financial Ombudsman Service's rules and accepts the investigator's assessment on that point now. I have not therefore considered that part of Mrs H's complaint in this decision.

### **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.

However, Section 75 does not apply to a claim so far as that claim relates to any single item to which the supplier has attached a cash price of more than £30,000. The Supplier's 'Pricing Summary' sheet shows the cash price attached to Signature Club membership was £35,059. So, it's unlikely Section 75 applied to Mrs H's claim for misrepresentation.

However even if that were not the case, 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 H's Section 75 claim for misrepresentation was time-barred under the LA before she 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 H 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 H entered into the purchase of her timeshare at that time based on the alleged misrepresentations of the Supplier – which she said 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 H first notified the Lender of her Section 75 claim on 14 July 2023. And although the Lender has not responded to that claim, 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 would be reasonable to ask it to compensate Mrs H on the basis it should have met her claim.

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

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I already explained why Section 75 is unlikely to apply to Mrs H's claim given the cash price the Supplier attached to Signature Collection membership. Section 75A may assist Mrs H in the circumstances for a breach of contract of claim. But I don't need to make a finding on this as I don't think the Lender is liable to pay Mrs H compensation for breach of contract in any event.

Mrs H says that she could not holiday where and when she 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 Mrs H states that the availability of holidays was/is subject to demand. I accept that she 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 Mrs H 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.

### **Mrs H's complaint about the Lender's affordability checks**

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 Mrs H was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs H.

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs H's Section 75 claims, and I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

### **Other complaint points**

The PR said in the Letter of Complaint that the loan was made in consequence of something said or done by the Supplier in the course of a regulated activity carried on by it in contravention of the general prohibition in Section 19 of the Financial Services and Markets Act 2000 ('FSMA') as the Supplier was not authorised by the Financial Conduct Authority to advise on or arrange investments. It said that in accordance with Section 27 FSMA, Mrs H can recover everything she paid to the Lender under the Credit Agreement as a result.

However, with the relevant provisions in FSMA and FSMA (Regulated Activities) Order 2000 in mind, neither Mrs H's testimony nor the surrounding circumstances of the sale makes me think the Supplier was advising on or arranging investments while selling Signature Collection membership to Mrs H in this particular case. So, Section 27 FSMA is not engaged, and I do not think the Lender is required to repay anything paid under the credit agreement on this basis.

### **My final decision**

For the reasons I have explained, I do not uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 April 2026.

Michael Ball  
**Ombudsman**