

## The complaint

Mrs K, using a professional representative (“the PR”), has complained that Tesco Personal Finance Limited, trading as ‘Tesco Bank’, acted unfairly and unreasonably by declining to pay a claim under Section 75 of the Consumer Credit Act 1974 (“CCA”).

## What happened

On 16 December 2010 (“the Time of Sale 1”), Mrs K attended a sales meeting with a timeshare provider (“the Supplier”). She agreed to take out a membership for £5,250, which provided her with occupancy rights at the Supplier’s resort in Malta for a week in December every odd-numbered year. She paid a deposit of £525 on the same day using a credit card provided by Tesco Bank. She paid the remaining balance in instalments.

On 22 December 2011, (“the Time of Sale 2”), Mrs K purchased another timeshare membership from the Supplier, costing £14,000, which provided her with occupancy rights at its resort for one week each December. She paid £2,800 using a credit card provided by Tesco Bank. She paid the remaining balance in instalments.

The PR wrote to the Lender on 2 November 2022 to make a claim for misrepresentations it says the Supplier made during the course of the two sales (“the Letter of Claim”). In summary, the PR said:

- Mrs K was guaranteed “*luxury holidays at affordable rates, at any resort of her choosing and at any time of her choosing, beyond that of the general public*”.
- Mrs K was told that she would be able to sell the membership, but this turned out to be false when she attempted to sell it in 2016.
- The timeshare was an investment and would increase in value and could be sold for a profit at the end of the term.
- Mrs K’s family could enjoy the benefits of the timeshare in the event of her death.
- Purchasing the timeshare was a one-time deal and she could not contemplate it as she would lose the offer.
- She would have “unlimited” access to all the Supplier’s resorts.
- The facilities were only available for members and were not available to the public.
- She would have access to discounts of up to 40% on flights, cars and holiday excursions.

Tesco Bank turned down the claim on 10 November 2022, so the PR raised a complaint about the rejection of the claim. On 29 May 2024, the Lender issued its final response to the complaint, rejecting it on the grounds that it had a legitimate defence to the claim under s.75 CCA as the claim was “time-barred”. The PR disagreed, so it complained to the Financial Ombudsman Service.

One of our investigators considered the complaint but thought that Tesco Bank had a complete defence to the claim due to the time limits set out in the Limitation Act 1980 (“the LA”). As the PR disagreed, it has asked for the matter to be referred to an Ombudsman.

## 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 considered everything, I do not think Tesco Bank needs to do anything further to answer the complaint.

Mrs K says the Supplier misrepresented the timeshare membership to her at the Time of Sale and that she has a claim for misrepresentation against Tesco Bank.

Under s.75 CCA, Tesco Bank could be jointly liable for the alleged misrepresentations made by the Supplier. But it has argued that any claim brought by Mrs K for any alleged misrepresentations was made too late. It would be for a court to decide whether the limitation period for such a claim as set out in the LA has expired, but I have thought about this argument as I think it is relevant in considering whether Tesco Bank acted fairly in turning down the claim.

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 s.2 LA).

But a claim, like Mrs K's, under s.75 is also an "action to recover any sum by virtue of any enactment" under s.9 LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The dates on which the cause of action accrued were the Time of Sale 1 and the Time of Sale 2. I say this because Mrs K entered the purchase agreements on those dates based on the alleged misrepresentations of the Supplier – which she says she relied on. And at these times, she agreed to pay the Supplier in accordance with the purchase agreement.

The PR says the time limits should be extended under s.32 LA as it argues Mrs K could not have known that the representations made at the time were false, or that until she brought the complaint, she could not have known the details of her complaint. The PR also refers to the judgment on "*R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*') and says the cause of action under s.75 CCA was only revealed to Mrs K after she saw the judgment.

S.32 has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here, but as Mrs K says that the timeshare was misrepresented to her because she couldn't holiday in the way the Supplier promised she could, that would have been clear to her soon after the Time of Sale 1 and Time of Sale 2. So, even if it could be said that s.32 is likely to have postponed the limitation period until she first discovered that the availability of holidays was not what she thought it would be (and I make no such finding that it would), I'm not persuaded that would make a difference here. I also note that a solicitor obtained Mrs K's testimony which is dated 2 February 2017. And Tesco Bank's case notes say that it rejected a claim in that year for similar reasons as it says it did for this claim. So, I am not persuaded that Mrs K only found she may have had cause to raise her claim recently as, by providing the testimony, she has shown that she was aware something might have gone wrong by 2017 at the latest.

As for the suggestion from the PR that Mrs K's cause of action was only revealed to her after she read the judgment in *Shawbrook & BPF v FOS*, this could not possibly be true as her

claim predates this judgment. So, the PR is clearly wrong to suggest that the limitation period only started from this point in time.

Mrs K raised her claim with the Lender on 2 November 2022. And as more than six years had passed between both the Time of Sale 1 and Time of Sale 2 and the date she put the claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mrs K's concerns about the Supplier's alleged misrepresentations.

### **My final decision**

For the reasons I have set out above, I don't uphold Mrs K's complaint about Tesco Personal Finance, trading as Tesco Bank's handling of her Section 75 CCA claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 28 May 2025.

Andrew Anderson  
**Ombudsman**