

The complaint

Mr and Mrs B have complained that Shawbrook Bank Limited (“Shawbrook”), acted unfairly and unreasonably by deciding against paying a claim under s.75 of the Consumer Credit Act 1974 (“CCA”).

What happened

Mr and Mrs B entered into a timeshare membership agreement with a timeshare provider (“the Supplier”) in December 2013. The membership cost £17,074 and they paid for it by taking a loan from Shawbrook for £20,403, which was also used to refinance an earlier loan from a different lender. This loan was repaid in full in September 2014.

In April 2014, Mr and Mrs B entered into a new membership with the Supplier, exchanging their earlier membership and paying an extra £9,639. To pay for this they took another loan from Shawbrook for the full amount. It too was repaid in full in September 2014.

In December 2023, Mr and Mrs B used a professional representative (“PR”) to make a complaint to Shawbrook about the purchases and associated loans. In short, it was alleged:

- The Supplier had described the memberships as ‘investments’ that would realise a profit at the end of the membership terms or that Mr and Mrs B could sell them back to the Supplier before then too. This was a breach of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.
- The Supplier told Mr and Mrs B that they could access better quality accommodation and cheaper flights.
- Mr and Mrs B had problems booking the Supplier’s accommodation at the resorts and times they wanted.

All of this led to unfair credit relationships as defined by s.140A CCA, as had been held in the judgment in *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). Further, the Supplier had misrepresented matters to them during the sales.

Shawbrook responded the following month to say the complaint had been made more than six years from when the two loans had been paid off, and so it was too late for it to have to consider the merits of the complaint. It also said that it thought PR had made a claim under s.75 CCA for the Supplier’s alleged misrepresentations, but that had also been made too late.

Unhappy with Shawbrook’s response, PR referred a complaint to our service on Mr and Mrs B’s behalf. In doing so, it provided a questionnaire filled in by Mr and Mrs B, setting out more details of the alleged misrepresentations made by the Supplier during the sales.

One of our investigators considered the complaint, but did not think Shawbrook needed to do anything further. She thought the claim that there were misrepresentations under s.75 CCA had been made too late under provisions of the Limitation Act 1980 (“LA”). She also thought

that any complaint that Shawbrook was a party to an unfair debtor-creditor relationship, as defined by s.140A CCA, had been made too late for our service to consider.

PR responded on behalf of Mr and Mrs B to say it disagreed with what our Investigator had said. It thought that any claim made under s.75 CCA had been made in time and required to be fully investigated. PR asked for an ombudsman to review the complaint.

In this decision I will deal solely with the complaint that Shawbrook did not fairly deal with Mr and Mrs B's claim under s.75 CCA. The remainder of Mr and Mrs B's complaint will be dealt with in a separate decision.

What I have 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.

Mr and Mrs B said that the Supplier misrepresented the nature of the memberships when they bought them and that they have a claim for misrepresentation against the Supplier. Under s.75 CCA, Shawbrook could be jointly liable for the alleged misrepresentations made by the Supplier. But Shawbrook argued that any claim brought by Mr and Mrs B for any alleged misrepresentations was made too late. I have considered that argument and, having done so, I agree with what Shawbrook has said. For the avoidance of doubt, I have not decided whether the limitation period has expired as that would be a matter for the courts should a legal claim be litigated. Rather, I have considered whether Shawbrook acted fairly in turning down the claim.

Our service normally thinks it would be fair and reasonable for a creditor to rely on the LA as an answer to a claim under s.75 CCA. This is because it would not normally be fair to expect lenders to look into a claim that has been made outside of the limitation periods, so long after the liability arose and after a limitation defence would have become available in court. So I think it is relevant to consider whether Shawbrook has a limitation defence under the LA when thinking about a fair answer to Mr and Mrs B's complaint.

It was held in *Green v. Eadie & Ors* [2011] EWHC B24 (Ch) that a claim under s.2(1) of the Misrepresentation Act 1967 is an action founded on tort for the purposes of the LA; therefore, the limitation period expires six years from the date on which the cause of action accrued (s.2 LA). Here Mr and Mrs B brought a like claim against Shawbrook under s.75 CCA and the limitation period for the corresponding like claim would be the same as the underlying misrepresentation claim. Therefore, the limitation period for the s.75 claim expires six years from the date on which the cause of action accrued.

The dates on which a 'cause of action' accrued is the point at which Mr and Mrs B entered into the agreements to buy the timeshares. It was at that time that they entered into an agreement based, they say, on the misrepresentations of the Supplier and suffered a loss. They say, had the misrepresentations not been made, they would not have bought the timeshares. And it was on those days that they suffered losses, as they took out the loan agreements with Shawbrook that they were bound to and would have never taken out but for the misrepresentations. It follows, therefore, that the causes of action accrued in December 2013 and April 2014, so Mr and Mrs B had six years from then to bring a claim. But they did not make a claim against Shawbrook until December 2023, which was outside of the time limits set out in the LA. So, I think Shawbrook acted fairly in turning down this misrepresentation claim.

The LA provides for extensions of the time limits in certain circumstances. However, having considered everything, I cannot see any reason for the limitation period to be extended.

Given all of this, I cannot see any reason why it would be fair or reasonable to direct Shawbrook to do anything further to resolve this complaint.

My final decision

Shawbrook Bank Limited acted fairly in turning down Mr and Mrs B's claim under s.75 CCA and I do not direct it do anything further.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 10 October 2025.

Mark Hutchings
Ombudsman