

## The complaint

Mr and Mrs D say that Shawbrook Bank Limited, have unfairly declined a claim they made under section 75 of the Consumer Credit Act 1974 ('CCA').

## What happened

In August 2015, Mr and Mrs D purchased a timeshare membership from a timeshare provider (the 'Supplier'). The membership was asset backed – which meant it included a share of the net sale proceeds of a property named on the purchase agreement (the 'Allocated Property') after the membership term ended. It cost £20,299. However, Mr and Mrs D received a 'trade-in' value of £3,995 for their existing timeshare membership. Mr and Mrs D borrowed £16,304 from Shawbrook to pay the balance. The loan was repaid in full in November 2015.

In 2023, Mr and Mrs D used a professional representative ('PR') to complain about the purchase and the related loan. Specifically, the complaint letter said:

- The Supplier told Mr and Mrs D that membership was a financial investment that would be sold after 19 years for a substantial profit, and that it was also an investment for their children's future which was a gross misrepresentation.
- The Supplier rushed them through the paperwork.

Mr and Mrs D say this led to an unfair relationship for the purposes of section 140A of the CCA, specifically relying on *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin) ('*Shawbrook v Financial Ombudsman Service*').

Shawbrook responded to Mr and Mrs D's complaint in November 2023. It said it understood Mr and Mrs D had raised a complaint under sections 75 and 140A of the CCA. It went on to say that Mr and Mrs D had waited too long to make a complaint as they had repaid the loan more than six years ago, and that it was time barred under the Limitation Act 1980 (LA).

Mr and Mrs D's PR referred the complaint to our service. One of our investigators considered the complaint. They didn't think it was unfair for Shawbrook to rely on the LA to decline a claim under section 75 of the CCA. And they didn't think this service could consider a complaint under section 140A of the CCA because it had been made more than six years after the loan was repaid.

Mr and Mrs D's PR have asked for a final decision from an ombudsman. This decision will deal solely with Mr and Mrs D's complaint that Shawbrook unfairly declined the claim they made under section 75 of the CCA. I have considered the rest of Mr and Mrs D's complaint in a separate 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.

Section 75(1) of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the Supplier.

However, Shawbrook says it's too late for Mr and Mrs D to make a claim for misrepresentation. It's specifically referred to the LA, which essentially says Mr and Mrs D had six years from the date on which the cause of action accrued' to make their claim, after which Shawbrook has a complete defence to the claim.

I wouldn't normally think it was unfair for a respondent firm to rely on the LA to decline a claim that's been made outside the limitation period, and I don't think it's unfair in this instance.

The date on which the cause of action accrued is, in this case, the date of sale. It was then that Mr and Mrs D entered into an agreement based, they say, on the Supplier's misrepresentations. As the loan from Shawbrook was used to finance the purchase, it was also then that they suffered a loss. It follows that Mr and Mrs D had six years from the date of sale to make a claim for misrepresentation. But they didn't make their claim until July 2023, which is outside the time limits set by the LA.

Mr and Mrs D's PR says section 14A of the LA gives Mr and Mrs D more time to make their claim. I disagree. Section 14A provides claimants with a 'special time limit for negligence actions where the facts relevant to [the] cause of action are not known at the date of accrual'. However, in *Thomas v Taylor Wimpey Developments* [2019] EWHC 1134 (TCC), the court confirmed that claims under section 2(1) of the Misrepresentation Act 1967 are not claims of negligence and section 14A of the LA doesn't apply to them. And, based on the PR's brief submissions, I don't see how section 14A could otherwise extend the time limit for Mr and Mrs D.

In addition, the PR says section 32(1) of the LA also gives Mr and Mrs D more time to make their claim. Again, I disagree. Section 32(1) of the LA has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here. But in this case the PR has simply referenced section 32(1), but it hasn't explained what acts Shawbrook carried out, that would make it a relevant consideration that might extend time. So, I find it very difficult to see taking into account the brief submissions provided by the PR in this case, how section 32(1) could extend the time limit for Mr and Mrs D.

Also, in their statement, Mr and Mrs D refer to a number of concerns that they became aware of shortly after purchasing their Timeshare. And in particular, they refer to the lack of availability of the accommodation and the quality of it. So, my understanding is that they believed the Timeshare was misrepresented because they couldn't holiday in the way they say they were led to believe by the Supplier. But that would have been clear to them soon after the Time of Sale. So, even if it could be said that section 32(1) is likely to have postponed the limitation period until they first discovered that the availability and quality of holidays was not what they thought it would be (and I make no such finding that it would), I'm not persuaded that would make a difference here.

As for the suggestion from the PR that Mr and Mrs D would only have become aware of cause for complaint after the judgment in *Shawbrook & BPF v FOS*, I can't see how this can

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

### **My final decision**

For the reason given, I don't think it was unfair for Shawbrook Bank Limited, to decline Mr and Mrs D's claim under section 75 of the CCA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 28 November 2025.

Simon Dibble  
**Ombudsman**