

The complaint

Mr and Mrs K's complaint is, in essence, that Shawbrook Bank Limited ('the Lender') acted unfairly and unreasonably by deciding against paying a claim made under Section 75 of the Consumer Credit Act 1974 ('CCA').

What happened

Mr and Mrs K purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 4 November 2014 (the 'Time of Sale'). Mr and Mrs K paid for their Fractional Club membership by taking finance from the Lender (the 'Credit Agreement'). Mr and Mrs K paid off the loan, and their credit relationship with the Lender ended, on 4 July 2016.

Mr and Mrs K – using a professional representative (the 'PR') – wrote to the Lender on 28 July 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs K's concerns as a complaint and issued its final response on 6 September 2023. It said the complaint had been made out of time.

The complaint was referred to the Financial Ombudsman Service on 21 February 2024. It was assessed by one of our Investigators who, having considered the information on file, said that Mr and Mrs K's concerns about an unfair credit relationship had been made out of time, and the remainder of their complaint should not be upheld.

Mr and Mrs K disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I recently issued a decision concerning our jurisdiction to consider Mr and Mrs K's complaint. I concluded that their complaint about an unfair credit relationship had been made out of time, but their complaint about the Lender's rejection of their Section 75 claim had been made in time. Therefore, this final decision relates solely to Mr and Mrs K's complaint about the Lender's rejection of their Section 75 claim.

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.

This part of Mr and Mrs K's complaint was made for several reasons, which included that the Supplier misrepresented the Fractional Club membership at the Time of Sale as it told them they had purchased an investment which would considerably increase in value and that they would have access to the Allocated Property at any time.

Generally, creditors can reasonably reject Section 75 claims that they are first made aware of after the claim has become time barred under the Limitation Act (the 'LA'), as it wouldn't be fair to expect them to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. Therefore, it's relevant to consider whether Mr and Mrs K's Section 75 claim was time barred under the LA before they put it to the Lender.

A claim under Section 75 is a "like claim" against the creditor. It in effect mirrors the claim a consumer could make against the Supplier.

A claim for misrepresentation against the Supplier would typically 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).

However, a claim under Section 75, like the one in question here, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. 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. That's when Mr and Mrs K entered into the purchase of their timeshare based on the alleged misrepresentations of the Supplier – which they say they relied on. Further, 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 K first notified the Lender of their Section 75 claim on 28 July 2022. Given more than six years had passed between the Time of Sale and when they first put their claim to the Lender, in my view it was neither unfair nor unreasonable that the Lender rejected their concerns about the Supplier's alleged misrepresentations.

It follows that I do not consider this complaint should be upheld.

My final decision

My final decision is that I do not uphold Mr and Mrs K's complaint about Shawbrook Bank Limited, regarding its rejection of their Section 75 claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs K to accept or reject my decision before 3 December 2025.

Alex Salton
Ombudsman