

The complaint

Mr and Mrs D complain that Shawbrook Bank Limited acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 (as amended) (the 'CCA').

Background to the complaint

Mr and Mrs D purchased membership of a timeshare that I'll call the 'Fractional Club' on 5 March 2013 (the 'Time of Sale').

To help pay for the membership, Mr and Mrs D took out a loan of £23,022 with Shawbrook. The loan was repaid on 13 May 2013.

Through a professional representative ('PR1'), Mr and Mrs D complained to Shawbrook on 6 December 2022 that the Supplier had misrepresented the Fractional Club membership in a number of ways, giving them a claim against Shawbrook under Section 75 of the CCA.

Mr and Mrs D also complained that the credit relationship between them and Shawbrook was unfair to them under Section 140A of the CCA. But by way of a separate decision I have explained that we are unable to consider that aspect of the complaint as it has been raised outside of the time limits that apply under our rules.

Shawbrook dealt with Mr and Mrs D's concerns as a complaint and issued its final response letter on 31 August 2023. It said, in short, that Mr and Mrs D had raised their Section 75 claim outside of the six-year limit imposed by the Limitation Act 1980 and therefore found there to be no valid claim.

Our Investigator thought that the defence available to Shawbrook under the Limitation Act meant that it hadn't done anything wrong in declining Mr and Mrs D's claim. So she didn't recommend that the complaint be upheld.

As Mr and Mrs D didn't accept our Investigator's view, the matter was passed to me to decide.

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 so, I've reached the same conclusion as our Investigator in that I do not think the complaint should be upheld and for largely similar reasons. I'll explain why.

As both sides may already know, a claim against Shawbrook under Section 75 essentially mirrors the claim Mr and Mrs D could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. Shawbrook does not dispute that the relevant conditions are met in this complaint, and I'm satisfied that they are.

There are, though, certain time limits that apply – and I think these mean Mr and Mrs D's claim would've been time-barred. The Limitation Act 1980 sets out limitation periods, or time limits, for bringing various types of legal claim. For a claim based on contract, it's not generally possible to start court action more than six years after the cause of action arose. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the time limit would typically be six years from the date the claimant suffers damage as a result of the misrepresentation. For example, entering into a contract – and incurring liabilities – when they would otherwise not have done.

Mr and Mrs D's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, they wouldn't have purchased the Fractional Club membership (and, therefore, entered into the related loan with Shawbrook). So it is the date on which they entered into those agreements that their cause of action arose, meaning they had six years from that date within which to bring this claim.

Mr and Mrs D purchased the membership on 5 March 2013. They raised their Section 75 claim on 6 December 2022 – more than six years later. So I think Shawbrook had a complete defence to the claim about misrepresentation, having been raised outside of the six-year statutory limit.

I have, however, noted that within the Letter of Complaint, PR1 said Mr and Mrs D could not access the holidays that the Supplier led them to believe the membership would entitle them to. And while that was framed, in the Letter of Complaint, as an alleged misrepresentation, to my mind that is an alleged breach of contract – that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. A cause of action for such a claim would only have arisen when any such breach occurred.

Neither PR1 nor Mr and Mrs D have given any details as to when such a breach occurred. But even if this was within the six-year period prior to the claim being made, I do not think it would have succeeded. 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 Mr and Mrs D signed stated that the availability of holidays was subject to demand. Moreover, Mr and Mrs D have not given details of any particular locations that they found themselves illegitimately unable to book. So I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement.

Given all of this, I don't think Shawbrook acted unfairly or unreasonably in declining Mr and Mrs D's claim.

Lastly, I have also noted PR1's argument that Mr and Mrs D's loan was arranged by an unauthorised credit broker – the upshot of which is to suggest that Shawbrook wasn't permitted to enforce its rights under the credit agreement. However, it looks to me like Mr and Mrs D knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the loan was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see that this led to Mr and Mrs D suffering a financial loss. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell Shawbrook to compensate them, even if the loan wasn't arranged properly.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 8 December 2025.

Ben Jennings
Ombudsman