

## **The complaint**

Mr and Mrs H say Shawbrook Bank Limited ('Shawbrook') has unfairly declined their claim under section 75 of the Consumer Credit Act 1974 ('CCA'). And they say their creditor-debtor relationship with Shawbrook was unfair to them under section 140A of the CCA.

## **What happened**

In September 2013, Mr and Mrs H 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 £36,960. However, Mr and Mrs H received a 'trade-in' value of £20,000 for their existing timeshare membership. Mr and Mrs H borrowed £16,112 from Shawbrook to pay the balance. The loan was repaid in full in November 2013.

In March 2020, Mr and Mrs H wrote to Shawbrook to complain about the purchase and the related loan.

Shawbrook issued its final response letter on 29 May 2020. It rejected the complaint.

In July 2020, Mr and Mrs H used a professional representative ('PR') to refer the complaint to our service.

One of our investigators rejected the complaint on its merits. Mr and Mrs H's PR initially asked for a final decision from an ombudsman. However, on 4 April 2023, it wrote to 'confirm that [Mr and Mrs H] no longer want to pursue this matter and wish to withdraw [the] complaint'.

In August 2023, Mr and Mrs H's PR wrote to Shawbrook to complain again about the purchase and the related loan.

Shawbrook issued its final response letter on 4 September 2023. It said Mr and Mrs H had waited too long to make a claim/complaint under sections 75 and 140A of the CCA as they'd repaid the loan more than six years ago.

Mr and Mrs H's PR referred the complaint to our service.

One of our investigators considered the complaint. She didn't think we could consider the complaint under section 140A of the CCA because it had been made more than six years after the loan was repaid. And she didn't think it was unfair for Shawbrook to rely on the Limitation Act 1980 (the 'LA') to reject the claim under section 75.

Mr and Mrs H's PR asked for a final decision from an ombudsman.

This decision will deal solely with Mr and Mrs H's complaint that Shawbrook unfairly declined their claim under section 75 of the CCA. I will consider the rest of Mr and Mrs H'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 H to make a claim for misrepresentation. It's specifically referred to the LA, which sets the statutory time limits for bringing civil claims in England and Wales. The LA says Mr and Mrs H had six years from the date on which the 'cause of action accrued' to make their claim, after which Shawbrook has a complete defence.

It is of course for a court to determine whether a respondent can rely on the LA to defend a claim. That said, I wouldn't normally think it was unfair for a 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 H entered into an agreement based, they allege, on the Supplier's misrepresentation(s). 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 H had six years from the date of sale to make a claim for misrepresentation. But they didn't make their claim until August 2023, which is outside the time limits set by the LA.

Mr and Mrs H's PR has referred me to section 32 of the LA, which postpones the limitation period in cases of fraud, concealment or mistake. It's also referred me to a county court judgment.

Essentially, it says Mr and Mrs H's purchase was 'ill-founded in law' and that Mr and Mrs H couldn't have known 'their arrangement was unlawful' until the judgment was handed down in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin) ('*Shawbrook v Financial Ombudsman Service*'), which only happened on 5 May 2023. The PR says the 'issues concerning the legality of the timeshare arrangement with [the Supplier] were concealed from [Mr and Mrs H] at the Time of Sale'. But the PR hasn't explained clearly how its concerns about the legality of Mr and Mrs H's timeshare membership amount to a misrepresentation, for which Shawbrook could be liable under section 75, nor otherwise provided persuasive evidence of fraud, concealment or mistake, such that section 32 of the LA would postpone the limitation period in this case. I'd like to reiterate that only a court can decide whether this claim was made out of time. My finding is simply that I don't think it's unfair for Shawbrook to rely on the LA to decline the claim in this case.

For completeness, I'd add that Shawbrook could have simply declined the claim under section 75(1) because Mr and Mrs H's purchase did not meet the relevant criteria. Section 75(3) says section 75(1) doesn't apply to a claim:

*'(b) so far as the claim relates to any single item to which the supplier has attached a cash price...[of] more than £30,000...'*

The cash price of the membership was £36,960. This means that section 75(1) doesn't apply.

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 15 December 2025.

Christopher Reeves  
**Ombudsman**