

The complaint

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

What happened

Mr and Mrs M were the members of a timeshare provider (the 'Supplier') – having previously purchased other memberships from it. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 23 May 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2504 fractional points at a cost of £6381 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs M paid for their Fractional Club membership by taking finance of £18,657 from the Lender (the 'Credit Agreement'). The lending appears to have included the refinancing of their previous loan with another lender.

The loan with the Lender was fully repaid on 15 October 2012.

Mr and Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 5 May 2022 (the 'Letter of Complaint') to raise a number of different concerns. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs M's concerns as a complaint and issued its final response letter on 31 August 2023, concluding that their complaint had been made too late under the provisions of the Limitation Act 1980.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint that the Lender hadn't properly considered a claim made under Section 75 of the CCA on its merits. The Investigator felt that the complaint that there was an unfair credit relationship under Section 140A hadn't been made in time as per the rules that this service must follow and that it couldn't be considered.

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

In this decision I will deal solely with the complaint that Shawbrook did not fairly deal with Mr and Mrs M's claim under s.75 CCA. The complaint that Shawbrook entered into an unfair credit relationship with them has been dealt with 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.

Having done so, whilst I'm sorry to disappoint Mr and Mrs M, I've decided not to uphold their complaint.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr and Mrs M's Section 75 claim for misrepresentation 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 essentially mirrors the claim Mr and Mrs C could make against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily 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).

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And 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. I say this because Mr and Mrs M entered into the purchase of their timeshare at that time based on the alleged misrepresentations of the Supplier – which they say were relied upon. And 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 M first notified the Lender of their Section 75 claim on 5 May 2022. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr and Mrs M's concerns about the Supplier's alleged misrepresentations. Nor do I think there are sufficient grounds for me to reasonably conclude that the LA should be extended.

Mr and Mrs M's complaint that the credit broker was not authorised

The PR has argued that that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr and Mrs M 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. So, even if the Credit Agreement 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 why that led to Mr and Mrs M suffering a financial loss. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them even if the loan wasn't arranged properly.

Overall, I can see no reason why it would be fair or reasonable for me to direct the Lender to refund anything Mr and Mrs M paid under their loan.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 13 January 2026.

Lisa Barham
Ombudsman