

The complaint

Mr A's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

On 18 January 2016 (the 'Time of Sale'), Mr A purchased from a timeshare provider (the 'Supplier') membership of a timeshare product I shall the 'Fractional. He entered into an agreement with the Supplier to buy 900 fractional points at a cost of £14,989 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr A 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 his membership term ends.

Mr A paid for his Fractional Club membership by taking finance of £14,989 from the Lender (the 'Credit Agreement').

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 16 March 2023 (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 A's concerns as a complaint and issued its final response letter on 8 September 2023. There it said that Mr A's complaints about being party to an unfair credit relationship under Section 140A and its decision to refuse his claim under Section 75 were out of time under the Limitation Act 1980. The Lender also rejected all of Mr A's other complaints.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, thought that Mr A's complaint about being party to an unfair credit relationship had been brought too late under our rules. Our Investigator also thought that the Lender hadn't unfairly or unreasonably declined Mr A's Section 75 claim by relying on the defence available to it under the Limitation Act 1980. Finally, our Investigator also rejected the other complaints Mr A had made on their merits.

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

I considered the matter and issued a provisional decision (the 'PD') in September 2025. In my PD I first considered whether this Service had jurisdiction to consider all aspects of Mr A's complaint. I explained provisionally why I thought the Financial Ombudsman Service does not have the jurisdiction to consider Mr A's complaint about the Lender's participation in and/or perpetuation of an unfair credit relationship under Section 140A of the CCA. And I also explained why Mr A's complaint about the Lender's decision to decline his Section 75

claim for misrepresentation did fall within this Service's jurisdiction. I then went on to explain why, despite this aspect of Mr A's complaint being one this Service could consider, I was not minded to uphold it on its merits.

In respect of the merits of Mr A's complaint about the Lender's decision to decline his Section 75 claim for misrepresentation I said the following:

“Mr A's Section 75 complaint

Section 75 of the CCA operates quite differently to Section 140A and, when it applies, it can give borrowers a very different ground for complaint against their lender. Whereas, as I've explained, Section 140A imposes responsibilities on creditors in relation to the fairness of their credit relationships, Section 75 simply creates a financial liability that the creditor is bound to pay. Liability under Section 75 isn't based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by the supplier, for which Section 75 imposes on the lender a “like claim” to that which the borrower enjoys against the supplier. If the lender is notified about a valid Section 75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

In his complaint, Mr A says the Supplier made a number of misrepresentations at the Time of Sale – namely that: -

- 1. Their timeshare was an “investment” that would considerably increase in value.*
- 2. They would have a share of the property and its value would considerably increase and thus they were promised a considerable return on their investment.*
- 3. They could sell the timeshare back to the resort or easily sell it at a profit.*
- 4. They were made to believe they would have access to the holiday apartment at any time all around the year.*

When a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful attempt to advance a Section 75 claim, the act or omission that engages the Service's jurisdiction is the creditor's refusal to accept and pay the debtor's claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

As a result, the six and three year time limit (under DISP 2.8.2 (2) R) to complain about an unsuccessful attempt to initiate a Section 75 claim doesn't usually start until the respondent firm answers and refuses the claim.

In this case, as the Lender refused to accept and pay Mr A's claim on 8 September 2023, the primary time limit (of 6 years) only started at that time. And as this complaint about the Lender's handling of that claim was referred to the Financial Ombudsman Service on 6 March 2024, it was made in time for the purpose of the rules on our jurisdiction.

However, like our Investigator, I don't think it would be fair or reasonable to uphold this complaint for reasons relating to Mr A's Section 75 claim. 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 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 A'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 essentially mirrors the claim the consumer 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 A entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says he relied on. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr A first notified the Lender of his Section 75 claim on 8 September 2023. And as more than six years had passed between Time of Sale and when they first put their claim to the Lender, I don’t think it was unfair or unreasonable of it to reject Mr A’s concerns about the Supplier’s alleged misrepresentations.

Mr A’s Other Complaints

Mr A has also complained about the Lender’s right to enforce the Credit Agreement because of the status of the credit broker. However, I’ve seen no documentary evidence that would allow me to reasonably find that the credit broker wasn’t authorised to arrange the Credit Agreement, so it follows that I can’t reasonably uphold this complaint.

Mr A has also complained that the Supplier’s sales company had gone into liquidation meaning that he would not be able to recover any amount awarded to him by a Spanish court. Under the CCA, this Service is confined to investigating matters relating to misrepresentation, breach of contract and/or allegations of an unfair relationship. It is not clear what type of claim Mr A is trying to make here but I can’t see that this allegation potentially falls under any claim he might have for misrepresentation, breach of contract and/or an unfair relationship that the Lender could be held liable for.”

The Lender responded to my PD and accepted it.

The PR responded on behalf of Mr A to acknowledge receipt of my PD but made no further substantive comments.

The complaint was returned to me to finalise my decision and I have now (separately) issued my final decision in respect of the Financial Ombudsman Service’s jurisdiction to consider Mr A’s complaint. As I said in my jurisdiction decision, the merits of Mr A’s complaint about the Lender’s decision to decline his Section 75 claim for misrepresentation will be referred for a final decision which is the purpose of this 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.

As the Lender has replied to state it accepts my provisional decision and as the PR has provided no further comments for me to consider here, it follows that my provisional findings in respect of the merits of Mr A's complaint about the Lender's decision to decline his Section 75 claim for misrepresentation remain unchanged and now form part of this, my final decision. That means, as I set out provisionally, I am not persuaded that the Lender unfairly declined Mr A's Section 75 claim on the grounds that it was effectively time-barred by the Limitation Act 1980.

Nor (also for the reasons I gave provisionally) am I minded to uphold Mr A's complaint about the Lender's right to enforce the Credit Agreement because of the status of the credit broker. And insofar as Mr A has complained about the Supplier's sales company going into liquidation (thereby meaning he would not be able to recover any amount awarded to him by a Spanish court) I reiterate that under the CCA, this Service is confined to investigating matters relating to misrepresentation, breach of contract and/or allegations of an unfair relationship. It is not clear what type of claim Mr A is trying to make here but I can't see that this allegation potentially falls under any claim he might have for misrepresentation, breach of contract and/or an unfair relationship that the Lender could be held liable for.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 February 2026.

Claire Woollerson
Ombudsman