

The complaint

Mr and Mrs G'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

Mr and Mrs G purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 21 October 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 15,000 fractional points at a cost of £8,548 (the 'Purchase Agreement') after trading in 15,000 European Collection points.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs G 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 G paid for their Fractional Club membership by taking finance of £8,548 from the Lender (the 'Credit Agreement').

Mr and Mrs G – using a professional representative (the 'PR') – wrote to the Lender on 27 October 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 G's concerns as a complaint, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said that we could only consider the complaint about the Lender deciding against paying a claim under Section 75 of the CCA – since the remainder of the complaint¹ was made too late. But that the complaint should not be upheld.

The PR has indicated it accepts the Investigator's assessment in regards our jurisdiction but disagreed with their assessment of the Section 75 complaint. As such, this decision is on the merits of the Section 75 complaint only.

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.

¹ The complaint included concerns about undisclosed commission, but the PR has accepted our approach to that, and that in this case it would not lead to the complaint being upheld. Here, the commission paid was about 8% of the amount borrowed and 8.7% of the charge for credit.

Having done so, I've decided not to uphold this complaint – for the same reasons given by the Investigator.

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 G's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr and Mrs G 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 G entered into the purchase of his 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 G first notified the Lender of his Section 75 claim on 27 October 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 G's concerns about the Supplier's alleged misrepresentations.

I have considered Section 32 of the LA, but I do not think it gave Mr and Mrs G more time to make their Section 75 claim.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 2 March 2026.

Phillip Lai-Fang
Ombudsman