

## The complaint

Mr and Mrs F'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').
- (2) deciding against paying a claim under Section 75 of the CCA.
- (3) lending to them when they couldn't afford it<sup>1</sup>.

## What happened

Mr and Mrs F purchased membership of a timeshare (the 'Balkan Jewel Fractional Owners Club') from a timeshare provider (the 'Supplier') on 10 August 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 16,500 fractional points at a cost of £14,605 (the 'Purchase Agreement') after trading in their existing trial membership.

Mr and Mrs F paid for their Balkan Jewel Fractional Owners Club membership by taking finance of £18,245.64 from the Lender (the 'Credit Agreement'). The additional amount was used to consolidate the loan used to pay for trial membership.

Mr and Mrs F paid off the loan and the credit relationship under the Credit Agreement ended on 26 November 2015.

Mr and Mrs F – using a professional representative (the 'PR') – wrote to the Lender on 13 May 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. 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 rejected Mr and Mrs O's concerns on 27 June 2022.

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 the complaints about an unfair relationship and irresponsible lending (points 1 and 3 above) were made too late under our rules and we could not consider it. While the complaint about the Section 75 claim (point 2 above) was within our jurisdiction, they did not think this complaint should succeed.

The PR accepted the Investigator's view on jurisdiction but asked for a decision on the Section 75 Claim. As such this final decision deal only with that complaint.

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<sup>1</sup> Mr and Mrs O also expressed concern about undisclosed commission, but the PR has now said it accepts our approach to that, and that it would not result in this complaint being upheld for reasons related to the commission arrangements between the Lender and Supplier. In this case the commission was a maximum of 8% of the amount borrowed.

## **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.

I've decided not to uphold this complaint – for the same reasons set out 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 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 F's Section 75 claim for misrepresentation was time-barred under the Limitation Act 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 F 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 Limitation Act).

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 Limitation Act. 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 F entered 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 F first notified the Lender of his Section 75 claim on 13 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 F's concerns about the Supplier's alleged misrepresentations.

I've considered Section 32 of the Limitation Act, but I do not think this gave Mr and Mrs O more time to make their 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 F and Mr F to accept or reject my decision before 3 March 2026.

Phillip Lai-Fang  
**Ombudsman**