

The complaint

Mr and Mrs H'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 H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 18 September 2013 (the 'Time of Sale'). Mr and Mrs H entered into an agreement with the Supplier to buy 11,000 fractional points at a cost of £8,480 (the 'Purchase Agreement').

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

Mr and Mrs H paid for their Fractional Club membership by paying a deposit and taking finance for the remaining £6,784 from the Lender (the 'Credit Agreement').

Mr and Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 13 September 2022 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the 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 complaint was ultimately 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 ought to have accepted a claim made under Section 75 of the CCA on its merits. The Investigator felt the complaint that there was an unfair credit relationship under Section 140A, and that the lending was unaffordable for Mr and Mrs H, hadn't been made in time as per the rules this service must follow and that it couldn't be considered.

Mr and Mrs H initially disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. Since then, the PR has accepted the Investigator's findings on this service's remit to consider the complaint, and seeks only to challenge the Investigator's findings on its remaining merits.

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, I conclude that the complaint should not be upheld. I'll explain why.

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 H'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 H 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 H 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 H first notified the Lender of their Section 75 claim on 13 September 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 not to accept Mr and Mrs H's concerns about the Supplier's alleged misrepresentations.

The PR has argued that the limitation period can be extended in cases of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances. However, I don't think the PR's arguments assist the claim because, for example, the PR's allegation of concealment of the product being an investment is inconsistent with another of the PR's allegations that the Supplier promoted the product to Mr and Mrs H as an investment.

My final decision

For these reasons, my final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 6 March 2026.

Nimish Patel
Ombudsman