

The complaint

Mr and Mrs B'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) Lending irresponsibly.
- (3) Deciding against paying a claim under Section 75 of the CCA.

What happened

Mr and Mrs B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 7 June 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 7,000 Fractional Points at a cost of £4,200 (the 'Purchase Agreement') after trading in 7,000 of their existing European Collection Points.

Mr and Mrs B paid for their Fractional Club membership by taking finance of £4,200 from the Lender (the 'Credit Agreement').

Mr and Mrs B paid of the Credit Agreement, and the relevant credit relationship with the Lender ended, on 10 January 2015.

Mr and Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 27 March 2023 (the 'Letter of Complaint') to raise several 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 rejected Mr and Mrs B's concerns. They then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said complaint points (1) and (2) were outside of our jurisdiction due to be referred too late, and point (3) should not be upheld.

Mr and Mrs B disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. The PR has since confirmed that it accepts the Investigator's assessment with regards our jurisdiction, so only requires a decision on the merits of point (3)¹.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

¹ The PR also raised concerns about Fractional Club membership being an Unregulated Collective Investment Scheme and about undisclosed commission (in this case 8% of the amount borrowed) but has since accepted that these concerns would not lead to the complaint being upheld.

reasonable in the circumstances of this complaint.

Having done so, I have decided not to uphold this complaint.

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

Generally, 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 investigate 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 B'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 B 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 B 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 B first notified the Lender of his Section 75 claim on 27 March 2023. 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 B's concerns about the Supplier's alleged misrepresentations.

I have considered Sections 14 and 32 of the Limitation Act, but do not think this gave Mr and Mrs B additional time to make the 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 B and Mr B to accept or reject my decision before 13 March 2026.

Phillip Lai-Fang
Ombudsman