

The complaint

Mr and Mrs K complain that Shawbrook Bank Limited acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 (as amended) (the 'CCA').

Background to the complaint

Mr and Mrs K purchased membership of a timeshare that I'll call the 'Fractional Club' on 4 August 2016 (the 'Time of Sale').

To help pay for the membership, Mr and Mrs K took out a loan of £15,930 with Shawbrook. The loan was repaid on 23 December 2016.

Through a professional representative ('PR1'), Mr and Mrs K complained to Shawbrook on 27 April 2023 that the Supplier had misrepresented the Fractional Club membership in a number of ways, giving them a claim against Shawbrook under Section 75 of the CCA.

Mr and Mrs K also complained that the credit relationship between them and Shawbrook was unfair to them under Section 140A of the CCA. But by way of a separate decision, I have explained that we are unable to consider that aspect of the complaint as it has been raised outside of the time limits that apply under our rules.

Shawbrook dealt with Mr and Mrs K's concerns as a complaint and issued its final response letter on 8 September 2023. It said, in short, that Mr and Mrs K had raised their Section 75 claim outside of the six-year limit imposed by the Limitation Act 1980 and therefore found there to be no valid claim.

Assisted by a different professional representative ('PR2'), Mr and Mrs K asked us to look into the matter. The complaint was assessed by an Investigator who, having considered the information on file, did not recommend that it be upheld. She thought that the defence available to Shawbrook under the Limitation Act meant that it hadn't done anything wrong in declining Mr and Mrs K's claim.

As Mr and Mrs K didn't accept our Investigator's view, the matter was passed to me to decide.

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've reached the same conclusion as our Investigator and for much the same reasons. I'll explain why.

As both sides may already know, a claim against Shawbrook under Section 75 essentially mirrors the claim Mr and Mrs K could make against the Supplier. Certain conditions must be

met if this protection is engaged – which are set out in the CCA. Shawbrook does not dispute that the relevant conditions are met in this complaint, and I'm satisfied that they are.

There are, though, certain time limits that apply – and I think these mean Mr and Mrs K's claim would've been time-barred. The Limitation Act 1980 sets out limitation periods, or time limits, for bringing various types of legal claim. For a claim based on contract, it's not generally possible to start court action more than six years after the cause of action arose. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the time limit would typically be six years from the date the claimant suffers damage as a result of the misrepresentation. For example, entering into a contract – and incurring liabilities – when they would otherwise not have done.

Mr and Mrs K's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, they wouldn't have purchased the Fractional Club membership (and, therefore, entered into the related loan with Shawbrook). So it is the date on which they entered into those agreements that their cause of action arose, meaning they had six years from that date within which to bring this claim.

Mr and Mrs K purchased the membership on 4 August 2016. They raised their Section 75 claim on 27 April 2023 – more than six years later. So I think Shawbrook had a complete defence to the claim about misrepresentation, having been raised outside of the six-year statutory limit.

I have, however, noted that within the Letter of Complaint, PR1 said Mr and Mrs K could not access the holidays that the Supplier led them to believe the membership would entitle them to. And while that was framed, in the Letter of Complaint, as an alleged misrepresentation, to my mind that is an alleged breach of contract – that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. A cause of action for such a claim would only have arisen when any such breach occurred.

Neither Mr and Mrs K nor their representatives have given any details as to when such a breach occurred. But even if this was within the six-year period prior to the claim being made, which I find unlikely in the circumstances, I do not think it would have succeeded. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork Mr and Mrs K signed stated that the availability of holidays was subject to demand and that the selection of available resorts would be amended from time to time. Moreover, Mr and Mrs K have not set out in any detail beyond PR1's vague allegation how the holiday options available to them fell short of their legitimate expectations. So I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement.

Given all of this, I don't think Shawbrook acted unfairly or unreasonably in declining Mr and Mrs K's claim.

Lastly, I have also noted PR1's argument that Mr and Mrs K's loan was arranged by an unauthorised credit broker – the upshot of which is to suggest that Shawbrook wasn't permitted to enforce its rights under the credit agreement. However, it looks to me like Mr and Mrs K knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the loan was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see that this led to Mr and Mrs K suffering a financial loss. And with that being the case, I'm not persuaded that it would be fair or

reasonable to tell Shawbrook to compensate them, even if the loan wasn't arranged properly.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 18 March 2026.

Ben Jennings
Ombudsman