

The complaint

Mr and Mrs G complain that Shawbrook Bank Limited ('Shawbrook') is liable to pay them compensation following a complaint made about a timeshare bought using credit provided by Shawbrook.

What happened

Mr and Mrs G were existing members of a timeshare with a timeshare provider (the 'Supplier') called the European Collection, holding 11,000 points.

On 8 July 2013 (the 'Time of Sale') Mr and Mrs G converted their European Collection points into a new type of timeshare (the 'Fractional Club') from the Supplier. This conversion to 11,000 fractional points cost £7,480 (the 'Purchase Agreement').

Mr and Mrs G paid for their Fractional Club membership by taking out a loan from Shawbrook for £7,480 (the 'Credit Agreement') in their joint names. The balance of this loan was cleared by Mr and Mrs G on 5 June 2015.

On 26 October 2021, using a professional representative (the 'PR'), Mr and Mrs G wrote to Shawbrook (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against Shawbrook under Section 75 of the CCA, which Shawbrook failed to accept and pay.
2. Shawbrook being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. A breach of fiduciary duty by Shawbrook, as the payment of commission by it to the Supplier was not disclosed to Mr and Mrs G.

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

Mr and Mrs G say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

- Told them that Fractional Club membership involved investing in a fraction of a property which would be sold on a set date in the future, when that was not true.
- Told them that they would receive the purchase price back and, in all likelihood, a profit on the sale, when this was not true.
- Told them that the fractional points would offer better availability at exclusive resorts and a higher standard of accommodation, which was not true.

Mr and Mrs G say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against Shawbrook, who, with the Supplier, is jointly and severally liable to Mr and Mrs G.

(2) Section 140A of the CCA: Shawbrook's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr and Mrs G say that the credit relationship between them and Shawbrook was unfair to them under Section 140A of the CCA. In summary, they include the following:

- They were pressured into purchasing Fractional Club membership and into taking the Credit Agreement by the Supplier.
- The decision to lend was irresponsible because Shawbrook didn't carry out the right creditworthiness assessment, and no alternative finance options were discussed.
- The Supplier failed to provide sufficient information in relation to the Fractional Club's ongoing costs, including the potential increase in maintenance fees, and failed to give Mr and Mrs G sufficient time to read the Purchase and Credit Agreements.

(3) Shawbrook's breach of its fiduciary duty

Mr and Mrs G say that it was not disclosed to them that Shawbrook would pay commission to the Supplier as a result of it brokering the Credit Agreement, and this was a breach of Shawbrook's fiduciary duty.

On 1 November 2011 Shawbrook sent its final response to the complaint. It said Mr and Mrs G had made their claims more than six years after the event being complained about, so it had a defence under the Limitation Act 1980 (the 'LA'). And it said that for credit agreements arranged before 1 April 2014 there was no obligation on the credit broker to notify potential customers that the broker was entitled to receive a commission in respect of the credit brokered.

The PR, on Mr and Mrs G's behalf, referred their complaint to this Service where it was considered by an Investigator. But having thought about what had happened, the Investigator didn't think Shawbrook needed to do anything further. He thought that Shawbrook had a defence to their claims under the LA.

Shawbrook added nothing further following the Investigator's view, but the PR responded and asked for the complaint to be considered afresh by an Ombudsman.

Mr and Mrs G's complaint was assessed again by a second Investigator. And having done so, he thought Mr and Mrs G's complaint of an unfair credit relationship with Shawbrook under Section 140A of the CCA was not in the jurisdiction of the Financial Ombudsman Service. He thought this because Mr and Mrs G had made their complaint more than six years after their credit relationship with Shawbrook had ended, and they ought reasonably to have been aware they had cause to complain before they did. And he couldn't see anything to suggest this delay was caused by exceptional circumstances.

Mr and Mrs G did not respond, but as they had already asked for their complaint to be assessed by an Ombudsman, it has been passed to me to consider.

Having considered everything that had been submitted, I set out in a separate decision that Mr and Mrs G's complaint of an unfair credit relationship with Shawbrook under Section 140A of the CCA had been made too late. I thought that they had made the complaint more than six years after the event they were complaining about, and more than three years after they were aware, or ought reasonably to have been aware they had cause to complain, and there were no exceptional circumstances to take into account when considering the delay.

The provisional decision (the 'PD')

It was not in dispute that our Service had jurisdiction to consider Mr and Mrs G's complaints about Shawbrook's handling of their claim under Section 75 of the CCA, along with their complaint about Shawbrook's alleged breach of its fiduciary duty, so I considered the merits of those complaints, and sent both parties my initial thoughts in a PD. I said:

"Mr and Mrs G's claim of misrepresentation by the Supplier"

As set out above, Mr and Mrs G allege that the Supplier made a number of misrepresentations at the Time of Sale, and they were induced into their purchase of the Fractional Club membership due to these misrepresentations. As such, they made a claim to Shawbrook under Section 75 of the CCA, which it rejected. Mr and Mrs G's complaint to this Service is about how Shawbrook handled their claim.

The LA imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we'd usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier. The limitation period to make such a claim against Shawbrook for alleged misrepresentations by the Supplier expires six years from the date on which Mr and Mrs G had everything they needed to make such a claim.

As the Letter of Complaint to the Lender makes clear, Mr and Mrs G entered into the purchase of the timeshare on 8 July 2013 based on the alleged misrepresentations of the Supplier, which they say they relied on. And as the credit arrangement from Shawbrook was used to help finance the purchase, it was when Mr and Mrs G entered into the Credit Agreement that they suffered a loss – which means it was at that time that they had everything they needed to make a claim.

Mr and Mrs G first notified Shawbrook of their claim for alleged misrepresentations by the Supplier on 26 October 2021. As that was more than 6 years after they entered into the Credit Agreement and related timeshare agreement, I don't think it was unfair or unreasonable of Shawbrook to reject Mr and Mrs G's concerns about the Supplier's alleged misrepresentations.

As such, given the facts and circumstances of this complaint, I don't think there's anything more that the Lender needs to do to put things right in respect of Mr and Mrs G's Section 75 claim.

Mr and Mrs G's complaint of a breach of fiduciary duty

As set out above, one of Mr and Mrs G's other concerns about the sale of Fractional Club membership relates to an alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. They have said the non-disclosure of this alleged commission payment was a breach of Shawbrook's fiduciary duty.

The Court of Appeal's recent judgment in Johnson and Wrench -v- FirstRand Bank, and Hopcroft -v- Close Brothers [2024] EWCA Civ 1282 ('Johnson, Wrench and Hopcroft') sought to clarify the law on secret and partially disclosed commission – albeit in the context of car dealers acting as credit brokers. In my view, the Court of Appeal's judgment sets out principles which appear capable of applying to credit brokers other than car dealer-credit

brokers. But as it was recently appealed to the Supreme Court, whose judgment is still pending, I don't intend on finalising my thoughts on this complaint until it is handed down and its implications on this complaint, if there are any, can be considered.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and I see no other reason why it would be fair or reasonable to direct the Lender to compensate them in this regard.

But, as I've already suggested, the Supreme Court's pending judgment on Johnson, Wrench and Hopcroft may prove important to this complaint. And with that being the case, it is necessary to wait and consider the possible implications of that judgment before finalising my thoughts on the merits of this complaint."

Further correspondence

Having considered the remaining complaint regarding the allegation of a breach of fiduciary duty, I wrote to the PR and said the following:

"Having considered the matter further, I remain satisfied that the complaint relating to their Section 75 CCA claim ought not to be upheld for the reasons set out in the PD. But I am now in a position to give my initial thoughts on the remaining complaint relating to the breach of fiduciary duty.

The Supplier's role as a credit broker was not a separate service (as it was in Hurstanger for instance) and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs [G] but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement.

As such, and taking into account the recent Supreme Court ruling in [Johnson, Wrench and Hopcraft] I do not think the Supplier, as the credit broker in this instance, had a fiduciary duty to Mr and Mrs [G].

For this reason, I currently do not think this part of Mr and Mrs [G]'s complaint should be upheld either."

Neither party said anything in response to either the PD or the further correspondence outlined above. As the deadline for responses has now passed, the matter has come back to me for a final decision.

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.

As neither party has submitted any new evidence or arguments, or disagreed with what I have said, I see no reason to depart from my provisional findings as set out in the PD and in the further correspondence as set out above. I think this having reconsidered everything afresh.

My final decision

I do not uphold Mr and Mrs G's complaint against Shawbrook Bank Limited.

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 13 October 2025.

Chris Riggs
Ombudsman