

The complaint

Mr and Mrs W complain that Shawbrook Bank Limited ('Shawbrook') is liable to pay them compensation under the Consumer Credit Act 1974 (as amended) (the 'CCA') following a complaint made about a timeshare bought using credit it provided.

What happened

On 8 August 2013 (the 'Time of Sale') Mr and Mrs W bought a timeshare membership from a timeshare provider (the 'Supplier') for £7,425. This was bought with the assistance of a loan provided by Shawbrook for £5,000 taken out in Mr and Mrs W's joint names. The outstanding balance of this loan was cleared on 13 September 2015.

On 16 December 2021, using a professional representative (the 'PR'), Mr and Mrs W 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.
2. A breach of contract by the Supplier giving them a claim against Shawbrook under Section 75 of the CCA.
3. 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.
4. Shawbrook paying undisclosed commission to the Supplier as a result of it arranging the Credit Agreement.

As these complaints haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

Shawbrook sent its final response letter to the complaint on 13 June 2022 rejecting it. It said that Mr and Mrs W's complaint had been made too late.

Unhappy with this outcome the PR, on Mr and Mrs W's behalf, asked this Service to consider their complaint. It was initially assessed by an Investigator, who thought Mr and Mrs W had made their complaint too late. The Investigator thought that under the Limitation Act 1980 they had six years from the event complained about to make their claim.

Mr and Mrs W did not agree, provided further submissions, and asked for the matter to be looked at by an Ombudsman.

The Investigator then reviewed her original findings, and although she still thought the complaint had been made too late, she revised her reasons for this. She said:

"The Financial Ombudsman Service isn't free to consider every complaint. It's bound by rules in the Financial Conduct Authority's Handbook ('DISP') that determine what the Service can and can't look at. And those rules include time limits that I must consider.

Section 2 of the Rules set out in DISP covers whether Mr and Mrs [W]'s complaints were made in time for the purposes of allowing the Financial Ombudsman Service to consider them. And it's DISP 2.8.2 R that's most relevant here. It says:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

[...]

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; [...]

unless:

[...]

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R

[...] was as a result of exceptional circumstances; or [...]

So, I've considered whether Mr and Mrs [W]'s complaints were made in time, starting with their complaint about being party to a credit relationship that was unfair to them, and then moving onto their complaint about the Business' decision to refuse their Section 75 claim.

Mr and Mrs [W]'s Unfair Credit Relationship Complaint

Part 1 – Six Years

The credit agreement Mr and Mrs [W] entered into with the Business and, in turn, their relationship with the Business ended on 13 September 2015. But the complaint about that credit relationship was first made to the Business on 16 December 2021. So, it's clear Mr and Mrs [W] complained more than six years after the event being complained about.

Part 2 – Three Years

DISP 2.8.2 R (2)(b) could provide Mr and Mrs [W] with more time to complain about the event in question if they did so within three years of when they became aware, or ought reasonably to have become aware, they had cause to complain.

So, that's what I've thought about here. When doing that, I've considered whether and when Mr and Mrs [W] were aware or ought reasonably to have been aware that:

1. There was a problem with the lending or with the Timeshare.
2. The problem(s) caused a loss.
3. Another party's actions (or its failure to act) may have caused the loss.
4. The other party may have been the Business.

I've already set out above the reasons Mr and Mrs [W] gave for their complaint – so I won't repeat them here. But I think it wasn't long after the Time of Sale that Mr and Mrs [W] knew

there were significant problems with the Timeshare causing them financial losses because they say, for instance, that they were:

1. struggling to book the holidays they wanted despite paying to be able to do so;
2. not getting accommodation of the standard they thought they were paying for;
3. having to meet increases in annual management charges they weren't warned about by the Supplier at the Time of Sale.

I also think Mr and Mrs [W] knew or ought reasonably to have known at that time that another party was responsible for the losses that followed. One of those parties was the Supplier. But they also knew that the Business had financed the purchase of the Timeshare and that the Supplier had brokered the finance.

Given the size of the loan Mr and Mrs [W] found themselves with because of the Timeshare and the long-term financial consequences of both of those commitments for them, I think it's reasonable to have expected them to carry out enquiries when their concerns about their loan and the Timeshare first arose in order to establish what their rights were. And had Mr and Mrs [W] carried out such enquiries, I think they would have led them to discover that the Business, as the lender that financed the transaction, may well have borne responsibility for the problems they say they had with the Timeshare.

So, I think Mr and Mrs [W] ought reasonably to have been aware they had cause to complain about the Business holding them in an unfair credit relationship within the first few years of purchasing the Timeshare and more than three years before they first complained.

And for that reason, I'm not persuaded that the three-year part of the relevant time limit extends the six-year part of it for the purpose of Mr and Mrs [W]'s complaint about an unfair credit relationship under Section 140A of the CCA. That means they had to complain about the Business' role in such a relationship by 8 August 2019. But as they didn't do that until 16 December 2021, their complaint was too late under the rules I have to apply.

Exceptional Circumstances

I can look at the merits of a complaint referred to the Financial Ombudsman Service after the expiry of the relevant time limit if there are exceptional circumstances that justify why it was late. But I can't currently see that there are any such circumstances that apply to Mr and Mrs [W]' complaint about an unfair credit relationship with the Business.

Mr and Mrs [W]'s Section 75 Complaint involving Misrepresentation

The 6&3 year time limit (under DISP 2.8.2 (2) R) to complain about an unsuccessful attempt to initiate a Section 75 claim didn't start until the Business answered and refused the claim. So, given the timing of Mr and Mrs [W]'s claim and the Business' response to it, I think this part of their complaint was made in time under that time limit.

However, I don't think it would be fair or reasonable to uphold this complaint for reasons relating to their Section 75 claim if it wouldn't be fair to expect a creditor to look into such a claim so long after the liability arose and after a limitation defence (under the Limitation Act 1980 (the 'LA')) would be available in court. So, I have considered whether their Section 75 claim was made out of time under the LA before they put it to the Business.

Under the LA, a claim, like Mr and Mrs [W]'s, had to be made within 6 years of when they had everything needed to make such a claim. And as I think they had everything they needed at the Time of Sale (which was more than 6 years before Mr and Mrs [W] made their

claim), I don't think it was unfair or unreasonable of the Business to refuse their claim given its timing.

Mr and Mrs [W]'s Lending Complaint

I've already explained why I think Mr and Mrs [W]'s complaint about the Business' participation in an unfair credit relationship under Section 140A was likely to have been made out of time under our 6&3 year time limit. Lending money under a regulated credit agreement of the kind in question was an activity covered directly by our jurisdiction at the Time of Sale. But I think a separate complaint about the Business' decision to lend to them was also made out of under our 6&3 year time limit.

The complaint was raised with us on 23 March 2022 and a complaint was made to the business on 16 December 2021.

The finance agreement was signed on 8 August 2013 and the business say the loan agreement ended in September 2015.

So, this means the complaint about no checks being carried out before the lending was given - needed to have been raised with us or the business within six years from 8 August 2013 so by 8 August 2019. But the complaint was raised more than two years after the six-year deadline on 16 December 2021. So, I think the lending complaint is out of time regarding the six-year time limit.

I then need to consider if the three-year time limit gives Mr and Mrs [W] longer and this is when they'd have reasonably become aware of the events they wanted to complain about.

But as far as I can see on this occasion it doesn't.

In the claim letter Mr and Mrs [W] say they don't remember any lending creditworthiness checks being carried out at the time of sale and that no income and expenditure information was requested – but I think this would've flagged as being unusual and put them on notice that something wasn't right with the lending.

I think a reasonable person would know that some sort of affordability check would need to be carried out by a business before they lend to a consumer. And as Mr and Mrs [W] alleged none were carried out before lending. I think it would be fair to say they ought reasonably to have been aware there was a cause for complain at that point.

So I don't think the three-year time limit gives Mr and Mrs [W] more time.

I've then considered whether there are exceptional circumstances for why the complaint wasn't brought to us in time. The bar for this is high and generally means a customer was physically incapable of raising the complaint or was prevented from doing so. But I've not seen any reason that I'd consider to be exceptional reasons for me to consider the lending complaint, out of time.

So, I think the lending complaint could've reached us in time. We have a number of ways to raise a complaint with our service which includes telephone, letter, and by completing our complaint form online. And as Mr and Mrs [W] were able to get help about their complaint, I also think they could've found out about our service as well.

Conclusion

I have thought about everything Mr and Mrs [W] said and provided throughout this complaint. But I can't see anything else that makes me think that they were likely to have had more than six years to make their CCA claims under the relevant provisions of the LA.

And as I see no other reason to now ask the Business to do anything to put things right, I don't think their complaint should be upheld. I realise this will be disappointing. But I hope my explanation helps them understand why I've come to this view.

For the reasons set out above, I don't currently think the Financial Ombudsman Service has the jurisdiction to consider Mr and Mrs [W]'s complaint about the Business' participation in and/or perpetuation of an unfair credit relationship under Section 140A of the CCA.

And insofar as their complaint about the Business' decision to decline their Section 75 claim for misrepresentation is concerned, as things stand, while I think that part of this complaint is in jurisdiction, I'm not persuaded to uphold it on that ground."

Mr and Mrs W did not reply to this second view. As they had previously asked for their complaint to be assessed by an Ombudsman, it came to me.

The provisional decision

Having considered everything, I agreed with the outcome reached by the Investigator for the reasons they had set out. I set out in a provisional decision that I didn't think that Mr and Mrs W had made their complaints about the unfair relationship with Shawbrook under Section 140A of the CCA, and that Shawbrook had lent to them irresponsibly, had been made in time under the rules this Service must follow. This jurisdiction issue has now been dealt with in a separate decision.

As far as Mr and Mrs W's complaint about Shawbrook's handling of their claims under Section 75 of the CCA, like the Investigator, I thought Shawbrook would have had a defence to them under the LA. So, I said I didn't think it needed to do anything in this regard.

I then addressed Mr and Mrs W's complaint that undisclosed commission had been paid by Shawbrook to the Supplier for arranging the Credit Agreement. I said:

"Mr and Mrs W's commission complaint

Mr and Mrs W's complaint that Shawbrook made an undisclosed commission payment to the Supplier for arranging the credit agreement has not yet been considered by this Service.

While I've found that the complaint that Mr and Mrs W's credit relationship with the Lender was unfair isn't in the jurisdiction of the Financial Ombudsman Service, two of the grounds of complaint relating to the commission arrangements between the Lender and the Supplier also constitute separate and freestanding complaints. So, for completeness, I've considered those grounds on that basis, and am setting out my initial thoughts on this here.

The first ground relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale¹ insofar as it was relevant to disclosing the commission arrangements between them, and the second relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr and Mrs W (i.e., secretly).

¹ The Office of Fair Trading guidance/CONC

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But regulatory breaches do not automatically mean a remedy is due. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to require the Lender to pay compensation to Mr and Mrs W.

Based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service 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 W 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 and thus a fiduciary duty.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale, so I cannot see that the non-disclosure of this would have made any difference to Mr and Mrs W's decision to take the Credit Agreement.

So, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs W a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mr and Mrs W would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time."

Both sides responded to my provisional decision but neither had anything to add. As the deadline for further 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.

Having reconsidered everything afresh, and because neither side has said anything in response to my provisional decision, I see no reason to depart from my provisional findings set out above. So, I formally adopt them into my final decision.

Shawbrook does not need to do anything further in relation to Mr and Mrs W's claim under Section 75 of the CCA, and I see no other reason why it would be fair and reasonable for it to compensate Mr and Mrs W.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 13 March 2026.

Chris Riggs
Ombudsman