

## **The complaint**

Mr and Mrs S'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 claims under Section 75 of the CCA.

## **What happened**

Mr and Mrs S were members of a timeshare provider (the 'Supplier') – having purchased several products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 31 August 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,230 fractional points at a cost of £5,405 (the 'Purchase Agreement') after trading in their existing timeshare membership.

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

Mr and Mrs S paid for their Fractional Club membership by taking finance of £5,405 from the Lender (the 'Credit Agreement'). Mr and Mrs S paid off the loan and their credit relationship with the Lender ended on 23 February 2015.

Mr and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 15 September 2021 (the 'Letter of Complaint') to raise various concerns. Since then, the PR has raised some further matters it says are relevant to this 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 Lender dealt with Mr and Mrs S's concerns as a complaint and issued its final response letter on 6 October 2021, rejecting it on every ground.

The complaint was then 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 hadn't properly considered a claim made under Section 75 of the CCA on its merits. The Investigator felt that the complaint that there was an unfair credit relationship under Section 140A hadn't been made in time as per the rules that this service must follow and that it couldn't be considered.

Mr and Mrs S disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued a provisional decision that explained:

1. Mr and Mrs S's complaints about a credit relationship with the Lender that was unfair to them and about irresponsible lending are not within our jurisdiction because they weren't made within the relevant time limits.

2. The rest of Mr and Mrs S's complaint – about the Lender's decision to reject their concerns about the Supplier's alleged misrepresentations and breaches of contract under Section 75 of the CCA – was made in time. But for the reasons I give below, I don't think these aspects of the complaint should succeed.

The Lender responded to say it agreed with my provisional decision.

The PR responded on behalf of Mr and Mrs S to say it disagreed. In relation to our jurisdiction, it said that the three-year part of the time limit for the unfair relationship complaint only started when Mr and Mrs S were told by the PR that Fractional Club membership being sold as an investment was a breach of the Timeshare Regulations, and the complaint was made within three years of this.

In relation to the merits of the complaint about the Lender's decision to reject Mr and Mrs S's concerns about the Supplier's alleged misrepresentations and breaches of contract under Section 75 of the CCA, the PR said, in summary, that:

- Section 32 of the Limitation Act 1980 provides more time to make the claim because the Supplier concealed that Fractional Club's "*asset-backed nature was false*" after industry investigations and media reports surfaced from 2019 onwards. So, the claim was made in time.
- The Lender breached CONC 7.3.4 R<sup>1</sup>, which the PR said meant the Lender had a "*duty to treat customers fairly and consider evidence of fraud or misrepresentation*".
- The provisional decision failed to apply "*FOS technical guidance on linked lender liability, which requires that lenders make reasonable enquiries rather than summarily dismissing such claims*".

I then issued a jurisdiction decision confirming that I could only consider the complaint about the Supplier's alleged misrepresentations and breaches of contract under Section 75 of the CCA.

I later issued an email explaining that although the PR had mentioned undisclosed commission paid to the Supplier by the Lender, and those concerns could be a complaint outside of Mr and Mrs S's unfair relationship complaint (which I cannot consider), such a complaint would not succeed. The PR did not respond to this by the deadline I gave.

So, this final decision deals with the merits of the complaint about the Lender's decision to reject their concerns about the Supplier's alleged misrepresentations and breaches of contract under Section 75 of the CCA – being the only part of Mr and Mrs S's complaint that I can consider and that is still in dispute.

### **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.

For the same reasons given in my provisional decision, which I repeat below, I do not uphold this complaint.

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

<sup>1</sup> Financial Conduct Authority Rule CONC 7.3.4R of the Consumer Credit (CONC) Sourcebook.

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 S'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 S 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 S entered into 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 S first notified the Lender of their Section 75 claim on 15 September 2021. 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 S's concerns about the Supplier's alleged misrepresentations.

### **Section 75 of the CCA: the Supplier's Breach of Contract**

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Section 75 of the CCA also provides protection where there is a breach of contract by the Supplier. This means if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr and Mrs S say that they could not holiday where and when they wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays. Some of the sales paperwork likely to have been signed by Mr and Mrs S states that the availability of holidays was/is subject to demand. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs S any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

## **The PR's response to my provisional decision on the Section 75 claim**

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I have considered the points made by the PR in response to my provisional decision.

The PR says that the Supplier concealed that *"the timeshare's alleged 'asset-backed' nature was false"*. But, as mentioned above, Mr and Mrs S's Fractional Club membership was asset-backed in that it was linked to the Allocated Property. That seems to have been made clear at the Time of Sale – both during the presentation Mr and Mrs S are likely to have been given, and in the documents provided to them at the time. So, I do not think this was *"false"*, as the PR alleges, nor was it concealed such that Mr and Mrs S had more time to make the claim under Section 32 of the Limitation Act.

The PR misquotes CONC 7.3.4R – which says, *"A firm must treat customers in or approaching arrears or in default with forbearance and due consideration."* This rule does not appear to be relevant to whether or not Mr and Mrs S's Section 75 claims were made in time for the purposes of the LA.

The PR refers to *"FOS technical guidance on linked lender liability."* It does not explain what specific guidance it means. But I am satisfied that I have followed our usual and longstanding approach to considering Mr and Mrs S's complaint about the Lender's decision to reject their concerns about the Supplier's alleged misrepresentations and breaches of contract under Section 75 of the CCA. And that the Lender's actions were not unreasonable.

So, I am not persuaded to change my findings from my provisional decision (as set out above).

## **Mr and Mrs S's concerns about undisclosed commission**

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I am unable to consider this matter in terms of Mr and Mrs S's allegations of the Lender being party to an unfair relationship with them under Section 140A of the Consumer Credit Act – as confirmed in my previous decision.

However, it is possible that these concerns could be considered in a broader sense – the first relating 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 S (i.e., secretly). And the second relating to the Lender's compliance with 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.

In relation to Mr and Mrs Bates's concerns about commission in this case, I think the following regulatory rules/guidance are relevant:

*The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance*

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

*The FCA's Principles*

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

#### *My findings on this part of the complaint*

I am not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs S a fiduciary duty. In the Supreme Court judgment in the cases of *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 it was ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A “disinterested duty”, as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to Mr and Mrs S. 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.

The amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr and Mrs S entered into wasn't high. At £540.50, it was only 10% of the amount borrowed and even less than that (5%) as a proportion of the charge for credit. So, had Mr and Mrs S known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs S wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, 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 S 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.

In light of this I am not persuaded that Mr and Mrs S's concerns about undisclosed commission should lead me to uphold this complaint.

#### **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 S and Mr S to accept or reject my decision before 10 January 2026.

Phillip Lai-Fang  
**Ombudsman**