

The complaint

Mr G's complaint is, in essence, that [Full Business Name] (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 a claim under Section 75 of the CCA.

What happened

Mr and Mrs G were members of a timeshare provider (the 'Supplier') – having previously purchased a product from it. 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 8 April 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 8,000 fractional points at a cost of £5,800 (the 'Purchase Agreement') after trading in 8,000 of the existing European Collection points.

Fractional Club membership was asset backed – which meant it gave Mr G 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 G paid for their Fractional Club membership by taking finance of £10,340.86 from the Lender (the 'Credit Agreement') in Mr G's name only. The additional amount was used to pay off or consolidate another loan used for a previous timeshare purchase. As Mr G took out the loan, only he can complain about it. So, I will just refer to Mr G for the remainder of this decision.

Mr G – using a professional representative (the 'PR') – wrote to the Lender on 2 November 2022 (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 didn't respond to the complaint in the time allowed, so the PR referred it to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said the following aspects of the complaint were outside of our jurisdiction because they were referred too late:

- The complaint about an unfair relationship under Section 140A of the CCA.
- A standalone complaint about irresponsible and/or unaffordable lending.

And that the remainder of the complaint was rejected on its merits, since the Section 75 claim was made too late considering the provisions of the Limitation Act 1980 (the 'LA') – which gave the Lender a defence to the claim.

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

I previously issued a jurisdiction decision confirming I can only consider the complaint about the Lender deciding against paying a claim under Section 75 of the CCA.

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 decided not to uphold this complaint – for the same reasons given by our Investigator.

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

As a rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under 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 G's Section 75 claim for misrepresentation was time-barred under the LA 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 G 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 G entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr G first notified the Lender of his Section 75 claim on 2 November 2022. 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 G's concerns about the Supplier's alleged misrepresentations.

Commission complaint

As part of the complaint, the PR mentioned concerns about the Supplier paying commission to the Lender – which could be considered a separate complaint. For completeness I have considered those concerns but find no reason to uphold the complaint (the reasons for which I previously explained the PR and it accepted).

I am not persuaded that the Supplier – when acting as credit broker – owed Mr G 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 G. 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.

I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And, based on what I've seen, 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 G but as the supplier of contractual rights that he 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 him when arranging the Credit Agreement and thus a fiduciary duty

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 Mr G to accept or reject my decision before 23 February 2026.

Phillip Lai-Fang
Ombudsman