

## **The complaint**

Mr and Mrs T 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**

Mr and Mrs T purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 30 May 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,494 fractional points at a cost of £7,442 (the 'Purchase Agreement').

Mr and Mrs T paid for their Fractional Club membership by taking finance from Shawbrook for £7,442 in their joint names (the 'Credit Agreement'). The outstanding balance of this loan was cleared by Mr and Mrs T on 14 August 2013.

On 4 January 2022, using a professional representative (the 'PR'), Mr and Mrs T 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. A breach of contract by the Supplier giving them a claim against Shawbrook under Section 75 of the CCA, which Shawbrook failed to accept and pay.
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 dealt with Mr and Mrs T's concerns as a claim, which it rejected. As a result, the PR referred their complaint to the Financial Ombudsman Service.

Upon being contacted about the complaint by this Service, Shawbrook said it would consider their complaint further, and on 22 July 2022 it issued its final response letter, rejecting it on all grounds.

Unhappy with this outcome, Mr and Mrs T asked this Service to consider their complaint, so it was assessed by an Investigator.

The Investigator thought there were parts of the complaint that this Service didn't have jurisdiction to consider, and the remaining parts ought not to be upheld.

Mr and Mrs T did not accept this and asked for an Ombudsman's decision, which is why it

was passed to me.

### **The provisional decision**

I thought that part of Mr and Mrs T's complaint, specifically that Shawbrook was party to an unfair credit relationship under Section 140A of the CCA, had been made too late, so was not in the jurisdiction of this Service, and I dealt with that issue in a separate decision.

But I thought that the merits of their other complaints, relating to how Shawbrook dealt with the claims under Section 75 of the CCA, and the complaint that there was undisclosed commission paid to the Supplier by Shawbrook, could be considered as they had been made in time under the regulator's rules. In relation to the merits of the parts of the complaint that were in this Service's jurisdiction I said:

#### *"Mr and Mrs T's claims under Section 75 of the CCA – merits*

*The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.*

*Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction, and these relevant conditions appear to have been met here.*

*However, the Limitation Act 1980 (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 would 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.*

#### *Misrepresentation*

*The limitation period to make a claim against Shawbrook for alleged misrepresentations by the Supplier expires six years from the date on which Mr and Mrs T had everything they needed to make such a claim.*

*As the letter of complaint to Shawbrook makes clear, Mr and Mrs T made their purchase of the Fractional Club membership on 30 May 2013. And Mr and Mrs T say they made this purchase based on the alleged misrepresentations of the Supplier, which they say they relied on. And as a loan from Shawbrook was used to help finance the purchase, it was when Mr and Mrs T 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.*

*So, Mr and Mrs T needed to notify Shawbrook of their claim by 30 May 2019. But Mr and Mrs T first notified Shawbrook of their claim for alleged misrepresentations by the Supplier on 4 January 2022. As that was more than six years after they entered into the Credit Agreement and related Purchase Agreement, I don't think it would have been unfair or unreasonable of Shawbrook to rely on the LA to decline the claim. As such I do not think Shawbrook needs to do anything further in relation to their claim for misrepresentation.*

### Breach of contract

*I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, Shawbrook is also liable.*

*Mr and Mrs T say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. And because they haven't said exactly when this happened, I am unable to say whether Shawbrook would likely have had a defence under the LA in a similar way to their claim for misrepresentation. However, I don't think that matters in these circumstances, as I don't think Shawbrook was unfair when it rejected the claim.*

*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 likely to have been signed by Mr and Mrs T states that the availability of holidays was/is subject to demand. Whilst I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier has 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 T 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.*

### Section 75 - 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 claims, so it does not need to do anything further in this regard.*

### Mr and Mrs T's Commission Complaint

*I note that one of Mr and Mrs T's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer-credit brokers. So, once the implications of that judgment become clear, I will finalise my findings on this aspect of their complaint."*

Having been sent the PD, neither side had anything further to add in response, so the complaint has come back to me to consider further.

### **My thoughts on the commission complaint**

Then, I wrote to both sides with my initial thoughts on the complaint that an undisclosed payment of commission had been made by the Lender to the Supplier. I said:

*"While I've found that the complaint that Mr and Mrs [T]'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 here.*

*The first ground relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale<sup>1</sup> 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 [T] (i.e., secretly).*

*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 [T].*

*In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr and Mrs [T] entered into wasn't high. At £744.20, it was only 10% of the amount borrowed and even less than that (5.46%) as a proportion of the charge for credit. So, had they 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 Mr and Mrs [T] either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs [T] 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 Mr and Mrs [T] 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 [T] 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.*

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<sup>1</sup> The Office of Fair Trading guidance

*So, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs [T] 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 [T] 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.*

### **My provisional decision – commission**

*Given the facts and circumstances of this complaint, I see no reason why it would be fair or reasonable to direct the Lender to compensate Mr and Mrs [T] in relation to the commission arrangements.”*

Neither the PR (on Mr and Mrs T's behalf) nor the Lender had anything to add following this. As both sides have now responded, the complaint has come back to me for a final decision.

### **The legal and regulatory context**

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

#### The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

#### The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7

- Paragraph 4.8

### **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 side has submitted any new evidence or arguments, and having reconsidered everything afresh, I can see no reason to depart from my initial thoughts as set out in the PD, and those on commission that I set out separately.

I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I see no reason why it would be fair or reasonable to direct the Lender to compensate Mr and Mrs Tin relation to the commission arrangements.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 2 January 2026.

Chris Riggs  
**Ombudsman**