

The complaint

Mr B and the estate of Mrs B'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 Mr and Mrs B 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 B and Mrs B, as she was known at the time of her passing in 2017, first purchased a trial membership with a timeshare provider (the 'Supplier') in April 2011. On 2 November 2011, they traded that in for a fractional timeshare product. This was funded by way of a loan with a different finance provider and falls outside the scope of this complaint.

On 9 September 2012 (the 'Time of Sale'), Mr B and Mrs B purchased a Fractional Club membership (the 'Purchase Agreement') from the Supplier at a cost of £32,209, which was funded by the trade-in of their existing membership, and the balance of £13,785 using finance from the Lender (the 'Credit Agreement').

The account was settled in full on 3 April 2013.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 21 July 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns 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. Mr B is one of the eligible complainants, and he also represents Mrs B's estate, which is the other eligible complainant. So, I will refer to only Mr B where I think this is appropriate, and I will refer to Mrs B, or her estate, where I think it is appropriate.

Mr B and the PR were unhappy with the Lender's handling of the complaint, so on 10 July 2023, the PR wrote to our service to ask us to investigate matters.

One of our Investigators looked into things and concluded that the complaint that the Lender was party to an unfair debtor-creditor relationship fell outside the jurisdiction of the Financial Ombudsman Service as it was raised too late. And he concluded that the complaint about the handling of the Section 75 claims was raised outside the time limits set out under the Limitation Act 1980 (the 'LA').

The PR rejected the investigator's view and asked for an Ombudsman's decision – which is why it was passed to me.

The provisional decision

I set out my initial thoughts in a provisional decision (the 'PD') because, having considered everything, I thought that aspect (1) of Mr B and the estate of Mrs B's complaint was raised too late, so did not fall within the jurisdiction of the Financial Ombudsman Service. But I thought that the merits of aspect (2) of the complaint could be considered as it had been

raised in time because the event complained about, being the handling of the claim, took place within six years of the date Mr B raised the complaint with the Lender.

The Lender did not have anything to add to the PD.

The PR, on behalf of Mr B and the estate of Mrs B, provided me with some lengthy submissions to argue why the complaint should be upheld.

I have dealt with the matter of whether the Financial Ombudsman Service has jurisdiction over the complaint about an unfair relationship under Section 140A in a separate decision.

This decision relates only to the parts of Mr B and the estate of Mrs B's complaint that I found to fall within the Financial Ombudsman Service's jurisdiction.

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.

And having done so, I remain satisfied that Mr B and the estate of Mrs B's complaint should not be upheld. For clarity, I will set out my reasons for reaching that outcome and will cover the PR's response to the PD.

The complaint about the Lender's handling of Mr B's Section 75 claims

I will first explain why I think the complaint about the Lender's handling of Mr B and the estate of Mrs B's Section 75 claims falls under the jurisdiction of the Financial Ombudsman Service.

Section 75 CCA imposes a "like claim" on the Lender for any misrepresentations or breaches of contract by the Supplier¹. So, the debtor, here Mr B and Mrs B, is able to notify the Lender of their claim against it and, if the Lender fails or refuses to pay the claim, that may give rise to a complaint to the Financial Ombudsman Service.

So, the activity Mr B is complaining about here is the Lender's refusal to accept and pay the claims under Section 75 CCA. As a result, the time limit set out under the rules we must follow (these are set out in the FCA Handbook and are known as the 'DISP' Rules) doesn't usually begin until the respondent business answers the claim. In this case Mr B referred his complaint to the Financial Ombudsman Service within six years of this activity taking place, meaning that he raised it in time for the purposes of the time limits set out in DISP 2.8.2(2)R.

However, I don't think it would be fair or reasonable to uphold this complaint about the Lender's handling of Mr B's claims. I'll explain why.

As I've explained, Mr B's claims under Section 75 CCA are "like" claims against the Lender which mirror the claims he could make against the Supplier. And so, it wouldn't be fair to expect the Lender to pay claims that arose after such a limitation defence would be available to the Supplier in court. As such, it's relevant for me to consider whether Mr B's claims were time-barred under the LA before he first raised them with the Lender.

¹ One of the criteria for a claim for misrepresentation under Section 75 CCA is that the cash price does not exceed £30,000. Here, the cash price is £32,209, so it may be the case that the claim cannot succeed for that reason alone. As I don't think the claim ought to succeed for another reason, I have not found it necessary to make a finding on this aspect of the claim.

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.

Mr B's claim is subject to the limitation periods set out under Sections 2 and 9 of the LA, which are both six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was at the Time of Sale. I say this because Mr B and Mrs B entered into the Purchase Agreement at that time based on alleged misrepresentations of the Supplier, which Mr B now says he relied upon when deciding whether or not to make the purchase. And the Credit Agreement was used to finance the purchase, so it was when Mr B and Mrs B entered into this that Mr B suffered a loss.

Mr B first notified the Lender of the claims against it on 21 July 2022, which was more than six years after the Time of Sale. With that being the case, I don't think it was unfair or unreasonable of the Lender to decline to pay the claim Mr B made against it for the Supplier's alleged misrepresentations.

Mr B can also raise "like" claims against the Lender in the event that the Supplier breaches the contract. As Mr B says they were unable to book the holidays they were told they could book, I think Mr B is saying the Supplier breached the contract with him and he thinks the Lender ought to pay his claim.

The limitation period for these claims is also six years, as set out in the LA, but the dates on which the causes of action accrued are not necessarily the same dates as for the claims about the alleged misrepresentation. Rather, the cause of action accrued when Mr B alleges the breach of contract took place.

As Mr B says he was not able to book the holidays he was promised, and that he received accommodation that was not of the standard he was led to believe he could receive, I think this put him on notice that the Supplier may have breached the contract with him. And I think this would have become apparent to him soon after he entered into the Purchase Agreement, and in any case by the time he and Mrs B took the holiday to Turkey in 2013. So, I don't think the Lender acted unfairly or unreasonably when it declined to pay the claim Mr B made against it for the Supplier's alleged breach of contract.

The PR's response to my provisional decision

The PR has argued that the time limit to bring the claims under Section 75 of the CCA should be extended by both Section 14A and Section 32 of the LA. But I do not see any reason why it is unfair or unreasonable to rely on Section 2 and Section 9 of the LA as I have done here. After all, the PR is not seeking damage for negligence, and it has not persuaded me that it would be fair or reasonable to apply the time limits set out under Section 32 of the LA or explained why that section applies here. It has not clearly explained the reasoning behind its argument that it was the Supplier's "*current poor conduct*" that alerted Mr B to the issues that he and Mrs B experienced, so I'm not persuaded by the PR's argument.

The PR has not commented on my findings as far as they relate to the claim for breach of contract. Overall, I maintain the conclusion I reached in the PD that the Lender did not act unfairly or unreasonably when it declined to pay the claims under Section 75 of the CCA.

Other matters

I note that one of Mr B's other concerns about the sale of the 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.

Although the PR raised their concerns about the commission arrangements as part of the complaint about an unfair relationship under Section 140A of the CCA, which I concluded was raised too late and is outside our jurisdiction, there are two separate and freestanding complaints that I consider to be relevant.

The first ground relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale² 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 B (i.e., secretly).

As both sides know, 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.

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 B and the estate of Mrs B.

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 B entered into wasn't high. At £1,412.96, it was only 10.25% of the amount borrowed and 5.6% as a proportion of the charge for credit. So, if they had 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 persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, they 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 B 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, 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 B, 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.

² 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 B 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 Mr B. 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 B 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.

Conclusion

I do not think that Shawbrook Bank Limited acted unfairly or unreasonably when it did not agree to pay Mr B's claims under Section 75 of the CCA, and I do not think there is any other reason why Mr B and the estate of Mrs B's complaint should be upheld.

My final decision

I do not uphold Mr B and the estate of Mrs B's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and the estate of Mrs B to accept or reject my decision before 5 January 2026.

Andrew Anderson
Ombudsman