

The complaint

This complaint is brought by the Estate of Mr M which engaged the services of a professional representative (“PR”) to help raise a number of concerns. I was sorry to learn that Mr M himself passed away in 2019.

The estate of Mr M alleges that Shawbrook Bank Limited (“Shawbrook”) acted unfairly when it declined a claim made under section 75 of the Consumer Credit Act 1974 (“CCA”). The claim was in relation to a timeshare (“the Fractional Club”) which the late Mr M bought back in 2014.

What happened

In June 2014, the late Mr M entered into a loan agreement with Shawbrook Bank Limited to help him buy the above timeshare product. He borrowed £13,348 to fund this purchase.

However, I should first explain that this complaint was essentially split into two parts and so The Estate of Mr M will ultimately receive two decisions. This was because The Estate of Mr M had complained firstly about section 140A of the CCA which is broadly about a credit relationship which was allegedly unfair. Secondly, The Estate of Mr M said there had been a misrepresentation and breach of contract under Section 75 of the CCA. I need to deal with these issues in slightly different ways because of the different rules which apply.

I first issued a provisional decision (PD) about both these matters combined, in August 2025. This PD set out my provisional thoughts but also gave the parties a few more weeks to respond with any new information or evidence they wanted to raise.

But specifically for the section 75 element, I explained in the PD that I wasn’t currently thinking that it was unreasonable for Shawbrook to reject this claim. This was largely based on the provisions of the Limitation Act 1980 (LA) which essentially sets out why it wouldn’t be fair to expect creditors to look into claims so long after the liability arose, and after a limitation defence would be available in a court. Because the late Mr M bought the timeshare in 2014 and the complaint wasn’t raised until 2023, I thought the Lender hadn’t done anything wrong by rejecting this claim.

For the section 140 element (the unfair credit relationship) I said in my PD that I thought this aspect fell outside the standard jurisdiction of the Financial Ombudsman Service because it had been made too late and therefore ‘out of time’.

I then began finalising matters. I issued ‘jurisdiction’ decision about the section 140 aspect of the complaint, in September 2025, confirming this element was ‘out of time’ under the rules which apply. However, due to some legal issues making their way through the courts at that time, the second (section 75) issue was paused to consider any additional legal implications related to the payment of commissions between the Supplier and Lender at the Time of Sale. It is this matter which remains outstanding.

This final decision will therefore now deal solely with the complaint under section 75 of the CCA. The Section 75 complaint about this aspect says, amongst other things, that at the time of this sale the Supplier made a number of misrepresentations – namely that:

- a) Membership of the Fractional Club was marketed to the late Mr M as an “investment” when that wasn’t true.
- b) There were consistent problems with holiday bookings, including obtaining suitable dates and not getting accommodation of an expected standard, which the membership had previously represented would be obtained.

The Lender still maintains that The Estate of Mr M waited too long to make this complaint as this loan had been taken out (and even repaid) more than six years prior to it being raised as a complaint. The Lender maintains that it was effectively time-barred under the LA because the Time of Sale was back in April 2014. The Estate of Mr M has asked for an ombudsman’s final decision in relation to the Section 75 complaint.

I issued a further communication to both parties (a ‘side letter’) on 8 January 2026 explaining that I was now in a position to address the issue of commission. In this, I said I wasn’t persuaded to uphold the complaint on this basis either.

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.

The Section 75 Complaint

Section 75 of the CCA operates differently to Section 140A and, when it applies, it can give borrowers a very different ground for complaint against their lender. Whereas, as I’ve explained elsewhere that Section 140A imposes responsibilities on creditors in relation to the fairness of their credit relationships, Section 75 simply creates a financial liability that the creditor is bound to pay. Liability under Section 75 isn’t based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by the supplier, for which Section 75 imposes on the lender a “like claim” to that which the borrower enjoys against the supplier. If the lender is notified of a valid Section 75 claim, it should pay its liability. If it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful attempt to advance a Section 75 claim, the act or omission that engages the Service’s jurisdiction is different to those considerations under Section 140A – it is the creditor’s refusal to accept and pay the debtor’s claim, rather than anything that occurs before the claim was put to the creditor, such as the supplier’s alleged misrepresentation(s) and/or breach(es) of contract.

As a result, the standard jurisdiction rules which the Financial Ombudsman Service typically works to – the 6 and 3 year time limit (under DISP 2.8.2 (2) R) - doesn’t usually start until the respondent firm answers and refuses the Section 75 claim.

In this case, the sale took place on 11 June 2014. An initial complaint was made to the Lender on 10 March 2023 and then to the Financial Ombudsman Service on 1 June 2014. The Lender started raising an ‘out of time’ argument on 12 June 2023. I have therefore taken 12 June 2023 as the date when Shawbrook refused to accept and pay The Estate of Mr M’s claim; this means the primary time limit (of 6 years) only started at that time. So, because

this is a complaint about Shawbrook's handling of the claim, it was made in time for the purpose of the standard rules on our 6 and 3 year jurisdiction time limits.

But as I've already indicated, I still don't think it would be fair or reasonable to uphold this Section 75 part of the complaint and I will now explain why.

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about once that claim has become time-barred under the LA. This is because 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.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. The limitation period to make such a claim expires **six years** from the date on which the cause of action accrued¹. 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. The limitation period under that provision is also **six years** from the date on which the cause of action accrued.

So, it is relevant here for me to consider whether The Estate of Mr M's Section 75 claim was time-barred under the LA before it was put to Shawbrook. The date on which the cause of action accrued was the Time of Sale. I say this because the late Mr M entered into the purchase of the timeshare at that time based on the alleged misrepresentations of the Supplier – which his Estate now say he relied on. As the loan from Shawbrook was used to help finance that purchase, it was at this time that he entered into the Credit Agreement that allegedly caused a loss.

In summary then, The Estate of Mr M first notified Shawbrook of the Section 75 claim on 10 March 2023. Shawbrook rejected this claim on 12 June 2023. As more than six years had passed between the Time of Sale (2014) and when the first claim was put to Shawbrook, I don't think it was unfair or unreasonable of Shawbrook to reject the concerns about the Supplier's alleged misrepresentations.

My final decision on this is therefore that I do not think it was unfair for Shawbrook Bank Limited to decline this claim under section 75 of the CCA.

Commission

The issue of commission has been overhanging these types of complaint for some time due to ongoing legal issues and I'm sorry the parties have had to wait. However, I am now able to move the issue forward.

On 8 January 2026 I sent both parties a 'side letter' setting out my views in the light of a recent court judgement and further investigations we've carried out. I invited any further information or evidence in relation to the commission issues. But I've seen nothing that changes my views that I shouldn't uphold this complaint.

Two of the grounds of complaint relating to the commission arrangements between the Lender and the Supplier could constitute separate and freestanding complaints. The first ground relates 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. 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 The Estate of Mr M (i.e., secretly).

¹ Section 2 of the Limitation Act 1980

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').

The Supreme Court 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.

However, the Supreme Court held that the credit relationship between the Lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the Lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the Lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists The Estate of Mr M in arguing that the credit relationship with the Lender was unfair for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to the late Mr M, nor have I seen anything that persuades me that the commission arrangement gave the Supplier

a choice over the interest rate that led him into a credit agreement that cost disproportionately more than it otherwise could have.

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 as I've said before, case law makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. 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 find the credit relationship in question unfair to The Estate of Mr M.

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. As it wasn't acting as an agent but as the supplier of contractual rights 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' when arranging the Credit Agreement and thus a fiduciary duty.

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 the late Mr M entered into wasn't high. It was no more than 10%. So, had the late Mr M 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 he either wouldn't have understood that, or would have otherwise questioned the size of the payment at that time. After all, I think the late Mr M wanted Fractional Club membership and had no obvious means of his own to pay for it. At such a relatively low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think the late Mr M would still have taken out the loan to fund the purchase at the Time of Sale had the amount of commission been disclosed.

In summary, I have explained in this decision that I am not upholding the Section 75 element as I don't think it was unfair of Shawbrook to reject the claim, based on time. For the commission element, I also don't think there are reasons to uphold the complaint, for all the reasons I've given above.

My final decision

I do not uphold this complaint.

I do not require Shawbrook Bank Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I now ask The Estate of Mr M to accept or reject my decision before 25 February 2026.

Michael Campbell
Ombudsman