DRN-6068063

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 a number of 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 21 March 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to trade in their existing 12,500 timeshare points and buy an additional 1,500 fractional points at a cost of £8,876 (the 'Purchase Agreement').

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 £8,876 from the Lender (the 'Credit Agreement').

Mr and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 3 August 2020 (the 'Letter of Complaint') to raise a number of different 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.

When Mr and Mrs S didn't receive a response from the Lender, they referred a complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint that the Lender ought to have accepted a claim made under Section 75 of the CCA on its merits. The Investigator felt the complaint that there was an unfair credit relationship under Section 140A, and that the lending was unaffordable for Mr and Mrs S, hadn't been made in time as per the rules 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.

Having reviewed the file afresh, I issued a provisional decision (PD) and gave the parties the opportunity to respond before I reconsidered the complaint. The PD included the following:

'***What I've provisionally 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 conclude that:

1. *Mr and Mrs S's complaint about a credit relationship with the Lender that was unfair to them is not within our jurisdiction because it wasn't made within the time limits set out in DISP 2.8.2 R (2).*
2. *The rest of Mr and Mrs S's complaint – about unaffordable lending and the Lender's decision to reject their concerns about the Supplier's alleged misrepresentations and breaches under Section 75 of the CCA – was made in time under DISP 2.8.2 R (2). But for the reasons I give below, I don't think these aspects of the complaint should succeed.*

I'll explain my reasons for my conclusions below.

…

Mr and Mrs S's Lending Complaint and its Merits

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs S was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason.

I note that, in her email of 9 January 2020, Mrs S says she'd taken retirement from her job at the Time of Sale and had £9,000 available to settle the loan. And, as I've noted above, the loan was in fact settled in full within weeks.

With all of that in mind, I am not satisfied from the available evidence that the lending was unaffordable for Mr and Mrs S.

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

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.

As I mentioned above, 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 their 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 3 August 2020. 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 – or at least refuse to accept – Mr and Mrs S's concerns about the Supplier's alleged misrepresentations.

The PR has argued that the limitation period can be extended in cases of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances. However, I don't think the PR's arguments assist the claim because, for example, the concealment of the product being an investment is inconsistent with the PR's allegation that the Supplier promoted the product to Mr and Mrs S as an investment.

Section 75 of the CCA: the Supplier's 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, the Lender is also liable.

As noted above when looking at the claim there was an unfair credit relationship, 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, for instance. 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. It also looks like they made use of their fractional points to holiday on a number of occasions. 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 had 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.

Mr and Mrs S's Commission Complaint

I note that one of Mr and Mrs S'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. At present, I do not know

enough about the relevant arrangements in place at the Time of Sale. So, once I know more, I will finalise my findings on this complaint.'

After finalising my decision on what parts of Mr and Mrs S's complaint this service could – and couldn't – consider, I sent the parties my thoughts on their commission complaint and provided them with the opportunity to respond. My thoughts included the following:

'*In my provisional decision, I noted that one of Mr and Mrs S's other concerns related to the alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. But, I said that the Supreme Court's pending (at that time) judgment on this issue may prove important to this complaint. So, I explained that I wouldn't finalise my thoughts on this complaint until it had been handed down and I'd considered its implications on this complaint, if there are any.*

As that has now happened and I've considered it, I'm outlining my thoughts on this issue in this letter so that both parties have the opportunity to respond before I finalise my 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*

The provision of information by the Supplier at the Time of Sale

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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 S.

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 S entered into wasn't high. At £710.08, it was only 8% of the amount borrowed and only marginally more than that (8.68%) 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 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 his 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.

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

The Lender accepted my PD but did not reply to my findings on commission.

The PR accepted my findings on commission. But it maintained that the Lender's response to Mr and Mrs S's Section 75 claims for misrepresentation and breach(es) of contract was unfair.

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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

I've already finalised by thoughts on what parts of Mr and Mrs S's complaint this service can – and can't – consider. I don't intend to address that again in this decision. Rather, I've focused here on addressing what I consider to be the key issues in deciding the merits of this complaint and explaining the reasons for reaching my final decision.

Having done so, I conclude that the Lender didn't act unfairly or unreasonably in rejecting Mr and Mrs S's concerns about the Supplier's alleged misrepresentations or breach(es) of contract under Section 75 of the CCA or the affordability of the lending.

I'll explain my reasons for my conclusions below.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale and breach(es) of contract

Although the PR says I misapplied the LA in reaching my provisional conclusion on this point, I don't share that view. It refers to the limitation period being suspended where the misrepresentation has been concealed. As I said in my PD, I don't think this serves to extend the limitation period in the circumstances of this case and I've not seen anything since to persuade me otherwise.

Nor have I seen persuasive evidence to show that the Lender is liable to pay Mr and Mrs S any compensation for a breach of contract by the Supplier.

Lending Complaint and its Merits

I still haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But as I said in my PD, even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs S was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason.

As I pointed out in my PD, I'm also mindful of the fact that the loan was in fact settled in full just a few weeks into the 120-month term.

With all of that in mind, I remain unpersuaded that the lending was unaffordable for Mr and

Mrs S.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs S's Section 75 claims or any other aspect of their complaint. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

For the above reasons, my final decision is that I do not uphold the 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 6 February 2026.

Nimish Patel
Ombudsman