

The Complaint

Mr and Mrs F complain that Shawbrook Bank Limited is liable to pay it compensation under the Consumer Credit Act 1974 (as amended) (the 'CCA') following a complaint made about a timeshare bought using credit it provided.

Mr and Mrs F'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.

Background to the Complaint

Mr and Mrs F purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 February 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,050 fractional points at a cost of £14,898 (the 'Purchase Agreement').

Mr and Mrs F paid for their Fractional Club membership by taking finance of £14,898 from the Lender (the 'Credit Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs F 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 F – using a professional representative (the 'PR') – wrote to the Lender on 20 December 2021 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it is not necessary to repeat them in detail here beyond the summary above. The Lender issued its final response letter on 21 March 2023.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

The provisional decision

Having considered everything, I thought that part of Mr and Mrs F's complaint, specifically that the Lender was party to an unfair credit relationship under Section 140A of the CCA, was made too late, so was not in the jurisdiction of this Service. But the merits of his other complaints, relating to how the Lender dealt with their claims under Section 75 of the CCA, and their complaint that there was undisclosed commission paid to the Supplier by the Lender, could be considered as they were made in time under the regulator's rules. I set out my initial thoughts on this Service's jurisdiction in a provisional decision (the 'PD').

Neither side had anything further to add in response to the PD, so, and having considered everything again, I decided that Mr and Mrs F's complaint that the Lender was party to an unfair credit relationship with them under Section 140A of the CCA had been made too late, so was not in the jurisdiction of this Service.

As part of the PD, I also set out my initial thoughts on the merits of Mr and Mrs F's complaint about the Lender's handling and response to their claims under Section 75 of the CCA, and their complaint that the Lender had paid the Supplier a commission which had not been disclosed to him. My PD said:

"Mr and Mrs F's claims under Section 75 of the CCA

In the Letter of Complaint to the Lender, Mr and Mrs F have said that the Supplier, at the Time of Sale, made misrepresentations upon which Mr and Mrs F relied when making their decision to purchase the Fractional Club membership. It also said that they were unable to book their chosen holidays due to problems with availability, which seems to be a complaint that the Supplier was not living up to its end of the bargain, and thus breaching the terms of the Purchase Agreement.

Mr and Mrs F made a claim under Section 75 of the CCA for misrepresentation and breach of contract by the Supplier. Mr and Mrs F's complaint to this service is that the Lender was unfair and unreasonable in not accepting the claim. So, Mr and Mrs F have made its complaint about the Lender's handling of the Section 75 claims within six years, it is in this Service's jurisdiction, and I can consider its 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 conditions appear to be 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 is 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, I can not reasonably expect the Lender to meet that 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 (see Section 2 of the LA). But a claim under Section 75, like this one, 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 here was the Time of Sale. I say this because Mr and Mrs F entered into the purchase of the timeshare product at that time based upon the alleged misrepresentations of the Supplier – which Mr and Mrs F say they relied upon. And as the Credit Agreement with the Lender provided funding to help finance that purchase, it was when they entered into the Credit Agreement that they allegedly suffered the loss.

Mr and Mrs F first notified the Lender of their Section 75 complaint on 20 December 2021. As more than six years had passed between the Time of Sale and when they first put their complaint to the Lender, I do not think the Lender needs to do anything further in relation to their claim for misrepresentation.

But Mr and Mrs F 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.

Notwithstanding it is unclear when this alleged breach occurred in this case, and this is necessary information to have when considering whether the Lender might have a defence under the LA, I accept it is possible that the alleged breach occurred within six years of the date Mr and Mrs F notified the Lender of their claim. But I do not find it necessary to make a finding on this point for the reasons below.

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 F 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.

The PR also says on Mr and Mrs F's behalf that the Supplier breached the Purchase Agreement because it went into liquidation which again I accept is possible it occurred within six years of the date Mr and Mrs F notified the Lender of their claim. If certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mr and Mrs F nor the PR have said, suggested or provided evidence to demonstrate that they are no longer:

- 1. a member of the Fractional Club;*
- 2. able to use their Fractional Club membership to holiday in the same way they could initially; and*
- 3. entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.*

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs F any compensation for a breach of contract by the Supplier.

Section 75 – conclusion

So, in conclusion, as things currently stand, I do not think that the Lender needs to do anything in regards to Mr and Mrs F's Section 75 claims.

Mr and Mrs F's Commission Complaint

While I have found that the complaint that Mr and Mrs F's credit relationship with the Lender was unfair is not 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 have 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 Sale¹ 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 F (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 is 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 is not 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 do not currently think any such failure is itself a reason to require the Lender to pay compensation to Mr and Mrs F.

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 F entered into was not high. At £1,527.05, it was only 10.25% of the amount borrowed and even less than that (5.60%) 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 am not currently persuaded that Mr and Mrs F either would not have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs F 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 does not strike me as disproportionate. So, I think Mr and Mrs F would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What is more, based on what I have seen so far, the Supplier's role as a credit broker was not 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 cannot 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 was not acting as an agent of Mr and Mrs F but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction does not 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 am not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs F a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission are not, in my view, available to Mr and Mrs F. And while it is 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 do not 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 F would still have taken out the loan to fund their purchase at the Time of

¹ The Office of Fair Trading guidance

Sale had there been more adequate disclosure of the commission arrangements that applied at that time.”

The responses to the PD

The PR, on Mr and Mrs F’s behalf, acknowledged the PD, but said it had nothing further to add. The Lender agreed with my PD.

Having received the relevant responses from both sides, I am now finalising 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

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 sides, I’ve considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to my initial findings, I see no reason to depart from the outcome as set out above.

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 F's Section 75 claims and their complaint regarding undisclosed commission. And having considered everything, I see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr and Mrs F.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 10 February 2026.

Sameena Ali
Ombudsman