

## The complaint

Mrs F complains that Shawbrook Bank Limited acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 (as amended) (the 'CCA') and failing to disclose a payment of commission.

## Background to the complaint

Mrs F purchased a 'Fractional Club' membership from a timeshare provider ('the Supplier') on 14 July 2014. To help pay for the membership, she took out a loan of £9,598 with Shawbrook.

Through a professional representative (the 'PR'), Mrs F complained to Shawbrook on that the Supplier had misrepresented the Fractional Club membership in a number of ways, giving her a claim against Shawbrook under Section 75 of the CCA. She was also concerned that a payment of commission made by Shawbrook to the Supplier hadn't been disclosed to her, and that the loan had been brokered by an unauthorised credit intermediary.

Mrs F also complained that the credit relationship between her and Shawbrook was unfair to her under Section 140A of the CCA. But by way of a separate decision, I have explained that we are unable to consider that aspect of the complaint as it has been raised outside of the time limits within the rules that govern us.

Shawbrook rejected Mrs F's complaint, saying, in short, that she had raised her Section 75 claim outside of the six-year limit imposed by the Limitation Act 1980 and there was therefore no valid claim. It declined to consider any of the other matters raised by Mrs F on the grounds that they had been raised too late.

So Mrs F referred her complaint to us and it was reviewed by an Investigator, who did not recommend that it be upheld.

As Mrs F didn't accept our Investigator's view, the matter was passed to me to decide.

I issued a provisional decision setting out why I didn't think the complaint should be upheld. I said:

### The Section 75 claim

As both sides may already know, a claim against Shawbrook under Section 75 essentially mirrors the claim Mrs F could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. Shawbrook does not dispute that the relevant conditions are met in this complaint, even though I'm not wholly persuaded that they are given the value of the transaction at issue. In any event, there are certain time limits that apply – and I think these mean Mrs F's claim would've been time-barred.

The Limitation Act 1980 sets out limitation periods, or time limits, for bringing various types of legal claim. For a claim based on contract, it's not generally possible to start

court action more than six years after the cause of action arose. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis.

For claims relating to misrepresentation, the time limit would typically be six years from the date the claimant suffers damage as a result of the misrepresentation. For example, entering into a contract – and incurring liabilities – when they would otherwise not have done.

Mrs F's claim under Section 75 is that but for the Supplier's various alleged misrepresentations, she wouldn't have purchased the timeshare membership (and, therefore, entered into the related loan with Shawbrook). So it is the date on which she entered into those agreements that her cause of action arose, meaning she had six years from that date within which to bring this claim.

Mrs F purchased the membership on 14 July 2014. She raised her Section 75 claim on 5 December 2023 – more than six years later. So I think Shawbrook had a complete defence to the claim, having been raised outside of the six-year statutory limit.

That being the case, I don't think Shawbrook acted unfairly or unreasonably in declining Mrs F's claim.

#### The commission complaint

While I found that the complaint relating to the unfairness of Mrs F's credit relationship with Shawbrook wasn't something we could consider – and which included a number of concerns about the disclosure of a commission payment – some of the grounds relating to that aspect of the complaint also constitute separate and freestanding complaints that we can consider. So I've considered those grounds here.

The first ground relates to whether Shawbrook 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 Mrs F (i.e., secretly). And the second relates to Shawbrook's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

Dealing with the first, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs F a fiduciary duty. 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 Mrs F but as the supplier of contractual rights she 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 her when arranging the Credit Agreement and thus 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 Mrs F.

And while it's possible that Shawbrook 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 Shawbrook's part is itself a reason to uphold this complaint. The amount of commission paid by Shawbrook to the Supplier for arranging the Credit Agreement that Mrs F entered into wasn't high. At £959.80, it was only 9.92% of the amount borrowed and even less than that (5.42%) as a proportion of the charge for credit. So,

had she 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 she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs F wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

#### The credit intermediary

The PR suggests that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that Shawbrook wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs F knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs F suffering a financial loss. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell Shawbrook to compensate her, even if the loan wasn't arranged properly.

Shawbrook responded to my provisional decision to confirm its acceptance. The PR did not respond.

#### **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 Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

#### The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 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.

Having done so, and with no new information or evidence for me to consider, I see no reason to depart from my provisional findings. So this final decision simply confirms those findings, as set out above.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 24 February 2026.

Ben Jennings  
**Ombudsman**