

The complaint

Mr D'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'), (2) deciding against paying a claim under Section 75 of the CCA and paying commission to a credit broker without disclosing this.

What happened

Mr D was a member of a timeshare provider (the 'Supplier') – having purchased several products from it over time. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 4 July 2013 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 12,000 fractional points at a cost of £7,344 (the 'Purchase Agreement') after trading in 12,000 European Collection points (from his previous timeshare).

Fractional Club membership was asset backed – which meant it gave Mr D 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 D paid for his Fractional Club membership by taking finance of £7,344 from the Lender (the 'Credit Agreement').

Mr D – using a professional representative (the 'PR') – wrote to the Lender on 19 August 2021 the 'Letter of Complaint') to raise several 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.

The Lender dealt with Mr D's concerns as a complaint and issued its final response letter on 19 October 2021, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service.

I issued a provisional decision saying the complaints about an unfair relationship and irresponsible lending were not within my jurisdiction, since they were made too late. And although the complaints about the Section 75 claim and undisclosed commission were within my jurisdiction, I was not planning to uphold them.

The Lender responded to say it had nothing to add.

The PR initially said it disagreed with my provisional decision on the jurisdiction to consider the unfair relationship and irresponsible lending complaints but has since confirmed it accepts my provisional decision on those points.

But the PR provided some additional comments for me to consider about the Section 75 claim. It did not provide any further comments on the commission complaint.

As such, this final decision deals only with the merits of the complaints about the Section 75 claim and undisclosed commission.

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, a copy of which is below. That is, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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 D's Section 75 claim for misrepresentation was time-barred under the LA before he 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 D 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 D entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr D first notified the Lender of his Section 75 claim on 19 August 2021. 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 Mr D's concerns about the Supplier's alleged misrepresentations.

I have considered Section 32 of the Limitation Act, but I am not persuaded this provided Mr D more time to make the claim.

Complaint that the Lender paid commission to the Supplier without disclosing this

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').

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').

I don't think *Hopcraft, Johnson and Wrench* assists Mr D in arguing that I should uphold this complaint 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 Mr D, nor have I seen anything that persuades me that the commission arrangement between them gave the

Supplier a choice over the interest rate that led Mr D 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, regulatory breaches do not automatically create unfairness. 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 uphold this complaint.

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 D entered into wasn't high. At £587.52, it was only 8% of the amount borrowed and 8.6% as a proportion of the charge for credit. So, had he 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 he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr D wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a 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 he 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 D but as the supplier of contractual rights that 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' to him when arranging the Credit Agreement and thus a fiduciary duty.

I've also considered 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 D (i.e., secretly). And the second 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 between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr D 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 him. 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 he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender mean that I ought to uphold this complaint.

The PR's further comments following my provisional decision

In summary, the PR's further comments in response to the provisional decision which are relevant to the complaint about the Section 75 claim said that:

1. I had not properly applied the principles of the Limitation Act 1980, since Section 32(1)(b) provides more time to make the claim where the Supplier has concealed the misrepresentation.
2. Rule CONC 7.3.4R in the Financial Conduct Authority Handbook means that the Lender has a duty to treat customers fairly and consider evidence of fraud or misrepresentation – and this means the Lender should've investigated the claim rather than rejecting it.
3. I had failed to apply "*FOS technical guidance on linked lender liability, which requires that lender make reasonable enquiries rather than summarily dismissing such claims.*"

The PR's comments do not persuade me to depart from my provisional findings. It says that the Supplier concealed that "*the timeshare's alleged "asset-backed" nature was false*". But, as mentioned above, Mr D's Fractional Club membership was asset-backed in that it was linked to the Allocated Property. That seems to have been made clear at the Time of Sale – both during the presentation Mr D is likely to have been given, and in the documents provided to him at the time. So, I do not think this was "false", as the PR alleges. And I can't see that Section 32 of the Limitation Act provides more time for Mr D to make the claim to the Lender.

As for the PR's second point, CONC 7.3.4R says:

"A firm must treat customers in or approaching arrears or in default with forbearance and due consideration."

I cannot see that this means what the PR says, nor that it is relevant to Mr D's Section 75 claim. While there is a duty to treat customers fairly, I am not persuaded that the Lender unfairly rejected Mr D's Section 75 claims.

Finally, the PR has not specified what technical guidance it is referring to. But I am satisfied I have followed our usual approach when deciding this complaint.

The PR provided no further comments on the complaint about undisclosed commission.

As such, for the reasons given in my provisional findings above, I do not uphold this complaint.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 February 2026.

Phillip Lai-Fang
Ombudsman