

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 a claim under Section 75 of the CCA.

What happened

In December 2014, Mr and Mrs S purchased a 'Fractional Club' membership from a timeshare provider (the 'Supplier'). The membership was asset backed – which meant it included a share of the net sale proceeds of a property named on the purchase agreement (the 'Allocated Property') after the membership term ended. Mr and Mrs S borrowed money from Shawbrook to buy the membership. The loan was repaid in full in May 2015.

In March 2023, Mr and Mrs S used a professional representative ('PR') to complain about the purchase and the related loan. The complaint letter said, in summary:

- That they had purchased an investment that would appreciate in value when that was not true.
- That they would own a share in a property that would increase in value during the membership term when that was not true.
- They could sell the timeshare back to the resort or easily sell it at a profit when that wasn't true.
- They were made to believe that they would have access to a specific apartment all around the year.

The Lender, Shawbrook Bank Limited, said that Mr and Mrs S had waited too long to make a complaint as it was 'out of time' under the standard jurisdiction rules which apply, and also that it was time barred under the Limitation Act 1980 (LA).

Dissatisfied with the Lender's response, Mr and Mrs S referred their complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and issued a 'view' saying they didn't think it was unfair for Shawbrook to rely on the LA to decline a claim under Section 75 of the CCA. The investigator also didn't think this Service could consider a complaint under Section 140A of the CCA because it had been made too late under the standard jurisdiction rules we must apply.

Because Mr and Mrs S's PR didn't agree with the investigator, the complaint was passed to me for an ombudsman's final decision.

To be clear, I will be dealing with the Section 75 and Section 140A¹ issues separately, using two decisions; this is because different rules apply to each. In *this* decision I will deal solely

¹ of the CCA 1974.

with Mr and Mrs S's complaint under Section 75. I have already considered the rest of their complaint² in a separate decision.

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.

Section 2 of the 'DISP' section of the Financial Conduct Authority Handbook covers whether Mr and Mrs S's complaint was made in time for the purposes of allowing the Financial Ombudsman Service to consider it. Details can be found online. But our standard jurisdiction rules say that we can't look at all the complaints referred to us. For example, the rules say that where a business objects, I can't consider a complaint made more than six years after the event complained of, or if later, made more than three years from the date the complainant was aware, or ought reasonably to have been aware, of having cause for complaint.

In my separate jurisdiction decision, I explained how this affected the Section 140A element (about an alleged unfair credit relationship) of Mr and Mrs S's complaint. I am now addressing the Section 75 element of their complaint (about misrepresentation and / or breach of contract).

The Section 75 Complaint

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 the considerations under Section 140A. It is the time of the creditor's refusal to accept and pay the debtor's claim which is relevant, rather than anything that occurs before the claim was put to the creditor. As a result, the standard jurisdiction rules which the Financial Ombudsman Service typically works to – the 6 and 3 year time limits (under DISP 2.8.2 (2) R) - don't usually start until the respondent firm answers and refuses the Section 75 claim.

Section 75(1) of the CCA protects consumers who buy goods and services on credit. A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. Liability under Section 75 isn't based on anything the Lender does wrong, but the misrepresentations and breaches of contract by the Supplier. If the Lender is notified of a valid Section 75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

Shawbrook says it's still too late for Mr and Mrs S to make their claim for misrepresentation. It has specifically mentioned the LA, which essentially sets out that the complainants had six years from which the cause of action accrued, to make the claim, after which Shawbrook has a defence to the claim under the Act. It is this issue which I am considering here.

I wouldn't normally think it was unfair for a respondent firm to rely on the LA to decline a claim – and I don't think it's unfair in this case. As a general rule a creditor 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.

² about an alleged unfair credit relationship, under Section 140A of the CCA 1974.

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 accrued³. 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.

With all this in mind, it is relevant here for me to consider whether Mr and Mrs S’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 – this is because it’s when Mr and Mrs S entered into the purchase of the timeshare and when the alleged misrepresentations of the Supplier took place, and which they now say they relied on. As the loan from Shawbrook was used to help finance that purchase, it was also at this time that they entered into the Credit Agreement which allegedly caused a loss.

In this case, we know the sale took place on 9 December 2014. A complaint was made to the Lender but not until 21 March 2023. The Lender then raised an ‘out of time’ argument in its final response letter of 12 September 2023. So, in summary, because much more than six years had passed between the Time of Sale (2014) and when the first claim was put to Shawbrook (2023), I don’t think it was unfair or unreasonable of Shawbrook to reject the concerns about the Supplier’s alleged misrepresentations.

The PR says section 32 of the LA should allow Mr and Mrs S more time to make their claim. Again, I disagree. Section 32 of the LA has the potential to postpone the relevant limitation period in specific cases of fraud, concealment, or mistake. I have thought about that here.

But in this case, I don’t agree with the PR that any alleged acts of fraud, concealment, or mistake prevented Mr and Mrs S from bringing a complaint. The PR references the Supplier’s sales documentation used at the time and also its internal training materials, which it implies concealed the truth from Mr and Mrs S. But having considered the PR’s submissions with care, I’m not persuaded Mr and Mrs S should have had more time to make their claim. It seems to me that their original points of complaint specifically refer to allegations of emerging problems which would have become obvious to them very soon after making their purchase. These include allegations that they could sell-on their purchase when this wasn’t the case, and also that they were told they could holiday at the Supplier’s resorts when and where they wanted, despite this apparently becoming an issue very early on in their membership.

Mrs S’s own witness statement sets out what I’d call alleged disappointments early on in the contract, including problems with booking holidays and effectively being told by another agent that their membership couldn’t be sold. In my view, these matters would have caused almost immediate concern and given the size and status of their purchase, I think it would have been reasonable for Mr and Mrs S to commence enquiries about bringing a complaint.

For Section 32 of the LA to assist them, Mr and Mrs S would need to show that they couldn’t have discovered the alleged frauds, concealments or mistakes. But as I say, I think the circumstances as they allege would have caused discovery of these matters within a few months of the membership being taken out, and certainly before May 2015, when we know they had already paid back the loan. So, I do not agree, taking account of the submissions provided by the PR, that Section 32 extends the legal time limit for Mr and Mrs S. In short, I’m not persuaded that this makes any difference here.

³ Section 2 of the Limitation Act 1980

I therefore do not think it was unfair for Shawbrook Bank Limited to decline their claim under section 75 of the CCA.

Commission

The issue of commission has been overhanging these types of complaints 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 15 January 2026 I sent both parties a 'side letter' setting out my views in the light of a recent court judgement and further investigations I've carried out. I invited any further information or evidence from the parties in relation to the commission issue but have had no replies.

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 Mr and Mrs S 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 Mr and Mrs S, nor have I seen anything that persuades me that the commission arrangement gave the Supplier a choice over the interest rate that led them 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 Mr and Mrs S.

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 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' 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 this Credit Agreement was £1,891.70 and so was 9.96% of the amount borrowed, and 8.89% as a proportion of the charge for credit – which is the calculation the Supreme Court used.

So, had Mr and Mrs S 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 they either wouldn't have understood that, or would have otherwise questioned the size of the payment at that time. After all, I think they wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a level, the impact of commission on the cost of the credit they required for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund the purchase at the Time of Sale had the amount of commission been disclosed. I've since received nothing from my 'side letter' which persuades me otherwise.

Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs S's credit relationship with Shawbrook wasn't unfair for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding

complaints to Mr and Mrs S's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground 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 Shawbrook without telling Mr and Mrs S (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.

However, 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 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 because, for the reasons I also set out above, I think they would still have taken out the loan to fund the purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

I have explained above why I don't uphold Mr and Mrs S's Section 75 complaint. I also don't think the commission made their relationship unfair either, for the reasons I have comprehensively explained.

My final decision

I do not uphold Mr and Mrs S's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 3 March 2026.

Michael Campbell
Ombudsman