

The complaint

Mrs and Mr C'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 March 2013, Mrs and Mr C 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. Mrs and Mr C borrowed money from Shawbrook to buy the membership. The loan was repaid in full in June 2014.

In January 2023, Mrs and Mr C 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 Mrs and Mr C 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, Mrs and Mr C referred their complaint to the Financial Ombudsman Service via their PR. One of our investigators looked into the complaint and issued a 'view' saying they didn't think this Service could consider a complaint about an unfair credit relationship under section 140A of the CCA because this part had been made too late under the standard jurisdiction rules we must apply. They also said they didn't think it was unfair for Shawbrook Bank Limited to rely on the LA to decline a claim for misrepresentation under section 75 of the CCA, again because the complaint had been made late.

Because Mrs and Mr C'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 with Mrs and Mr C'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' in the Financial Conduct Authority Handbook covers whether Mrs and Mr C'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 Mrs and Mr C's complaint. I am now addressing the Section 75 element of their complaint (about misrepresentation).

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.

What this means is that I can consider Mrs and Mr C's complaint under Section 75.

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.

However, Shawbrook Bank Limited says it's still too late for Mrs and Mr C to make their claim for misrepresentation. It has specifically referred to 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. So, it is this issue which I am considering here.

Given the provisions of the LA, I wouldn't normally think it was unfair for a respondent firm to rely on it to decline a claim – and I don't think it's unfair for Shawbrook Bank Limited to rely

¹ of the CCA 1974.

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

on it in this case. As a general rule a creditor can reasonably reject Section 75 claims which they are first informed about once that claim has become time-barred under the provisions of 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 a court.

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. And 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 Mrs and Mr C's Section 75 claim was time-barred under the LA before it was put to Shawbrook Bank Limited. I think it was.

The date on which the cause of action accrued here was the Time of Sale. This is when Mrs and Mr C entered into the purchase of the timeshare and when the alleged misrepresentations of the Supplier took place - and which they now say they relied upon. As the loan from Shawbrook Bank Limited 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 11 March 2013. A complaint was made to the Lender, but not until 19 January 2023. The Lender then raised an 'out of time' argument in its final response letter of 31 August 2023. So, in summary, because much more than six years had passed between the Time of Sale (2013) and when the first claim was put to Shawbrook (2023), I don't think it was unfair or unreasonable of the Lender to reject the concerns about the Supplier's alleged misrepresentations.

I haven't seen any other arguments from Mrs and Mr C to persuade me otherwise. Their own witness statement sets out what I'd call alleged disappointments early on in the contract, including by "*2013 being increasingly unhappy with [the Supplier]*". Having looked very carefully at what they have to 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 mid-2014, when we know they had already paid back the loan.

I recognise this will be disappointing, but I do not think it was unfair for Shawbrook Bank Limited to decline Mrs and Mr C's claim under section 75 of the CCA. I am therefore not upholding this aspect of their complaint.

Commission

The issue of commission has been overhanging these types of complaint 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 21 January 2026 I sent both parties a 'side letter' setting out my views in the light of a recent court judgement. I also set out some conclusions about the further investigations which I have carried out, specifically about the level of commission paid to the Supplier in this case. I invited any further information or evidence in relation to the commission issue but have had no replies.

³ Section 2 of the Limitation Act 1980

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 Mrs and Mr C 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 Mrs and Mr C, 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 Mrs and Mr C.

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 £1,290.40. This means it was 10% of the amount borrowed and 5.47% as a proportion of the charge for credit – which is the calculation the Supreme Court used.

In my view, had Mrs and Mr C 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.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs and Mr C'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 Mrs and Mr C'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 Mrs and Mr C (i.e., secretly). 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 Mrs and Mr C 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. 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 Mrs and Mr C's Section 75 complaint. I also don't think the commission made their relationship unfair either.

My final decision

I do not uphold Mrs and Mr C'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 Mrs and Mr C to accept or reject my decision before 5 March 2026.

Michael Campbell
Ombudsman