

The complaint

Mr and Mrs E complain 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

Mr and Mrs E purchased a 'Fractional Club' membership from a timeshare provider ('the Supplier') on 21 April 2016. To help pay for the membership, they took out a loan of £20,190 with Shawbrook.

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

Mr and Mrs E also complained that the credit relationship between them and Shawbrook was unfair to them 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 Mr and Mrs E's complaint, saying, in short, that they had raised their 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 Mr and Mrs E on the grounds that they had been raised too late.

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

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

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.

The Section 75 claim

As both sides may already know, a claim against Shawbrook under Section 75 essentially mirrors the claim Mr and Mrs E 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.

However, 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.

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

Mr and Mrs E purchased the membership on 21 April 2016. They raised their Section 75 claim on 19 April 2024 – 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 Mr and Mrs E's claim.

The commission complaint

While I found that the complaint relating to the unfairness of Mr and Mrs E'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 Mr and Mrs E (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.

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 and Mrs E 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' to them when arranging the Credit Agreement and thus a fiduciary duty.

In any event, as I understand it, Shawbrook didn't pay the Supplier any commission in relation to Mr and Mrs E's transaction. So it cannot have breached such a duty in the manner alleged, even if one were to have arisen. Similarly, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I can't see how these would have impacted Mr and Mrs E's decision to purchase the Fractional Club membership.

The credit intermediary

The PR suggests that the loan was arranged by an unauthorised credit broker, the upshot of which is to suggest that Shawbrook wasn't permitted to enforce its rights under the credit agreement.

However, it looks to me like Mr and Mrs E knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the loan 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 Mr and Mrs E suffering a financial loss.

With that being the case, I'm not persuaded that it would be fair or reasonable to tell Shawbrook to compensate them, even if the loan wasn't arranged properly.

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 Mr E and Mrs E to accept or reject my decision before 17 March 2026.

Ben Jennings
Ombudsman

