

## **The complaint**

Mr and Mrs G'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 claims under Section 75 of the CCA.

## **What happened**

On 1 April 2016 (the 'Time of Sale'), Mr and Mrs G purchased a Fractional Club membership (the 'Purchase Agreement') from the Supplier at a cost of £14,027 using finance from the Lender (the 'Credit Agreement').

The Credit Agreement was settled in full on 21 April 2016.

Mr and Mrs G – using a professional representative (the 'PR') – wrote to the Lender on 24 August 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

Mr and Mrs G and the PR were unhappy with the Lender's handling of the complaint, so on 14 March 2024, the PR wrote to our service to ask us to investigate matters.

One of our Investigators looked into things and concluded that the complaint that the Lender was party to an unfair debtor-creditor relationship fell outside the jurisdiction of the Financial Ombudsman Service as it was raised too late. And she concluded that the complaint about the handling of the Section 75 claims was raised outside the time limits set out under the Limitation Act 1980 (the 'LA').

The PR rejected the investigator's view and asked for an Ombudsman's decision – which is why it was passed to me.

## **The provisional decision**

I set out my initial thoughts in a provisional decision (the 'PD') because, having considered everything, I thought that aspect (1) of Mr and Mrs G's complaint was raised too late, so did not fall within the jurisdiction of the Financial Ombudsman Service. But I thought that the merits of aspect (2) of the complaint could be considered as it had been raised in time because the event complained about, being the handling of the claim, took place within six years of the date Mr and Mrs G raised their complaint with the Lender.

The Lender did not have anything to add to the PD.

The PR, on behalf of Mr and Mrs G, has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed

with a decision before this is done and it has had an opportunity to make further submissions.

The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

The PR also provided a separate submission where it argued that the PD was not accepted and it raised many points in support of the merits of the complaint about an unfair relationship, among other things.

I have dealt with the matter of whether the Financial Ombudsman Service has jurisdiction over the complaint about an unfair relationship under Section 140A in a separate decision.

This decision relates only to the parts of Mr and Mrs G's complaint that I found to fall within the Financial Ombudsman Service's jurisdiction.

### **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.

And having done so, I remain satisfied that Mr and Mrs G's complaint should not be upheld. For clarity, I will set out my reasons for reaching that outcome and will cover the PR's response to the PD.

### **The complaint about the Lender's handling of Mr and Mrs G's Section 75 claims**

Mr and Mrs G's claims under Section 75 CCA are "like" claims against the Lender which mirror the claims they could make against the Supplier. And so, it wouldn't be fair to expect the Lender to pay claims that arose after such a limitation defence would be available to the Supplier in court. As such, it's a relevant for me to consider whether Mr and Mrs G's claims were time-barred under the LA before they first raised them with the Lender.

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.

Mr and Mrs G's claim is subject to the limitation periods set out under Sections 2 and 9 of the LA, which are both six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was at the Time of Sale. I say this because Mr and Mrs G entered into the Purchase Agreement at that time based on alleged misrepresentations of the Supplier, which they now says they relied upon when deciding whether or not to make the purchase. And the Credit Agreement was used to finance the purchase, so it was when Mr and Mrs G entered into this that they suffered a loss.

Mr and Mrs G first notified the Lender of the claims against it on 24 August 2023, which was more than six years after the Time of Sale. With that being the case, I don't think it was unfair or unreasonable of the Lender to decline to pay the claim they made against it for the Supplier's alleged misrepresentations.

### **The PR's response to my PD**

I have read the PR's response to my PD and, as it has not provided any new arguments for me to consider in relation to the Limitation Act or the timing of the complaint, I do not see any reason to depart from my findings as set out above.

### **Other matters**

In November 2024, the PR asserted on behalf of Mr and Mrs G that the payment of commission made the financial arrangement unfair. The PR didn't give a level of commission at which it considered unfairness arose, but its arguments included the following:

- Despite requests, there was no disclosure of the actual amount of commission paid by the Lender to the Supplier
- per the Court of Appeal's judgment in *Johnson*<sup>1</sup>, the percentage of commission should be based upon "*the sum borrowed*"
- the amount of the annual percentage rate of interest ("APR") is key and was unusually high, substantially increasing the total charge for credit
- Commission paid by the Supplier to its self-employed sales representatives should also be disclosed and taken into account in the calculation used to determine unfairness

While I've found that Mr and Mrs G's complaint about an unfair credit relationship with the Lender falls outside the jurisdiction of the Financial Ombudsman Service, two of the grounds raised by the PR also constitute separate and freestanding complaints. So, for the sake of 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 the Lender without telling Mr and Mrs G (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 and Mrs G 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 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 they would still have taken out the loan to fund their trial timeshare membership purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

### **Conclusion**

I do not think that Shawbrook Bank Limited acted unfairly or unreasonably when it did not agree to pay Mr and Mrs G's claims under Section 75 of the CCA, and I do not think there is any other reason why their complaint should be upheld.

### **My final decision**

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<sup>1</sup> The PR's submission references the Court of Appeal judgment (*Johnson v FirstRand Bank Limited, Wrench v FirstRand Bank Limited and Hopcraft v Close Brothers* [2024] EWCA Civ 1106 ("*Johnson*"). The Supreme Court has since handed down its judgment clarifying the position in law.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 23 March 2026.

Andrew Anderson  
**Ombudsman**