DRN-6333705

The complaint

Mr and Mrs L'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

Mr and Mrs L purchased membership of a timeshare ('Fractional Club 1') from a timeshare provider (the 'Supplier') on 24 July 2012 ('Time of Sale 1'). They entered into an agreement with the Supplier to buy 3,864 fractional points at a cost of £13,884 ('Purchase Agreement 1').

Mr and Mrs L paid for Fractional Club membership 1 by taking finance of £25,372[1] from the Lender in Mr and Mrs L's name ('Credit Agreement 1'). This finance was repaid in full on 19 March 2014 (£25,600) following Mr and Mrs L's 20 February 2014 purchase.

Mr and Mrs L purchased membership of a timeshare ('Fractional Club 2') from the Supplier on 30 July 2013 ('Time of Sale 2'). They entered into an agreement with the Supplier to buy 3,900 fractional points at a cost (inclusive of £1,127 for the first year's management charge) of £5,655 ('Purchase Agreement 2'). This loan was repaid in full on 19 March 2014 (£5,900) following Mr and Mrs L's 20 February 2014 purchase.

Mr and Mrs L paid for Fractional Club membership 2 by taking finance of £5,655 from the Lender in Mr and Mrs L's name ('Credit Agreement 2').

Mr and Mrs L purchased membership of a timeshare ('Fractional Club 3') from the Supplier on 20 February 2014 ('Time of Sale 3'). They entered into an agreement with the Supplier to buy 4,250 fractional points at a cost of £8,399 ('Purchase Agreement 3').

Mr and Mrs L paid for Fractional Club membership 3 by taking finance of £39,899[2] from the Lender in Mr and Mrs L's name ('Credit Agreement 3'). This loan was repaid in full on 12 June 2016.

All three memberships were asset backed – which meant it gave Mr and Mrs L more than just holiday rights. It also included a share in the net sale proceeds of the properties named on the Purchase Agreements.

The PR referred Mr and Mrs L's complaint (in respect of all three sales) to our Service on 27 March 2023. It says it did so having received no reply from the Lender in respect of three Letters of Complaint it sent on 2 July 2019 and three emails it sent on 11 November 2022.

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[1] Inclusive of £11,488 advanced to repay a previous loan agreement (in respect of a previous purchase) with another lender

[2] £8,399 plus £25,600 plus £5,900

Our service contacted the Lender who, on 8 January 2024, advised us that as the PR didn't contact it to express dissatisfaction (about any of the sales) until 11 November 2022 – more than six years after all three sales and more than six years after all three finance agreements were repaid – the complaint was time barred.

Mr and Mrs L's complaint was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold the Fractional Club memberships as investments to Mr and Mrs L at the Times of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on their purchasing decisions, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs L was rendered unfair to them for the purposes of section 140A of the CCA.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

The provisional decision

Having considered everything, I thought Mr and Mrs L's complaint that the Lender was party to an unfair credit relationship under Section 140A of the CCA had been made too late and therefore not in the jurisdiction of our Service. But I thought the merits of their other complaint points, relating to claims under Section 75 of the CCA and the payment of undisclosed commissions to the Supplier by the Lender, could be considered as they had been made in time under the regulator's rules.

I set out my initial thoughts on this Service's jurisdiction in a provisional decision (the 'PD').

A separate decision has been issued with my findings relating to Mr and Mrs L's complaint that the Lender was party to an unfair credit relationship with them under Section 140A of the CCA.

As part of the PD, I also set out my initial thoughts on the merits of Mr and Mrs L's complaint points, relating to claims under Section 75 of the CCA and the payment of undisclosed commissions to the Supplier by the Lender. In my PD I said:

Mr and Mrs L's claims under Section 75 of the CCA

It was suggested in the three Letters of Complaint and/or the three complaint forms that, at the Times of Sale, the Supplier made misrepresentations upon which Mr and Mrs L relied and that the Supplier later went on to breach the terms of the Purchase Agreement by going into liquidation.

Mr and Mrs L made a claim under Section 75 of the CCA for misrepresentation and breach of contract by the Supplier. Their complaint to our Service is that the Lender, in 2024, acted unfairly and unreasonably in not accepting that claim, making it in our Service's jurisdiction (on grounds of time) and a complaint I can consider.

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction and these conditions appear to be met here.

However, the Limitation Act 1980 (the 'LA') imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits to long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, I can't reasonably expect the Lender to meet that claim.

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 under Section 75 of the CCA, like this one, 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 here was, at the latest, the Time of Sale 3 – February 2014. I say this because Mr and Mrs L entered into the purchase of timeshare product 3 at that time based upon the alleged misrepresentations of the Supplier – which Mr and Mrs L say they relied upon. And as Credit Agreement 3 with the Lender provided the funding to help finance purchase 3, it was when they entered into Credit Agreement 3 that that allegedly suffered the loss.

The Lender was first advised of Mr and Mrs L's Section 75 of the CCA complaint no earlier than November 2022. As more than six years had passed between Time of Sale 3 and when the PR first put Mr and Mrs L's complaint to the Lender, I don't think the Lender needs to do anything further in relation to Mr and Mrs L's claim for misrepresentation.

It was also said by the PR that the Supplier breached the Purchase Agreements because it went into liquidation, a complaint that I'm satisfied is in our Service's jurisdiction (on grounds time) and a complaint I can consider.

If certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreements (in particular Purchase Agreement 3) as a result. However, neither Mr and Mrs L nor the PR have said, suggested or provided evidence to demonstrate that as a result of certain parts of the Supplier's business being put into administration they are no longer:

1. *a member of the Fractional Club;*
2. *able to use their Fractional Club membership 3 to holiday in the same way they could initially; and*
3. *entitled to a share in the net sales proceeds of Allocated Property 3 when their Fractional Club membership ends.*

So, from the evidence I've seen, I don't think the Lender is liable to pay Mr and Mrs L any compensation for a breach of contract by the Supplier.

Section 75 of the CCA – conclusion

So, in conclusion, as things currently stand, I don't think that the Lender needs to do anything in regard to Mr and Mrs L's Section 75 of the CCA claims.

Mr and Mrs L's Commission Complaint

While I've found that the complaint that Mr and Mrs L's credit relationship with the Lender was unfair isn't in the jurisdiction of the Financial Ombudsman Service, two of the grounds of complaint relating to the commission arrangements between the Lender and the Supplier also constitute separate and freestanding complaints. So, for completeness, I've considered those grounds on that basis here.

The first ground 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, and the second 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 L (i.e., secretly).

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').

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But regulatory breaches don't automatically mean a remedy is due. 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 Times of Sale, it's for the reasons set out below that I don't currently think any such failure is itself a reason to require the Lender to pay compensation to Mr and Mrs L.

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 Agreements that Mr and Mrs L entered into wasn't high. In respect of all 3 Credit Agreements it was no more than 10.25% of the amount borrowed and even less than that (at no more than 5.62%) as a proportion of the charge for credit. So, had they known at the Times of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that Mr and Mrs L either wouldn't have understood that or would have otherwise questioned the size of the payment at those times. After all, Mr and Mrs L wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for the timeshares they wanted doesn't strike me as disproportionate. So, I think Mr and Mrs L would still have taken out the loans to fund their purchases at the Times of Sale had the amounts 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 successful timeshare sales. 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 Agreements. And as it wasn't acting as an agent of Mr and Mrs L but as the supplier of contractual rights they obtained under the Purchase Agreements, the transactions don't strike me ones with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreements and thus a fiduciary duty.

So, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs L 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 Times of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failures on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mr and Mrs L would still have taken out the loans to fund their purchase at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at the relevant times.

Both the Lender and the PR responded to my PD to say they had nothing further to add.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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 isn't necessary to set out that context in detail here.

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.

As both parties have confirmed they have nothing further to add to my provisional findings, I see no reason to depart from them and I now confirm them as final.

My final decision

My final decision is I don't uphold Mr and Mrs L's complaint that Shawbrook Bank Limited acted unfairly or unreasonably when it dealt with their Section 75 of the CCA claims or their complaint regarding undisclosed commissions paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 29 May 2026.

Peter Cook
Ombudsman