

The complaint

Mr and Mrs B complain that Shawbrook Bank Limited won't refund to them the money that they paid for a timeshare trial membership.

What happened

Mr and Mrs B entered into a trial membership agreement in May 2017 for the right to reserve five holiday weeks within the following three years with a timeshare company. The price of the trial membership was £3,995 which they paid using a loan from Shawbrook Bank. They signed a fixed sum loan agreement for that amount which they agreed to repay by 36 monthly instalments of £131.36.

They complained to Shawbrook Bank in 2018 as they said that they weren't aware that they were buying a timeshare or entering into a loan to purchase a timeshare and about the way that the trial membership was presented to them. They said that they'd cancelled their direct debit and weren't going to make the payments due under the loan agreement. Shawbrook Bank said that they'd signed the purchase agreement and didn't cancel it during the 14 day cooling-off period. It issued a notice of default to Mr and Mrs B in March 2018 and their loan account was transferred to a third party in September 2018.

Mr and Mrs B weren't satisfied with its response so complained to this service. Our investigator didn't recommend that their complaint should be upheld. She said that the evidence available didn't appear to support their claim for a refund and she thought that Shawbrook Bank had fairly investigated their claim. She also thought that it had done enough to try and support them about their financial difficulties.

Mr and Mrs B have asked for their complaint to be considered by an ombudsman. Mrs B has responded in detail and has described the way that the timeshare was sold to them. She says, in summary and amongst other things, that:

- she wants to know how much they owe to Shawbrook Bank;
- they didn't receive letters from Shawbrook Bank and it sent letters to their address in other people's names;
- they've not taken any services from the timeshare company;
- they had to fund the flights and they're not willing to pay for them;
- Mr B lost his job in June 2017 which had a massive impact on their finances and they realised that they wouldn't be able to afford the flights;
- until she contacted the timeshare company she had absolutely no idea that they'd bought a timeshare and it was mis-sold to them;
- at no point did Shawbrook Bank or the timeshare company suggest reducing payments as a result of their financial difficulties and the only option they were offered was to call Shawbrook Bank's arrears department; and
- the whole situation was a massive trap and they were tricked into buying the timeshare.

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.

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- the sale of a holiday membership by a timeshare company isn't an activity that this service can investigate directly but, in certain circumstances, section 75 of the Consumer Credit Act 1974 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mr and Mrs B's complaint about Shawbrook Bank, I must be satisfied that there's been a breach of contract or misrepresentation by the timeshare company and that Shawbrook Bank's response to their claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr and Mrs B's claim under section 75 as only a court would be able to do that;
- Mr and Mrs B entered into a trial membership agreement with the timeshare company in May 2017 for the right to reserve five holiday weeks within the following three years – and they also signed the trial membership agreement conditions, a declaration about their understanding of what had been agreed, and a document containing the form of withdrawal notice;
- the trial membership agreement said, immediately above their signatures, that they agreed: *"... to be bound by this Agreement and the Membership Agreement Conditions as stated overleaf and the Trial Membership Regulations, Rules of Occupation of the Club and ancillary documents ... and acknowledge receipt of the Information Statement ..."*;
- the declaration about their understanding of what had been agreed set out 14 bullet points, the first of which said: *"We understand that we have entered into an Agreement for the purchase of a Trial Membership and have received a copy of our agreement together with its terms and conditions"*; and included other information about what had been agreed;
- the right to withdraw from the agreement within 14 days was clearly set out in the documents that they signed and they had signed the standard form of the withdrawal notice that could be given – and they had agreed that: *"The consumer has the right to withdraw from this contract within 14 calendar days without giving any reason"*;
- Mr and Mrs B also entered into a fixed sum loan agreement with Shawbrook Bank to pay for the trial membership, it was clearly described as a fixed sum loan agreement and said that the goods and services that were being financed were *"Timeshare weeks"* and, immediately above their signatures, the agreement said *"This is a Credit Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by its terms"* - and their right to withdraw from the loan agreement was also clearly set out;
- Mr and Mrs B had the right to withdraw from the trial membership agreement within the first 14 days but they didn't exercise that right and they didn't complain to Shawbrook Bank or the timeshare company about their issues with the product until November 2017 which was nearly six months after they'd signed the agreements;
- I've carefully considered Mrs B's description of the way that the timeshare was sold to them, together with this service's understanding of the sales processes that were

often used, but I consider that it was clear enough from the documents that Mr and Mrs B signed that they were buying the right to reserve five holiday weeks within the following three years with the timeshare company and I'm not persuaded that there's enough evidence to show that the trial membership was misrepresented to them or that they were induced into entering into the trial membership agreement by a misrepresentation made by the timeshare company;

- Mrs B says that they haven't taken any services from the timeshare company, including the introductory holiday that was offered to them, but I've seen no evidence to show that the timeshare company said that it would provide flights for that holiday, or any of the other holidays that were available under the trial membership agreement, and I consider that the holidays were available to Mr and Mrs B but it was their decision not to use them and I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the timeshare company in these circumstances;
- I've also considered whether there was an unfair relationship between Mr and Mrs B and Shawbrook Bank in these arrangements as section 140A of the Consumer Credit Act gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor – but I'm not persuaded that there's enough evidence to show that there was an unfair relationship between Mr and Mrs B and Shawbrook Bank in these circumstances and I consider it be unlikely that a court would find that the relationship was unfair;
- Mr and Mrs B stopped making payments to Shawbrook Bank in November 2017 so their account went into arrears – Shawbrook Bank has provided copies of 24 letters that it sent to Mr and Mrs B about their account between then and May 2018 when the account was defaulted – those letters were correctly addressed though Mrs B says that they weren't received but I consider it to be more likely than not that the letters were sent by Shawbrook Bank and I'm not persuaded that it's likely that none of the letters was received;
- I consider that it was clear from those letters that Mr and Mrs B should contact Shawbrook Bank to discuss their financial situation – for example one of the letters that was sent to them in November 2017 said: *"If you are experiencing financial difficulties, there are a number of ways in which we may be able to help, so please do not hesitate to get in touch"*; and the contact details for its customer management team were provided;
- I've seen no evidence to show that Mr and Mrs B properly explained their financial difficulties to Shawbrook Bank and it transferred their loan account to a third party in September 2018 when the outstanding balance on their account was £3,519.62;
- I suggest that Mr and Mrs B contact the third party to discuss their debt and it will be able to provide them with the current amount of the debt – if they don't do so I consider it to be likely that the third party will take further action against them, to the extent that it's legally entitled to do so, to try to recover the debt from them – but the third party is required to respond to any financial difficulties that they're experiencing positively and sympathetically;
- Mrs B has provided a letter that was sent to her address by Shawbrook Bank but which relates to another customer – that was clearly an error by Shawbrook Bank but that didn't form part of Mr and Mrs B's complaint to Shawbrook Bank and this service so I'm unable to consider that issue as part of this complaint – if they now want to complain about that issue I suggest that they contact the Information Commissioner's Office;

- it's clear that Mrs B feels strongly that she's been treated unfairly by the timeshare company and Shawbrook Bank and I sympathise with her and Mr B for the issues that they've had with the timeshare company and Shawbrook Bank and their financial difficulties, but I consider that Shawbrook Bank's response to Mr and Mrs B's claim was fair and reasonable in these circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Shawbrook Bank to refund to Mr and Mrs B any of the money that they've paid for the trial membership, to write-off all or any part of their debt, to pay them any compensation or to take any other action in response to their complaint.

My final decision

My decision is that I don't uphold Mr and Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 1 August 2022.

Jarrold Hastings
Ombudsman