

The complaint

Mr and Mrs H, who are represented by a professional representative (“PR”) complain that Shawbrook Bank Limited unfairly declined their claim under section 75 of the Consumer Credit Act 1974 (“CCA”) in respect of a holiday product they purchased in 2017.

What happened

Mr and Mrs H made a number of purchases from a holiday provider I will call D. These are as follows:

- In August 2006, Mr and Mrs H purchased a trial membership at a cost of £3,245 with a loan from another lender
- In February 2007, Mr and Mrs H traded in their trial membership for full membership and 7,000 points at a cost of £7,374 with a loan from a different lender
- In September 2007, Mr and Mrs H entered into an agreement to purchase a fixed timeshare week through an auction facility which D was offering at that time. However, this agreement was cancelled at their request, and no monies were taken in connection with it.
- In February 2013, Mr and Mrs H entered into an agreement to trade in their points towards the purchase of 8,000 fractional points in D’s Fractional Owners Club. However, this agreement was also cancelled at their request within the “cooling off period, and no monies were taken in connection with it.
- In November 2016, Mr and Mrs H purchased a ‘Silver Sampler’ trial membership which conferred an additional one-off allotment of 15,000 points. This cost £1,995 and was paid by credit card.
- In July 2017, they purchased an additional 8,000 points at a cost of £7,285 00. This was funded by a fixed sum loan agreement with Shawbrook Bank and is the subject of this complaint.

Shawbrook has told this service that since July 2017, Mr and Mrs H had secured 13 reservations for themselves and others, of which four have been cancelled.

In February 2021 the PR submitted claim under s 75 in respect of the purchase funded by the loan from Shawbrook. It said that Mr and Mrs H were initially happy with their purchase, but they were concerned the ownership was in perpetuity and the resorts were available to non-members.

They tried to sell their membership points but were unable to do so and they were persuaded to buy more points and upgrade. The PR says they only later discovered it was illegal to sell these products as investments.

Shawbrook rejected the claim and said that given the number of previous purchases made

by Mr and Mrs H it was reasonable to presume they were aware of the sales process and what was being offered.

They also had a 14 day cooling off period which they did not exercise. It confirmed the points were not held in perpetuity and did not pass to beneficiaries on death. At the time of sale they'd been given key information details which included current management charges. It said there was nothing to suggest they had been told the accommodation was exclusive.

A complaint was brought to this service and it was considered by one of our investigators who didn't recommend it be upheld.

He said there was no evidence of misrepresentation by D and no basis for Shawbrook to uphold the claim. The PR didn't agree and said Mr and Mrs H had been led to believe they could sell the products back. It also argued the terms of the loan were unfair as Mr and Mrs H stood to lose their rights over the products. They had been sold these products as an investment. They had not been given a valuation of the products and they had found it hard to pay the ongoing fees.

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.

Where evidence is incomplete, inconclusive or contradictory, I reach my decision about the merits of this complaint on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I also have to take account of law and regulations, regulators' rules, guidance and standards, and codes of practice and good industry practice, when I make my decision.

In this case, section 75 of the CCA is relevant to the complaint, which says:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

This means that, in certain circumstances, if Mr and Mrs H paid for goods or services using certain types of credit (even in part), and there was a breach of contract or misrepresentation by the supplier of those goods or services, the creditor can also be held responsible.

The key issue I need to decide in this case is whether Shawbrook's decision to decline the section 75 claim was fair. To decide this, I must consider whether Mr and Mrs H's claim meets the requirements of section 75, as set out by the CCA. These criteria include the following points, which are in dispute in this case:

- (a) There must be the required relationship between the debtor, creditor, and supplier;
and
- (b) (b) There must be a misrepresentation or breach of contract on the part of the supplier.

Unless the above criteria are met in the circumstances of this case, I wouldn't consider Shawbrook to have acted unfairly when refusing Mr and Mrs H's claim. I'll consider each of

these points in turn. I note that there is no dispute that the required debtor, creditor, supplier link is intact.

Was there a breach of contract or misrepresentation by the supplier?

Turning first to misrepresentation; in summary, from what the PR has told us, I understand Mr and Mrs H feel the product was misrepresented to them by the seller because they were told these were investments and there was sufficient availability of accommodation.

I've considered the common law position, as well as the Misrepresentation Act 1967 when deciding whether a misrepresentation is most likely to have been made in the circumstances of this case. For me to conclude there was a misrepresentation on the part of the supplier in the way Mr and Mrs H have alleged, generally speaking, I would need to be satisfied, based on the available evidence, that the supplier made a false statement of fact when selling the holiday products in 2017. In other words, that they told Mr and Mrs H something that wasn't true in relation to one or more of the points they have raised. I would also need to be satisfied that the misrepresentation was material in inducing Mr and Mrs H to enter the contracts. This means I would need to be persuaded that Mr and Mrs H reasonably relied on the false statement when deciding to buy the holidays.

The claim is based on what Mr and Mrs H say they were told at the meeting when they made the purchase of additional points. I am aware such meetings can last for a number of hours and the agents for D can be very persuasive. I recognise they will emphasise the positive benefits of memberships and the access to accommodation. That of itself does not demonstrate that statements were made which might amount to misrepresentation. I am also mindful that Mr and Mrs H had made a number of purchases from D and their association began in 2006. I find it hard to believe that they would easily succumb to a misleading presentation.

The documentation I have seen clearly refers to the products not being investments and while they might be seen as investments in future holidays there is nothing I have seen that shows they were sold as financial investments. Nor does the paperwork refer to the ability to sell the memberships of points back to D. In fact it says the opposite.

As far as availability is concerned it seems that Mr and Mrs H were able to make numerous bookings albeit they appear to have cancelled some of these. Quite simply I do not have sufficient evidence to allow me to conclude Shawbrook was wrong to decline the claim on the basis of the alleged misrepresentation.

Breach of Contract

Turning then to whether there was a breach of contract on the part of the suppliers; that is, generally speaking, whether the suppliers broke any terms of their contracts with Mr and Mrs H, whether implied or explicit. I haven't seen sufficient evidence that D failed to comply with the terms of the agreements Mr and Mrs H entered into.

I have addressed the issue of availability above and I am satisfied that D provided the accommodation as set out in the contract. Nor were the contracts to be held in perpetuity as suggested. The points can be sold, albeit D does not offer a re-sale facility and the contract can also be terminated.

Nor have I seen any evidence that they were promised exclusive access. Given they had been members since 2006 I would presume they would have been aware of how the product operated.

In summary, I think Mr and Mrs H took out several holiday agreements that were fairly straightforward. Their agreements entitled them to stay at a number of different properties run by D. Each property had a different 'cost' in points and they had a lot of points to use in each year. Mr and Mrs H were able to book from 2006 onwards and every year they had to pay maintenance fees to access their points. None of this was in any way unusual or unclear, in my view, so I do not think there was any reason why the 2017 agreement was breached for the reasons put forward by the PR.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 27 January 2023.

Ivor Graham
Ombudsman