

## The complaint

Mr and Mrs P complain that Shawbrook Bank Limited (Shawbrook) didn't fairly or reasonably deal with their claims under Section 75 and 140A of the Consumer Credit Act 1974 (CCA) in relation to a holiday product they purchased.

## What happened

Mr and Mrs P purchased membership of a holiday club from a third party (the 'Supplier') in September 2019. The purchase price of £18,847.00 was funded by way of a Fixed Sum Loan Agreement with Shawbrook, which also consolidated £4,421 of an existing loan with another lender.

Mr and Mrs P, acting through a professional representative (PR), contacted Shawbrook in March 2022 to raise claims under Sections 75 and 140A of the CCA and complain about the authority of the credit broker and affordability of the loan. The key complaint points are noted below:

### Section 75 of the CCA: Misrepresentation

Mr and Mrs P say the following facts were misrepresented to them;

- the holiday product they acquired was an investment and would increase in value.
- their share of the property would increase in value and so would deliver a considerable return.
- they could sell the holiday product back to the resort or easily sell it at a profit.
- they would have access to holiday apartments at any time.

### Section 140A of the CCA: Unfair relationship

- Mr and Mrs P say the agreement includes a clause which would result in the forfeiture of the holiday product in the event a payment wasn't made under the agreement. The PR said this clause put Mr and Mrs P in an unfair debtor-credit relationship under Section 140A of the CCA.

### Unauthorised credit intermediary

- The sales representatives of the credit intermediary were self-employed so while the credit intermediary was authorised to carry on regulated activities the persons signing the agreements were not employed by the regulated company but self-employed.

### Other complaint points

- The transaction was illegal as the holiday product was sold as an investment contrary to Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.
- The Supplier is in liquidation and so Mr and Mrs P are unable to receive any amounts they may be awarded.

Shawbrook issued a final response to Mr and Mrs P in April 2022. It said that the claim was based on a membership type that Mr and Mrs P didn't have. In regard to the product funded by the Shawbrook loan, Shawbrook said that Mr and Mrs P were provided with sufficient information at the point of sale to make a reasoned decision. It noted there was a 14-day cooling off period and that Mr and Mrs P signed the Customer Compliance Statement which said they had been provided with a full and adequate explanation of the credit agreement. Shawbrook also said that Mr and Mrs P weren't told they were buying a specific property but instead points to enable them to access holidays.

Mr and Mrs P didn't accept Shawbrook's final response, and the PR referred their complaint to the Financial Ombudsman Service.

Our investigator didn't uphold this complaint. They found the following:

- The claim under Section 75 of the CCA wasn't turned down unfairly or unreasonably given its merits.
- There wasn't an unfair debtor-creditor relationship between Mr and Mrs P and Shawbrook.
- There wasn't enough evidence to show the lending was unaffordable.
- The Supplier was in liquidation but the holiday products were still being honoured and so the benefits of Mr and Mrs P's acquisition were still available to them.

Mr and Mrs P didn't agree with our investigator's view. The PR said:

- It had provided a training manual that clearly showed the holiday product was sold as an investment and that Mr and Mrs P believed this and entered into the purchase agreement on this basis.
- There was an unfair relationship due to the timeshare agreement including a clause stating that failure to make any payment due may result in the right of the timeshare company to retain the whole amount paid by the purchaser without any compensation.
- Although the credit intermediary was authorised, its representatives were all self-employed and so the persons that offered the agreements and signed on behalf of the company were not employees, but self-employed and not regulated to carry on this activity. It provided a copy of a decision by the Upper Tribunal in London regarding loans brokered by a different credit intermediary.
- Lending without adequate checks is irresponsible lending.

Our investigator dealt with the complaint about the authority of the credit broker when they referred the complaint for a decision.

As a resolution hasn't been agreed, this case has been passed to me, an ombudsman, to issue a decision.

### **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.

When doing that, I'm required to take into account the relevant law and regulations;

regulator's rules, guidance and standards; and codes of practice and what I consider to have been good industry practice at the time.

When evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is more likely than not to have happened given the available evidence and wider circumstances.

#### *Section 75: Misrepresentation*

Mr and Mrs P have made a number of claims of misrepresentation. Having looked at the alleged misrepresentations these primarily relate to the holiday product being sold as an investment. I have noted the training manual provided in support of this claim, but this relates to a different product to the one Mr and Mrs P acquired so I haven't considered this further. Instead, I have looked at some of the paperwork from the time of the acquisition. The membership agreement states that the acquisition was for the primary purpose of holidays and was not for the purpose of a trade or investment. There was no suggestion in the paperwork I've seen that the product would be bought back by the Supplier. Given this, I do not find that I can say the product was misrepresented to be an investment product or that it would be able to be sold back.

In regard to the alleged misrepresentation about availability of holidays, I haven't seen enough evidence to show that Mr and Mrs P were told that they would have access to holiday accommodation at any time. Instead, the membership agreement set out that if it is not possible to trade in points because of circumstances or due to availability of suitable properties, these points will continue to be held by Mr and Mrs P. I think this supports the fact that the holidays were subject to availability.

Based on the above, and noting the allegations of misrepresentation made, I do not find that there's the evidence to say the agreement was misrepresented to Mr and Mrs P.

#### *Section 140A: Unfair Relationship*

The PR has referred to the terms and conditions governing what happens in the event of non-payment and argue that they created an unfair debtor-creditor relationship because the terms themselves breached the law on unfair contract terms.

But the Supreme Court has made it clear that for the purposes of section 140A of the CCA, any regulatory breach must be considered in the round, rather than in a narrow, technical way. Section 140A(2) says that a court shall have regard to 'all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor)'. While I think that's wide enough to include the way the supplier exercises or enforces any terms that are or may be unfair, I haven't seen sufficient evidence that any terms in this case were exercised or enforced in a way that was unfair to Mr and Mrs P.

#### *Other points raised*

The other points raised were that the holiday product was sold as an investment. However, based on the comments above I do not find this was the case. The PR also raised concerns about the Supplier being in liquidation. While I note the point raised, as the services are continuing to be provided, I do not find that this constitutes an actionable breach of contract in regard to Section 75 of the CCA. Therefore, I do not require Shawbrook to do anything further in regard to these issues.

#### *Irresponsible lending*

The PR has said that not carrying out adequate checks means the lending was irresponsible. I do not have information about the checks that took place before the loan was provided. But for me to require Shawbrook to take any further action in regard to this part of the complaint, I would need to be satisfied that adequate checks would have shown the lending to have been unaffordable and I haven't seen enough evidence of this.

#### *Authorisation of the credit broker*

The loan agreement records the credit intermediary and this service's records show that the company identified does have the required authorisation and did at the time the loan was provided.

I note the reference made to the Upper Tribunal decision, but I do not find that this is relevant in this case as the decision provided is in relation to another lender and use of an unauthorised credit broker. The credit intermediary for Mr and Mrs P's agreement had the required authorisation in place.

#### *Conclusion*

While I note the concerns raised by and on behalf of Mr and Mrs P, I do not find in this case that the evidence supports the complaint being upheld.

#### **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 P and Mrs P to accept or reject my decision before 13 July 2023.

Jane Archer  
**Ombudsman**