

The complaint

Mr and Mrs C's complaint is that Shawbrook Bank Limited ('Shawbrook') acted unfairly and unreasonably when dealing with a complaint about a loan taken out in 2016.

What happened

Mr and Mrs C purchased membership of an asset-backed timeshare called the Fractional Property Owners Club ('FPOC') from a timeshare provider (the 'Supplier') on 2 June 2016 (the 'Time of Sale'). They bought 1,500 Fractional Points at a cost of £11,165, after trading in an existing membership and consolidating their existing loan. It's the particular purchase on 2 June 2016 that is the subject of this complaint.

Mr and Mrs C paid for their FPOC membership by taking finance from Shawbrook in both of their names. They entered into a consolidated 10 year restricted use Fixed Sum Credit Agreement for £26,237 and the total amount repayable after interest and charges was £43,906.80 (the 'Credit Agreement').

Under the terms of the FPOC, Mr and Mrs C could exchange their Fractional Points for holidays. And, at the end of the projected membership term, they also had a share in the sale proceeds of a property tied to their membership (the 'Allocated Property').

Mr and Mrs C emailed Shawbrook on 7 January 2019 to complain. They said:

- They were pressured into the sale as aggressive sales tactics were used.
- They feel the loan was mis-sold to them as the interest rate was very high.

Shawbrook dealt with Mr and Mrs C's concerns as a complaint and issued its final response letter on 7 February 2019, rejecting it.

Mr and Mrs C then referred their complaint to the Financial Ombudsman Service on 7 March 2019. At that stage, they added to their complaint and said:

- They are finding the loan to be unaffordable for them and have realised the interest rate on the loan is high. They say they wouldn't have taken the loan if this had been made clear to them at the time of sale.
- They weren't given any time to consider what they were getting into.
- The sales agent was very aggressive in their approach.
- They were told that they could easily sell their fractional rights but they've now been told they can't do this until after 19 years have passed.
- They say there was a misrepresentation as the individual who arranged their loan also worked for the Supplier.
- Shawbrook did not comprehensively assess their financial situation at the time of sale. They're now struggling to pay the loan and are having to borrow from friends and family in order to do so. Mr C had recently been made redundant and so this was making payments difficult at this point.

The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits on 18 October 2023.

Mr and Mrs C disagreed with these findings and asked for the matter to be referred to an Ombudsman for a final decision to be made. They said:

- There was undue pressure given the fact that the tone of the sales agent was “*somewhat harsh*”, and they were told “*if you don’t take this now you are not going to get as good a deal as this*”.
- The sales process was lengthy and they were not prepared for this and were not notified in advance that it would take this long.
- Due to the pressure of the sale, no attempts were made to verify their earnings and no payslips or bank statements were requested.
- They didn’t proactively request to upgrade their membership, rather they were invited for breakfast on the first day of their holiday and they found themselves being introduced to a new product and they didn’t plan for this.
- They had thought it was a 5 year loan but only realised later it was actually a 10 year loan.

As agreement on the outcome could not be reached, the complaint has been referred to me to make a final 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 making my decision, I’m required by DISP 3.6.4 R of the Financial Conduct Authority’s handbook to take into account the:

“(1) *relevant:*

(a) *law and regulations;*

(b) *regulator’s rules, guidance and standards;*

(c) *codes of practice; and*

(2) *([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”*

Where evidence is incomplete, inconclusive, or contradictory, I make my decision on the balance of probabilities i.e., what I think is more likely than not to have happened based on the evidence available and the wider circumstances of the complaint.

My role as an Ombudsman isn’t to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven’t commented on, or referred to, something that either party has said, this doesn’t mean I haven’t considered it.

Rather, I’ve focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

Finally, when bringing their complaint, Mr and Mrs C didn’t set out on what regulatory or legal basis they felt Shawbrook needed to do something to put right what they said went wrong – I make no criticism of them in not doing so as I wouldn’t expect them to necessarily know these things. Our Investigator considered the complaint and thought parts of it amounted to complaints that Shawbrook should have considered under the Consumer Credit

Act 1974 (the 'CCA') and, having considered everything, I agree. So, I've reflected that in my approach to this complaint.

Mr and Mrs C's complaint about the Supplier's misrepresentations

Mr and Mrs C say that there were a few elements to FPOC membership that were misrepresented by the Supplier, leading them into their purchase of the FPOC membership. To reiterate briefly, those were:

- They were told that they could easily sell their fractional rights but they've now been told they can't do this until after 19 years have passed.
- They say there was a misrepresentation as the individual who arranged their loan also worked for the Supplier.

In order for me to say there was a misrepresentation made by the sales agent in the sale of the FPOC membership, I would have to say that there is evidence that Mr and Mrs C were told something that was not true. If that was found, it's possible that Shawbrook could be jointly liable with the Supplier for those misrepresentations under the operation of Section 75 of the CCA.

In terms of being able to easily re-sell their membership, Mr and Mrs C haven't provided any detail about what exactly they were told or promised in this regard in 2016.

I can see from Mr and Mrs C's signed Information Statement it explains that there is no re-sale, rental or re-purchase of Fractional Rights in place operated by the Vendor or the Management Company, although the Owners are entitled to sell their Fractional rights on the open market if they wish to do so. Similarly, with the Exchange scheme, explanation is given in the documentation as to how this works and that it's subject to availability.

I think the existence of a way of transferring memberships if they were sold isn't the same as giving an assurance that such a sale was likely. Further, I think it's not that likely that a statement like that would be made as it would open the Supplier up to complaints from customers who weren't able to resell their timeshares on the open market.

I'm also mindful that Mr and Mrs C had made a previous purchase. I therefore think it's reasonable to say that they were presumably familiar by that stage with how the product worked. So, although it's possible Mr and Mrs C were told they could resell their membership, I can't say it's more likely than not they were told they would be able to easily resell their membership.

Mr and Mrs C also said they felt there was a misrepresentation because the individual who arranged their loan also worked for the Supplier. Again, they haven't explained what exactly they were told about this at the time of sale or what was misrepresented to them. And, I don't see how this would have affected their understanding of how the product they were purchasing worked or the key features of it.

In short, therefore, I have not seen enough evidence to say, on balance, that any alleged false statements of fact were made to Mr and Mrs C by the Supplier.

So having considered everything, and without a more detailed description of the conversation(s) surrounding the alleged misrepresentations, or any supporting evidence, Mr and Mrs C's claim of misrepresentation doesn't have sufficient weight to succeed. And for this reason, I do not think it would be unfair or unreasonable for Shawbrook to turn down a Section 75 claim.

Mr and Mrs C's complaint that Shawbrook hadn't treated them fairly

I've already explained why I'm not currently persuaded that the contract entered into

by Mr and Mrs C was misrepresented by the Supplier. But there are other aspects that, being the subject of Mr and Mrs C's dissatisfaction, I need to explore in more detail. These include the affordability of the loan, being pressured into the sale and not being given sufficient information about the term and interest rate of the loan. Some of these matters, such as the question of whether the loan was affordable, can be considered as points of complaint in their own right. But some of these concerns could give rise to an unfair debtor-creditor relationship as set out in section 140A of the CCA.

Affordability of the loan

Mr and Mrs C say no affordability assessment or credit check was carried out in relation to the loan they took out. Shawbrook have said in their final response to the complaint that they did do such checks, although I haven't been provided with any information regarding what affordability check(s) were carried out in relation to Mr and Mrs C, and what these showed.

But, even if no affordability assessment or check was carried out, I'm not currently persuaded it makes a difference in this case. The reason I say this is that there has been no evidence provided by Mr and Mrs C that the loan actually was unaffordable for them at the time of sale. Indeed, this doesn't seem to be their suggestion. Rather, what they've said indicates that the loan may have become difficult for them to afford at the time of submitting their complaint to our Service, due to recent changes in personal circumstances which couldn't have been known at the Time of Sale, namely the previous redundancy Mr C has mentioned (although from what he's said, he then subsequently got a new job). I empathise with what Mr and Mrs C have said, but this doesn't automatically mean the loan was unaffordable for them at the Time of Sale.

I note that Mr C has mentioned he believes at the Time of Sale he was under an Individual Voluntary Arrangement (IVA) or was just reaching the end of one. We asked him for further information about this and their wider circumstances at the Time of Sale, including their bank statements from the time but no such information or evidence on these points was provided.

So, on the basis of the evidence and information I do have, I've not seen anything to suggest the loan wasn't affordable for Mr and Mrs C at the Time of Sale. It follows, I can't say Mr and Mrs C lost out, even if Shawbrook didn't do all of the checks it should have done, or that this caused an unfairness that requires a remedy in this case.

The Supplier's sales and marketing practices at the Time of Sale

Mr and Mrs C have told our Service that the sales process lasted several hours, and aggressive sales techniques were used. And, that they weren't given any time to consider what they were committing to.

From what I know of the Supplier's general sales practices at this time, I don't doubt that the sales process Mr and Mrs C attended was lengthy. But I don't think the testimony provided sufficiently supports that any malicious or undue pressure was applied to them during the sale, such as to cause them to buy something they otherwise wouldn't have done. They've said the tone of the sales agent was "*somewhat harsh*", but in my view, this is rather vague and open to personal interpretation. And, the only example of this given is that they were told "*if you don't take this now you are not going to get as good a deal as this*". While this may have been a persuasive statement, in my view it may also have been an accurate one as I'm aware that often, prospective members were offered cheaper deals on the day than if they'd approached the Supplier at another time. And I don't think there is anything wrong with offering customers limited time offers.

Mr and Mrs C don't describe any further exactly how they were pressured. So, from the

evidence provided, I'm not sufficiently persuaded the sale was so pressured it caused them to buy something they otherwise wouldn't have done, nor do I think this created an unfair relationship that requires a remedy.

It is also important to note that Mr and Mrs C were also given a 14-day 'cooling off' period following the sale, during which time they could cancel the purchase and the associated Credit Agreement without penalty.

As noted above, I'm also mindful that Mr and Mrs C had made a previous purchase prior to this one. So, I think it's reasonable to say that they were already interested in taking holidays with the Supplier.

I don't therefore think this is a reason to uphold this complaint given its circumstances.

The provision of information at the Time of Sale

Mr and Mrs C say that they were not given sufficient information regarding the term of the loan and the interest rate that would apply.

Again, I'm mindful that given Mr and Mrs C had already purchased the product before using a similar loan, they would therefore likely be familiar with how it worked.

But, in any event, it seems likely to me that Mr and Mrs C were told this information at the Time of Sale. For example, I can see in their signed Credit Agreement that it clearly states the applicable interest rate and the duration of the agreement. It also explains the total amount they'd be repaying after interest and charges. There are also further explanatory notes beside and below this which are noted as important and to be read carefully.

Being charged interest when borrowing money is normal, and I do not see that charging interest would have led to an unfairness in this case. I note that Mr and Mrs C have said they feel the interest rate was high but again, the interest rate was set out on the face of the loan agreement, so it would have been clear to Mr and Mrs C. Further, I've not been provided with any reason why such a rate was unfair given Mr and Mrs C's circumstances, so I can't say the level of interest led to an unfairness that requires a remedy in this case.

Conclusion

Overall, taking into account all facts and circumstances of this complaint, I don't think that Shawbrook acted unfairly or unreasonably when it declined Mr and Mrs C's complaints and I'm not persuaded that Shawbrook was party to a credit relationship with Mr and Mrs C under the Credit agreement that was unfair to them. And, having taken everything into account, I see no other reason why it would be fair or reasonable to direct Shawbrook to compensate Mr and Mrs C.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 28 May 2024.

Fiona Mallinson
Ombudsman