

The complaint

Mr and Mrs N's complaint is that Shawbrook Bank Limited ('Shawbrook') acted unfairly and unreasonably in relation to a complaint they made about a timeshare they bought using credit from Shawbrook.

What happened

Mr and Mrs N purchased membership of an asset-backed timeshare from a timeshare provider (the 'Supplier') on 30 May 2013 (the 'Time of Sale'). They bought 1,080 Fractional Points at a cost of £13,950.

Mr and Mrs N paid for their membership and the first year of annual management charges by taking finance from Shawbrook in both of their names. They entered into a 15 year loan for £14,749 (the 'Credit Agreement').

Under the terms of the membership, Mr and Mrs N 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'). As their interest in the Allocated Property was limited to a share in its net sale proceeds, they didn't have any preferential rights to stay in the Allocated Property or use it in any other way.

Mr and Mrs N wrote, via a representative ('LF'), to Shawbrook on 21 February 2019 to complain about misrepresentations by the Supplier at the Time of Sale giving them a claim under Section 75 of the Consumer Credit Act 1974 (the 'CCA'). They also mentioned Section 140A of the same Act.

Mr and Mrs N say that the Supplier made a number of misrepresentations at the Time of Sale, which are as follows:

- They were led and made to believe the purchase would benefit them in terms of an investment, which would yield returns in the future. However, the purchase was in no way an investment as it has no increment in value once it's been completed.
- Statements were made by the Supplier that the accommodation and its facilities were to an exceptional standard and level.
- False promises were given in relation to the apartments, destinations and availability, including that they would be able to make a booking at their preferred resort. But, when Mr and Mrs N tried to book, there were difficulties with this.
- The Supplier made false statements in relation to the re-sale and exit of the timeshare.

Other, more general, points were made as follows:

- They were subjected to aggressive and unrelenting sales tactics.
- The information they were given in relation to the annual charges was negligent and ambiguous. And, the charges are not rational nor manageable for Mr and Mrs N.
- Mr and Mrs N were forced to take finance through Shawbrook, resulting in higher interest rates and charges than they could have obtained elsewhere.
- The cooling off period was not mentioned.

Shawbrook dealt with Mr and Mrs N's concerns as a complaint and issued its final response letter on 24 April 2019, rejecting it.

Mr and Mrs N then referred the complaint to the Financial Ombudsman Service on 22 May 2019. LF, their aforementioned representative, was later removed from their complaint.

The complaint was then assessed by an Investigator. Prior to issuing their findings, they asked Mr and Mrs N for their recollections of the sale, in their own words. But, no response was received.

So, having considered the information on file, the Investigator then issued their findings and rejected the complaint on its merits on 27 October 2023.

Mr and Mrs N disagreed with these findings and asked for the matter to be referred to an Ombudsman for a final decision to be made. They also provided further comments on the sale.

As agreement on the outcome could not be reached, the complaint has been referred to me to make a final decision. Prior to reaching my decision, I spoke with Mr and Mrs N over the phone in order to hear from them directly their recollections of the sale in question.

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 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.

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

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

- They were led and made to believe the purchase would benefit them in terms of an investment, which would yield returns in the future. However, the purchase was in no way an investment as it has no increment in value once it's been completed.
- Statements were made by the Supplier that the accommodation and its facilities were to an exceptional standard and level.
- False promises were given in relation to the apartments and availability options, including that they would be able to make a booking at their preferred resort. But, when Mr and Mrs N tried to book, there were difficulties with this.
- The Supplier made false statements in relation to the re-sale and exit of the timeshare.

A misrepresentation is a false statement, made by the supplier, that induces a consumer into entering a contract. So, in this case, for me to say there had been a pre-contractual misrepresentation by the Supplier, I would have to be satisfied, on the balance of

probabilities, that Mr and Mrs N were told something that was factually untrue, and that this induced them to make the purchase. 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.

Based on the documentation available and Mr and Mrs N's comments, there is nothing that makes me think they were told they were guaranteed to get a financial return in the future.

They haven't elaborated on this in their testimony. So, I can't say they were told anything untruthful at the time of the sale. The Allocated Property would be sold at the end of the contract period, and they would be given their fractional share of the proceeds. So, they were entitled to get something back at the end of their membership period, but I can't see that Mr and Mrs N have made an allegation that they were told how much this would be or that it would be more than what they paid for their membership.

I've also not seen anything which makes me think Mr and Mrs N won't receive their share of any proceeds from the sale of the Allocated Property which are due to them.

Regarding the level of accommodation and availability, I can see from what Mr and Mrs N have said, it was explained to them during the sale that there were different levels of accommodation available and this was the reason for the differences they saw in the accommodation shown to them during the sale.

I can't see that any guarantees were made in the documentation that certain resorts or holidays would always be available at any time. And furthermore, the Supplier has confirmed that Mr and Mrs N have never tried to reserve a holiday using their membership, so it's unclear what issues with booking they've referred to.

Lastly, Mr and Mrs N have said false statements were made in relation to the re-sale and exit of their timeshare, but didn't elaborate further on this until after they received our Investigator's assessment. And, the only further comment they've made in this regard is that they were told they could sell the timeshare easily at any time and have referred to the sale of the Allocated Property. But, this isn't something that's reflected in the documentation they received. For example, in their signed purchase agreement, it explains the duration of ownership and when the Allocated Property will be sold, which from what they've said, I think is what Mr and Mrs N are more likely than not referring to here.

I also note that the Supplier has confirmed they've only received one request from Mr and Mrs N to surrender their membership, not the multiple they've referred to.

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.

So, although it's possible Mr and Mrs N 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.

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 N by the Supplier. I recognise that they have concerns about the way in which their membership was sold. But, given the evidence in this complaint, I'm not persuaded that there was an actionable misrepresentation by the Supplier for the reasons Mr and Mrs N allege. And, for that reason, I don't think Shawbrook acted unfairly or unreasonably when it dealt with Mr and Mrs N's Section 75 claim.

Mr and Mrs N's other points of complaint

I've already explained why I'm not currently persuaded that the contract entered into by Mr and Mrs N was misrepresented by the Supplier. But there are other aspects of the sales process in question that, being the subject of Mr and Mrs N's dissatisfaction, I need to

explore in more detail. These include being pressured into the sale (including being forced to take finance with Shawbrook specifically) and not being given sufficient information about the annual management charges, and the cooling off period available to them. Some of these concerns could give rise to an unfair debtor-creditor relationship as set out in Section 140A of the CCA. So, I have considered whether the problems raised led to an unfairness that requires a remedy.

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

Mr and Mrs N have told our Service that aggressive and unrelenting sales techniques were used. They've described the sales agent being persistent and not giving them sufficient time to consider what they were purchasing. I also spoke with Mr and Mrs N further over the phone to clarify the points they'd made, and they made similar comments during that conversation too.

From what I know of the Supplier's general sales practices at this time, I don't doubt that the sales presentation Mr and Mrs N attended was lengthy and the sales agents were ultimately trying to persuade them to purchase. But having considered everything carefully, 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. So, I can't see that their own memories of the sale are sufficient for me to conclude that there existed an unfair debtor-creditor relationship that requires a remedy.

But, even if this was the case, it is also important to note that I can see from the documentation that Mr and Mrs N were 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.

I also haven't seen anything to suggest Mr and Mrs N were forced into taking finance with Shawbrook specifically, nor have I been provided with any evidence to show that they could have sourced cheaper finance elsewhere. And, this isn't something Mr and Mrs N have mentioned in their further testimony either.

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

I also note Mr and Mrs N have said the membership was sold to them as an investment. Their point in this regard seems to relate to that being misrepresented to them at the Time of Sale, which I've already addressed above.

However, I'm also mindful that Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling the membership as an investment and that if there was a breach of this regulation, this could potentially give rise to an unfair relationship.

Looking at Mr and Mrs N's testimony, the only description or reference to it being sold as an investment is where they've said the sales representative told them they could look at it as such while enjoying holidays.

I acknowledge that they've said this, but they didn't elaborate on that particular part of their testimony to give it colour and context. So, I don't think it's unreasonable to read it in the context of the rest of their testimony, which in my view only describes the Supplier's description of how the membership worked rather than any attempt by the Supplier to induce them into the purchase on the promise of a profit.

As mentioned above, I also spoke with Mr and Mrs N further over the phone and they were also clear in this conversation that the main reason they were interested in the membership

and what they saw as the main benefit of it, was using it for holidays. And, they've said what induced them into making the purchase was the alleged pressure of the sale, which I've already addressed above.

With that, and their testimony being the best evidence I have of what Mr and Mrs N remember of their purchase, I'm not persuaded that the Supplier was likely to have led them to believe that membership offered them the prospect of a financial gain, and inducing them into their purchase on that basis, which is what I would need to be satisfied of here.

But, even if I'm wrong about that, I'm not persuaded that makes a difference to the outcome of this complaint. The reason I say this is that I note from their testimony that the main reasons why Mr and Mrs N appear to be unhappy with their membership relate to how well the membership functions as a holiday product and the annual charges they were having to pay, as opposed to any function as an investment. They also don't mention it being sold to them as an investment as one of the reasons why they say they signed the contract.

So, I can't say any sale of the membership as an investment was important to Mr and Mrs N's purchasing decision.

The provision of information by the Supplier at the Time of Sale

Mr and Mrs N say that they were not given accurate information regarding the annual maintenance fees or the cooling off period available to them.

Firstly, in relation to the cooling off period, as explained above, I can see this was clearly explained to Mr and Mrs N in the documentation provided to them at the Time of Sale. Further, even if they weren't aware of what was in the documentation, I can't see how it made a difference in this case and I've not seen that Mr and Mrs N wanted to cancel the agreement within the cooling off period.

Secondly, in relation to the annual management charges, in their original complaint, Mr and Mrs N's representative said the information they were given in relation to the annual charges was 'negligent and ambiguous'. And, the charges are not 'rational nor manageable' for Mr and Mrs N.

It wasn't explained further what was meant by this, or how exactly they felt this caused an unfairness in the credit relationship. In their own testimony, Mr and Mrs N have only said that they were told the maintenance fee they were charged at the Time of Sale was a one-off as opposed to a regular, yearly payment.

So, this seems to be more of an allegation of misrepresentation. But, in any event, it seems likely to me that Mr and Mrs N were told by the Supplier at the Time of Sale that the annual maintenance fees were payable each year and that they may increase. For example, I can see in their signed purchase agreement that it states the charges are due each year.

And while it's possible the Supplier didn't give Mr and Mrs N sufficient information, in good time, on the various charges they could have been subject to as members and the cooling off period available, in order to satisfy its regulatory responsibilities at the Time of Sale, I haven't seen enough to persuade me that this, alone, rendered Mr and Mrs N's credit relationship with Shawbrook unfair to them.

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 N's Section 75 claim, and I'm not persuaded that Shawbrook was party to a credit relationship with Mr and Mrs N 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 N.

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 Mrs N and Mr N to accept or reject my decision before 26 June 2024.

Fiona Mallinson
Ombudsman