

The complaint

Mr and Mrs S's complaint is, in essence, that Shawbrook Bank Limited ('Shawbrook') acted unfairly and unreasonably when deciding against paying their claim under Section 75 of the Consumer Credit Act 1974 (the 'CCA').

What happened

Mr and Mrs S purchased membership of an asset-backed timeshare called the Fractional Property Owners Club ('FPOC') from a timeshare provider (the 'Supplier') on 25 March 2014 (the 'Time of Sale'). They bought 3,440 Fractional Points at a cost of £6,293. They've made a number of purchases over several years but it's this particular purchase that is the subject of this complaint.

Mr and Mrs S paid for their FPOC membership by taking finance from Shawbrook in both of their names. They entered into a 15-year restricted use Fixed Sum Credit Agreement for £6,293 and the total amount repayable after interest and charges was £17,965.80 (the 'Credit Agreement').

Under the terms of the FPOC, Mr and Mrs S 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 S wrote to Shawbrook in November 2018 to complain about misrepresentations by the Supplier at the Time of Sale giving them a claim under Section 75 of the CCA.

Mr and Mrs S say that the Supplier made a number of misrepresentations:

- The quality of accommodation and level of customer service wasn't what they'd been promised and there were issues with availability – for some destinations they had to book 18 months in advance and some were never available at all.
- They were told the accommodation was member-exclusive but non-members could also book it.
- They specifically asked if the membership was easily re-sellable and they were told yes but this wasn't true.
- They were told that if they upgraded their membership this would resolve the issues they'd been experiencing so far in using their rights.

Mr and Mrs S also say that they were pressured into the sale in question, their annual management charges have increased by around 300% over 10 years and they're worried that their children are going to have to keep paying the annual management charges in the future.

Shawbrook dealt with Mr and Mrs S's concerns as a complaint and issued its final response letter on 23 January 2019, rejecting it.

Mr and Mrs S then referred the complaint to the Financial Ombudsman Service on 19 February 2019.

The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits on 26 October 2023.

Mr and Mrs S disagreed with the Investigator's assessment and asked for the matter to be referred to an Ombudsman for a final decision to be made. They said the reason for asking for a final decision was "*only in order to get a second opinion*" because their "*claim against a different company has resulted in a small offer of compensation*".

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.

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 S only mentioned that they wanted to make a Section 75 claim. They didn't set out what other 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 could be considered under the Consumer Credit Act 1974 (the 'CCA'), including Section 140A and, having considered everything, I agree. So, I've reflected that in my approach to this complaint.

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

Mr and Mrs S set out a number of alleged misrepresentations by the Supplier as part of this complaint. But on my reading of them, only one of them concerns their purchase at the Time of Sale. And that's the fact they were told, if they upgraded their membership, that would resolve the issues they'd been experiencing so far when using membership to holiday.

To say that there was a misrepresentation made by the Supplier at the Time of Sale, I would have to see enough evidence that Mr and Mrs S were told something that was factually untrue.

It's important to note that I'm considering what was said and/or done at the Time of Sale since it's that purchase that this complaint relates to, rather than Mr and Mrs S's earlier purchases.

It seems the issues Mr and Mrs S say they'd been experiencing until their upgrade related to the availability of holidays and the standard of accommodation available to them. But, Mr and Mrs S haven't elaborated on what they were told, by who and in what circumstances at the Time of Sale as to how upgrading their membership would resolve their existing issues and why such representations were factually untrue.

And with that being the case, therefore, I have not seen enough evidence to say, on balance, that any false statements of fact were made by the Supplier to Mr and Mrs S at the Time of Sale.

So, without a more detailed description of the conversation(s) surrounding the alleged misrepresentations, or any supporting evidence, Mr and Mrs S's claim of misrepresentation doesn't have sufficient weight to succeed. And for this reason, I do not think Shawbrook acted unfairly or unreasonably when it dealt with Mr and Mrs S's Section 75 claim.

Mr and Mrs S's complaint about there being an unfair debtor-creditor relationship

I've already explained why I'm not currently persuaded that the contract entered into by Mr and Mrs S was misrepresented by the Supplier. But there are other aspects of the sales process in question that, being the subject of Mr and Mrs S's dissatisfaction, I need to explore in more detail. Again, I can only consider those points which relate either as a whole or in part to the acts and/or omissions of the Supplier and/or Shawbrook at the Time of Sale. These include the sales process being pressured and the annual management charges increasing over a period of ten years.

And in considering these aspects of the sale, I've considered the impact that one or both had on Mr and Mrs S and their credit relationship with Shawbrook.

The Supplier's sales process at the Time of Sale

Mr and Mrs S suggest that the sales process at the Time of Sale lasted several hours, that aggressive and high-pressure sales techniques were used by the Supplier, and that they weren't given any time to consider what they were committing to because the Supplier's aggressive techniques convinced them to buy and pay on the day.

I'm required to take into account, when appropriate, what I consider was good industry practice at the time – which, in this complaint, is the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code'). The RDO Code sets out, amongst other things, the Sales and Marketing Principles. And those Principles state that selling members (like the Supplier) had to ensure that it used "*appropriate selling methods that treat the consumer with respect and allow the consumer choice between purchasing and reflection.*"

From what I know of the Supplier's general sales practices at the time, I don't doubt that the sales process Mr and Mrs S attended was lengthy. But Mr and Mrs S haven't described what was said to them, by whom and in what circumstances to give the allegation that they were pressured into their purchase the necessary colour and context. So, I can't see that their own memories of the sale support the allegation of a sale so pressured it caused them to buy something they otherwise wouldn't have done. And other than what was said in the Letter of Complaint, I haven't seen sufficient evidence to persuade me that, on the balance, the Principle I've referred to above was not adhered to for reasons relating to pressure.

What's more, Mr and Mrs S 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 S had made several other purchases prior to this one. So, I think it's reasonable to say that they were presumably familiar by that stage with how the product worked and with the general sales practices the Supplier used, as well as having time to reflect on their previous purchases. I also think their past purchasing history shows that they were interested in the Supplier's memberships, so I think it's likely that they bought this membership for that reason rather than due to a coercive sale.

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

Increases of the annual management fees

Mr and Mrs S said when they complained that the management fees were increased by around 300% over ten years.

From this, it would seem that much of the increases Mr and Mrs S say they're unhappy with took place prior to the sale being complained about here in 2014. And, it's not clear from what they've said what they believe went wrong in this regard at the Time of Sale in 2014 or why they believe such increases to have caused an unfairness in their credit relationship with Shawbrook.

I'm mindful that given Mr and Mrs S had already purchased the product multiple times before, they would therefore likely be familiar with the annual management charges and have seen that these could increase prior to making their 2014 purchase which is the subject of this complaint.

It also seems likely to me that Mr and Mrs S were told by the Supplier at the Time of Sale that the annual maintenance fees could go up each year and it was explained why this was. For example, I can see in their signed Information Statement that it states the charges are budgeted annually and are subject to increase or decrease as determined by the costs of managing the project.

There's been no suggestion from what Mr and Mrs S have said that they were told something inaccurate by the Supplier in the lead up to the Time of Sale or that they were not told something that they should have been told. There also isn't any suggestion from Mr and Mrs S that they have concerns about the terms of the contract governing the ongoing costs.

So, I haven't seen enough to persuade me that this, alone, rendered Mr and Mrs S'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 S's Section 75 claim, and I'm not persuaded that Shawbrook was party to a credit relationship with Mr and Mrs S 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 S.

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 S and Mrs S to accept or reject my decision before 5 June 2024.

Fiona Mallinson
Ombudsman