DRN-4596494

The complaint

Ms G complains that Shawbrook Bank Limited ('Shawbrook') treated her unfairly and unreasonably when it rejected her claim under Section 75 of the Consumer Credit Act 1974 (the 'CCA').

What happened

In November 2014 Ms G was on a holiday as part of her existing timeshare ownership. This was a points-based arrangement whereby the points purchased renewed every year enabling Ms G to exchange them for use at the timeshare company's holiday accommodation. Whilst at the resort she attended a sales promotion for an asset-backed timeshare scheme where fractional rights in a specified property were being sold.

As a result of the promotion, Ms G purchased a membership from a timeshare provider (the 'Supplier') in a specified apartment. This allowed her to stay in that apartment (the 'Allocated Apartment') for one week each year, up to a specified date in 2030, when the apartment would be sold. Upon its sale the proceeds from the sale would be split proportionally amongst the fractional owners whose membership was linked to the Allocated Apartment. Gaining a share of the proceeds of sale was known as 'Fractional Rights'. As part of this purchase Ms G relinquished to the Supplier her existing points-based timeshare ownership.

Ms G paid for this fractional ownership by taking finance from Shawbrook. She entered into a 15-year restricted use Fixed Sum Credit Agreement for £15,000 with the total amount repayable after interest and administration charges being £32,585.40 (the 'Credit Agreement').

The application and purchase agreement dated 24 November 2014 (the 'Purchase Agreement') was made between Ms G and one of the timeshare provider's sales representatives. The sales representative, which had the right to promote and sell memberships, was the Supplier for the purpose of the CCA. Under the Purchase Agreement Ms G agreed to be bound by the club rules (the 'Club Rules') which included the payment of the Annual Management Charge ('AMC').

As part of the purchase the Supplier agreed to pay the AMC for the years 2015 and 2016, and paid Ms G €1,000 as 'cashback' via a cheque on completion of her purchase.

Ms G appears to have taken a holiday in the apartment in 2015, 2018 and 2019, and swapped her 2016 week with a third party to enable her to stay at a different location.

In November 2019, via a professional representative ('BS') Ms G wrote to Shawbrook to complain there had been misrepresentations at the time of the sale, and to make a claim under Section 75 CCA for the Credit Agreement. In summary, she said the following misrepresentations were made:

- The purchase was for a fractional ownership investment product which could be resold at any time, and which also guaranteed a return on her initial investment plus profit at the latest in 2030.

- The only way she could exit from her existing timeshare ownership was to purchase the fractional ownership. She has since discovered that she could have relinquished her original membership at any time without penalty.
- There was a guaranteed rental programme which would provide €1,250 rental income to her for her week if she was unable to use it, which would cover the maintenance fee and provide some profit. She was told the €1,000 was paid to her as an advance rental income.
- She asked the Supplier to rent out her week in 2015 but was told the maximum she would receive was €750 which she declined to take up.
- She has discovered that the maximum rental that could be achieved would only cover the following years maintenance fee, and there would be no profit.
- The Supplier has since closed its sales operation which means the rental and resale promises will be unfulfilled. The new owners have confirmed they do not provide a rental service.
- She now has no customer or administration support and the product she was sold is now not, and never will be, what she was sold. This was financed by Shawbrook.

On 27 January 2020 Shawbrook sent its final response to Ms G's claim. It dealt with the claim as a complaint which it did not uphold. It said that the documentary evidence from the time of sale gave a reasonable indication of what happened and what was discussed. It said, in summary:

- Ms G was provided with the Application and Purchase Agreement Form dated 24 November 2014, which she signed. This set out the purchase price she would be paying, and that year's AMC of €562.
- The paperwork provided confirmed that Ms G understood what she was purchasing and how the scheme worked.
- She had been informed that the Supplier did not operate a guaranteed rental programme, nor did it operate a re-sale facility.
- She was given a 14-day 'cooling off' period during which she could cancel her membership without penalty.
- The document highlighted the details of the loan:
    - Amount of credit (£15,000)
    - Term of the agreement (180 months)
    - Monthly repayment (£181.03)
    - Fixed rate of interest (11.9%)
    - Administration fee (£165)
    - Total charge for the credit (£17,585.40)
    - Total payable (£32,585.40)
    - APR (12.8%)
- Ms G was given a €1,000 cashback payment.
- Ms G signed a declaration that she had not entered into the purchase purely as an investment opportunity or for financial gain.
- Ms G continued to be provided operational support. It gave the details of the in-resort

representative that she could contact if she needed to.

- The responsibility for the sale of the apartment remained with a third-party as trustees, and Ms G would receive her fraction of the sales proceeds as set out in the Purchase Agreement Form.

Ms G's complaint was considered by an Investigator at this Service who determined that it should not be upheld. The Investigator thought that Shawbrook hadn't acted unfairly when it had decided to reject Ms G's claim under Section 75 CCA.

Ms G did not agree and asked for her complaint to be referred to an Ombudsman – so it has been passed to me for 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.

And when doing that, the Regulator – the Financial Conduct Authority's (FCA) handbook, under DISP 3.6.4R requires me to take into account:

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.*

I have seen that Ms G entered into a contract with the Supplier for services financed by a debtor-creditor-supplier agreement, for the purchase of Fractional Rights at the time of sale. So I am satisfied that Section 75 applies. This means that if I find the Supplier is liable for having misrepresented something to Ms G, Shawbrook – as the creditor – is jointly liable.

BS, on behalf of Ms G, made several complaint points in order to substantiate her claim under Section 75. For ease of reference, I've repeated a summary of what I consider to be the crux of Ms G's complaint below, and will deal with each point in turn:

1) The Fractional Rights product was sold as one that could be resold at any time, and one that would guarantee a return on her initial investment plus profit by 2030 at the latest.
2) Ms G was told that the purchase of the Fractional Rights product was the only way she could exit from her existing timeshare arrangement.
3) She was told there was a guaranteed rental system which would provide a profit on any weeks she did not use herself.
4) The closure of the Supplier's sales operation has now left her without the promised rental and sales systems.

Having read and considered everything, I do not think this complaint should be upheld because I do not think Shawbrook acted unfairly or unreasonably when it declined Ms G's Section 75 claim. I understand this will come as a disappointment to Ms G, so I'll explain.

1) The Fractional Rights purchase, as detailed in the Purchase Agreement dated 24 November 2014, was a different type of timeshare agreement to that which Ms G owned

at the time, as this entitled Ms G to stay in the Allocated Apartment for one specified week in the year, and to receive a fractional share (1/52 in her case) of the future sale price of the Allocated Apartment. So as this product contained the potential of a return of some money at the end of the contract term, I can understand why Ms G thought she may gain a profit from the Fractional Rights purchase. But the *potential* for a profit is different from a *guaranteed* profit, so I've looked at the Purchase Agreement to try and understand what might have been said at the time, and whether there was a misrepresentation made by the Supplier.

The Purchase Agreement is signed and dated by Ms G on 24 November 2014. And the first condition listed on this document is as follows (bold my emphasis):

> *"We apply to purchase from the Vendor Fractional Rights in an Allocated Property which equate to use of specific Weekly Periods in the Allocated Apartment each Year at the Resort and to use any Exchange until the Termination Date and thereafter to participate proportionately in the net sales proceeds* ***(if any)*** *of the Allocated Property…"*

Ms G has also completed and signed a Declaration of Treating Customers Fairly Sales Practice form. This listed five statements (bold my emphasis):

1. *I/We have been given every opportunity to consider the purchase that we are making and that we have not been put under pressure to purchase the products and services.*
2. *I/We understand that this is a holiday based purchase and I/We believe that meets our future holiday needs that I/We will be able to use and enjoy.*
3. *My/Our representative [C] or her Manager [R] has fully explained how this membership product will benefit us in the future.*
4. *I/We understand that the benefits that I/We choose to utilize from the ownership of My/Our fractional membership are entirely at My/Our own discretion.*
5. ***I/We Ms G agreed that I/We have not entered into this purchase purely for a wider investment opportunity or financial gain****.*

Ms G has then written the following feedback for the presentation and how she had been treated – *"Very Professional, Answered Questions Promptly Very Courteous and Friendly."*

So having looked at how the scheme worked, I can see there is an element of investment in the Fractional Rights purchase, given there was the potential to realise a return from the eventual sale of the Allocated Apartment. And given that was the main difference between the Fractional Rights and Ms G's existing points-based timeshare arrangement that she changed from, along with the €1,000 cashback and not having to pay AMC for two years, I think it is most likely that the fractional element of membership was a significant driver for her. But for me to say there was a misrepresentation made by the sales agent in the sale of the Fractional Rights, I would have to say that there is evidence that Ms G was told something that was not true.

Based on the documents available from the time of sale and Ms G's recollections provided by BS, I cannot say on the balance of probabilities that Ms G was told the Fractional Rights would be sold with a guaranteed profit. I think it is probable that Ms G was told that the Allocated Property would be sold at the end of the contract period, and that she would be given her fractional share of the proceeds, which was a factual description of how the Fractional Rights membership worked. But importantly, I've not seen anything which leads me to think that she was told a profit from the sale was guaranteed.

2) BS says that Ms G was told that buying Fractional Rights was the only way of getting out of her existing points-based timeshare arrangement. But based on the available evidence, on balance, I am unable to say this is something she was told. Plainly, buying Fractional Rights was a way of ending her points-based arrangement, but I cannot say with any certainty she was told that this was the only way to do so.

Having considered everything, and without a more detailed description of the conversation(s) and circumstances surrounding the alleged misrepresentation, or any supporting evidence, it doesn't have sufficient weight to succeed.

3) BS says that Ms G was told the Supplier had a guaranteed rental system for the weeks she did not wish to use, and these were guaranteed to provide a profit. And Ms G has said the €1,000 she received as 'cashback' was an upfront payment for the guaranteed rental income. But I've seen nothing in the documentation that has been provided which makes any reference to the ability to rent out any unused weeks, and the documentation which accompanied the cheque for €1,000 payable to Ms G also made no mention of it.

Further, Ms G has said she asked the Supplier to rent out her week in 2015 but was only offered €750, instead of the €1,250 she says she was told she would receive. I can see that Ms G did not take up her allocated week in 2015, and swapped it for a week later in the year, so I agree it is likely that she probably had a conversation with the Supplier to see what could be done about her week. But as I've said, I've not seen any evidence to support that she was told about a guaranteed rental scheme at the point of sale. And if she was not offered what she thought she had been promised when she tried to arrange the rental, it would be reasonable to expect her to have done something about this, and perhaps make a complaint at the time. But I've not seen any evidence to show that anything was done to question this with the Supplier.

So based on the available evidence, on balance, I am unable to say that Ms G was told there was a rental scheme available.

4) If Ms G was unable to continue to enjoy her holidays as she was entitled to under the Fractional Rights membership, due to changes in the available services when compared to those which were offered by the Supplier at the time of sale, then that may be construed as a breach of contract, and remedy may be due. This is also true if Ms G was unable to sell or otherwise dispose of her Fractional Rights, either during the term of the contract, or at its conclusion, if this was something that she would be able to do under her contract. Ms G has said that in closing the sales office in resort, the Supplier is no longer providing a rental or sales service.

But as I've said above, I've seen no evidence to show me that the Supplier did offer a rental service to Fractional Rights holders. And the Sales Agreement, under section *6. Additional information* it states the following:

"…

b) *It is not possible to join a resale system within this Club. There are third party resale companies which may undertake this service (for a fee) on Your behalf…"*

So, I cannot see that the Supplier offered a resale system if owners, like Ms G, wished to sell their Fractional Rights before the conclusion of the contract. In fact, it explicitly said that it didn't offer such a scheme.

I've also not seen anything which makes me think the closure of the sales office means the Allocated Apartment would not be able to be sold at the conclusion of the contract period. The Terms and Conditions set out that the title to the property is held by independent

trustee, the sale of the Allocated Apartment can only be carried out by the Trustee on or after the proposed sale date, and the Allocated Apartment cannot be removed from the trust before that sale date. So, the status of the Supplier, or the closure of the sales office has no effect in this regard.

As a result, I'm satisfied that there is no evidence of a breach of contract in this regard.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I'm not persuaded that there was an actionable misrepresentation by the Supplier when it sold to Ms G Fractional Rights in the Allocated Apartment on 24 November 2014, and I cannot see there has been a breach of contract. This means I do not think that Shawbrook acted unfairly or unreasonably when it declined Ms G's Section 75 claim.

In response to our investigator's view, BS pointed to the recent judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd; R. (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin). But the parts of the judgment that BS point to deal with a complaint that a lender was a party to an unfair debtor-creditor relationship. Here, that complaint was never made to, nor has been considered by, Shawbrook. So it's not something I can consider in this decision.

My final decision

I do not uphold Ms G's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 22 April 2024.

Chris Riggs
Ombudsman