

The complaint

Mr W's complaint is, in essence, that Shawbrook Bank Limited ('Shawbrook') acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Mr W and the late Mrs W were long-standing members of a timeshare arrangement with a timeshare provider (the 'Supplier').

Mr W and the late Mrs W purchased a new membership of a timeshare (the 'Fractional Club') from the Supplier on 21 December 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy the membership at a cost of £53,851 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £18,881 for membership of the Fractional Club.

Mr W and the late Mrs W paid for their Fractional Club membership by taking finance of £38,410 from Shawbrook in their joint names (the 'Credit Agreement'). This loan consolidated the outstanding balance of previous lending from Shawbrook.

Mr W and the late Mrs W raised concerns with the Supplier regarding the quality and facilities of their timeshare accommodation when they first used it in July 2016, and complained to the Supplier that it was not of the quality that they had been promised at the Time of Sale.

This complaint wasn't resolved to their satisfaction so Mr W and the late Mrs W completed a Supplier Dissatisfaction form for Shawbrook (as the creditor) on 18 November 2016 and made a claim under Section 75 of the CCA for misrepresentations by the Supplier.

Mr W and the late Mrs W said that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. Told them that the layout and amenities of their allocated Fractional Club apartment would be of the same standard as the Signature Suites they had seen at the Supplier's resorts of Santa Cruz and San Diego, but this was untrue.
2. Told them that the Supplier's holiday resorts were exclusive to its members when that was not true.

Mr W and the late Mrs W said that they had a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against Shawbrook, who, with the Supplier, is jointly and severally liable to them both.

Mr W and the late Mrs W also said the decision by Shawbrook to lend was irresponsible. They said that Shawbrook didn't carry out the right creditworthiness assessment, and the Supplier had told the late Mrs W to include housekeeping money paid to her by Mr W in her income, monies which had already been accounted for in Mr W's income.

Shawbrook dealt with Mr W and the late Mrs W's concerns as a complaint and issued its final response letter on 23 January 2017, rejecting it on every ground.

Mr W and the late Mrs W then referred the complaint to the Financial Ombudsman Service, after which time Mrs W sadly died.

The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. The investigator said, in summary:

- Mr W and the late Mrs W's claim under Section 75 of the CCA was invalid as the purchase price of the Fractional Club was in excess of £30,000.
- There was nothing to suggest the lending was unaffordable for Mr W and the late Mrs W.

Mr W disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

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 having done that, I do not think this complaint should be upheld, for broadly the same reasons as given by the Investigator.

But before I explain in more detail, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against Shawbrook under Section 75 essentially mirrors the claim Mr W and the late Mrs W could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase. The purchase price must be more than £100 but no more than £30,000. So, if the purchase price of the product is in excess of £30,000 (irrespective of any trade-in allowance), a claim under Section 75 cannot succeed.

The purchase price for Mr W and the late Mrs W's membership of the Fractional Club was £53,851 so their claim under Section 75 of the CCA cannot succeed.

For this reason, therefore, I do not think Shawbrook is liable to pay Mr W any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think Shawbrook acted unfairly or unreasonably when it dealt with the Section 75 claim in question, so I do not uphold this aspect of the complaint.

Mr W and the late Mrs W's lending complaint

Mr W and the late Mrs W said that the right checks weren't carried out before Shawbrook lent to them. Mr W says that there is no record of a credit check having been carried out.

I haven't seen anything to persuade me that was the case in this complaint given its circumstances, and Shawbrook have provided the results of the credit searches it carried out on both Mr W and the late Mrs W at the Time of Sale. But even if I were to find that Shawbrook failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr W and the late Mrs W was actually unaffordable, before also concluding that they lost out as a result.

Mr W and the late Mrs W have also said that she was encouraged to add the housekeeping money that Mr W gave her to her recorded income, despite that already having been taken into account in Mr W's recorded income. I am considering here Shawbrook's decision to lend, and it made that decision on the basis of the information Mr W and the late Mrs W gave it. But again, even if something has gone wrong here, I would have to see that the lending was actually unaffordable for Mr W and the late Mrs W before concluding that they lost out.

But, from the information provided, I am not satisfied that the lending was unaffordable for Mr W and the late Mrs W, so I do not uphold this aspect of the complaint.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 March 2025.

Chris Riggs
Ombudsman