

## The complaint

Mr G complains Shawbrook Bank Limited are reporting late payments on his credit file for a loan he says he cancelled within the 14-day cooling off period.

A representative has supported Mr G in making this complaint, but for simplicity I'll refer to their submissions as having come from Mr G.

## What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

*From the information I have, Mr G took out a loan on 9 July 2018. It was for £30,528 excluding interest, over 15 years, with a monthly repayment of £352.76. The loan was for the purpose of repaying a loan with a lender I'll refer to as B for an existing timeshare and upgrading that existing timeshare agreement with a company I'll refer to as C. I understand the loan settlement with B made up £18,278 of the amount borrowed – with the remaining £12,250 going towards the timeshare upgrade which was in his and his wife's name. The loan itself is just in Mr G's name.*

*Mr G provided letters dated 20 July 2018 where he said he wanted the agreements to be cancelled. Mr G says these letters were posted to Shawbrook and C.*

*In his complaint form to our service, Mr G has said Shawbrook registered a loan in his name which he cancelled in writing within the 14-day period. Mr G said Shawbrook are registering him as having made late payments when he says they know he cancelled the agreement.*

*In October 2018 Shawbrook replied to Mr G's complaint, said sorry his cancellation wasn't promptly actioned, and now they and C were cancelling the agreements.*

*Mr G asked us to look into things and said Shawbrook had now removed the adverse information on his credit file – and just needed them to confirm they'd cancelled his contract with them.*

*In November 2023 while our Investigator was gathering information, Shawbrook said:*

- *There was no evidence Mr G had ever contacted them or C to cancel the agreement in the 14-day cooling off period*
- *The first contact they had with Mr G was 14 August 2018 where he says he sent the letters before the cooling off period ended*
- *As a gesture of goodwill C offered to put Mr G back in the position he was in prior to the purchase, but he never returned the revised loan agreement – because of that, they were now rescinding that offer*
- *They also said Mr G cancelled his direct debit in August 2018, and the account was defaulted on 17 December 2019*

- *In addition, all credit file records have been deleted for this account back to 2019 because the account was due to be cancelled*

*And Mr G said:*

- *When cancelling this new product, there was nothing in the contract that said they'd need to revert to the old product*
- *What should have happened is C should have returned the funds they received to Shawbrook*
- *He cancelled in time, with both Shawbrook and C*
- *Shawbrook accepted the cancellation was done correctly and acknowledged this in their letter dated 17 August 2018*
- *C wouldn't return the money to Shawbrook, so they've tried to pursue him*
- *He doesn't have a legal requirement to sign a new contract – and Shawbrook know this which is why they're not pursuing him in court*

*Our Investigator considered all of this information, but overall didn't uphold Mr G's complaint – as the new loan Mr G had taken out with Shawbrook had repaid a previous loan with B. As he'd now cancelled the contract, this meant any funds used to pay off the previous loan were still owed. And because the loan couldn't be reconstructed with B, it'd have to be a new loan agreement with Shawbrook.*

*Mr G didn't accept this. He said:*

- *The contract was cancelled as required by both parties*
- *He's adhered to the contract terms*
- *The fractional points can be resold for £30,000*
- *His complaint was Shawbrook put a bad marker on his account which Shawbrook said they'd rectify and hadn't*
- *His solicitor told Shawbrook there are no legal grounds to mark his credit file as late – because there has to be a valid contract*

*He also provided a link to an article about timeshare sales. Our Investigator reconsidered things, and said it's unclear why Mr G believes he doesn't have an outstanding debt – when this new loan he took out with Shawbrook repaid an existing one.*

*As Mr G still didn't accept this, the complaint's been passed to me to decide.*

### ***What I've provisionally 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.*

*I'm required to decide cases taking into account relevant law and regulations, regulators' rules guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time. Overall though, I'm required to decide things on a fair and reasonable basis. This means I can depart from the law if I consider it fair and reasonable to do so.*

*The key question in this case is whether Shawbrook are fairly and reasonably asking Mr G to repay this debt.*

*To help answer that, I need to firstly consider whether I agree the agreement was cancelled. The relevant part of the cancellation terms say:*

The consumer has the right to withdraw from this contract within 14 calendar days without giving any reason.

The right of withdrawal starts from 09/07/2018

Where the consumer has not received this form, the withdrawal period starts when the consumer has received this form, but expires in any case after one year and 14 calendar days.

Where the consumer has not received all the required information, the withdrawal period starts when the consumer has received that information, but expires in any case after three months and 14 calendar days.

To exercise the right of withdrawal, the consumer shall notify the trader using the name and address indicated below using a durable medium (e.g. written letter sent by post, e-mail). The consumer may use this form, but it is not obligatory.

Where the consumer exercises the right of withdrawal, the consumer shall not be liable for any costs.

*The 14 days from 9 July 2018 takes us to 23 July 2018 – and I've seen nothing in either parties submissions to suggest the appropriate date for cancellation isn't 23 July 2018. So, Mr G was required to cancel the agreement by 23 July 2018 – and to do so he could write to Shawbrook and C, or email them.*

*To support he did that, Mr G's provided a signed copy of his cancellation form – dated 20 July 2018. I've also seen copies of the envelopes Mr G says he sent to Shawbrook and C. The envelope to Shawbrook has a date stamp of 20 July 2018 – and the envelope to C doesn't have any date stamp on it and is being sent to Spain.*

*Shawbrook say their first contact from Mr G asking for cancellation of the agreement was 14 August 2018 by email (though I've seen an email dated 13 August 2018 from Mr G to Shawbrook) – where he emailed a copy of the signed cancellation form and the envelopes above. Shawbrook also say Mr G called up on 3 August 2018 saying he'd asked about the status of the account – and if he'd already cancelled it then they question why he didn't ask about it in this call. The note for this call says:*

W- mr called, DPA confirmed, contacts confirmed

R – looking for status of account

A – confirmed 1<sup>st</sup> payment due 26/08/2018. Customer said would call back.

P – NFA

*Bringing all of this together, I'm not currently persuaded Mr G did cancel within the 14 calendar days of 9 July 2018.*

*I say that because objectively the act of taking pictures of the envelopes before posting them is the act of someone who is concerned they may have to prove they cancelled their agreement in time. I completely accept Mr G may simply be a very cautious man, who thought it best to have evidence in case something goes wrong – and that makes absolute sense to me. But if Mr G was this concerned before he'd cancelled the agreement, it's unclear to me why he didn't email Shawbrook and C – which could then be used as conclusive proof he had cancelled in time. Particularly given he's said he posted these letters on 20 July 2018 – which was a Friday. So, these would have to have arrived just three days later by 23 July 2018 to have been received on the final cancellation day. Which,*

*taking into account the weekend and that one of the letters had to go overseas to Spain, would be quite a significant risk and not in keeping with someone who is cautious.*

*In addition, the phone call on 3 August 2018 suggests Mr G has asked about payments. But, if he'd already cancelled the agreement by this time, I'd have expected him to have at least asked about this.*

*I don't have the call recording, so I can't know for certain exactly what was discussed on the call. But, in situations where evidence is missing or incomplete as it is here, I need to rely on the information I do have in order to decide what I think is more likely than not.*

*In addition, C emailed Mr G and his representative on 31 August 2018 saying they didn't get a copy of any cancellation until the email of 13 August 2018 which was addressed to Shawbrook but they were copied in to. They said although the envelopes were provided no tracking details were so they couldn't verify Mr G had cancelled by 20 July 2018.*

*I accept what Mr G has told us may absolutely be true about sending off the letters, and that he could have talked about the cancellation in the phone call on 3 August 2018 and it's just not been noted. But, as I've said above, I'm required to decide what I think is more likely than not – and based on the above information and evidence, I think it's more likely than not Mr G didn't cancel the agreement in time.*

*With that in mind, I do acknowledge initially Shawbrook told Mr G on 3 October 2018 he had cancelled in time, they'd made a mistake, and would get things sorted – despite C saying they didn't get the cancellation in time in their earlier email. Naturally this is unhelpful and against the finding I've made – but I think this was an error when they said the loan was cancelled for the reasons I've mentioned above.*

*I felt it important to explain I didn't think Mr G had cancelled the loan / timeshare agreements within the deadline required – because virtually all of his points are based on him having done so. But, in reviewing this case in detail, I think what's of far more significance is C / Shawbrook's actions after they did receive his cancellation on 13 August 2018.*

*In the earlier email from C on 31 August 2018, after saying they didn't get the cancellation, went on to make an offer to Mr G. In this part of the email they said:*

*Having said that, it is apparent that Mr and Mrs G... do not wish to continue with their recent upgrade to the C... Signature Collection and therefore it has been agreed to cancel this purchase agreement...and the corresponding loan agreement with Shawbrook Bank.*

*Mr and Mrs G... will revert to their previous C...Membership – Fractional Property Owners Club (FPOC)... The B... loan agreement taken in conjunction with the FPOC purchase (which was consolidated in with the Shawbrook Bank loan agreement) will of course also be reinstated.*

*To me this offer is a natural consequence of the loan and timeshare agreements being cancelled. The loan agreement in force at the time was charging Mr G for a timeshare membership he no longer planned to use or have access to. So, a new loan for only the amount borrowed (which was the £18,278 that Shawbrook paid B to redeem that loan) was the only way forward whether the cancellation was received in time or not.*

*On 28 September 2018 C then chased Mr G and his representative for a reply to their email above – saying:*

We have recently received correspondence from Shawbrook Bank Limited with relation to Mr G...’s Loan Agreement with them.

Mr G... has informed Shawbrook Bank that his Signature Collection Membership was cancelled by C... in August 2018 and refers to an email sent to Customer Services on 5 September 2018; which he claims contained documentation from C... confirming the cancellation. However, Shawbrook Bank have no record of this email.

We must also stress that we have not received any correspondence from yourselves or Mr G... in response to our email dated 31 August 2018 and are unaware whether Mr G... wishes to accept our proposal and proceed with the cancellation of his Signature Collection Membership.

Therefore, at present, his C... Signature Collection membership remains active. Once we have written confirmation that Mr G... wishes to accept our proposal to cancel his recent C... Signature Collection purchase, reverting to his original FPOC Membership, we will then provide the necessary documentation to proceed with the cancellation.

We look forward to hearing from you.

*I can see on 24 October 2018 C wrote to Mr G’s representative, saying:*

Following on from your written correspondence we are trying to cancel and refund the Signature Collection purchase that Mr G... made on the 9 July 2018.

To be able to refund the purchase price back to his loan company we require written confirmation from (sic) Mr G... that he accepts the cancellation of his Signature Collection Membership and that his C... Membership will revert back to his Fractional Property Owners Club Membership.

*And 19 December 2018 where C said:*

I am re-sending the below, as at present I still have not received a reply.

Many thanks for your e-mail and I am hoping we can now finalise all arrangements.

We have been in contact with Shawbrook and we can look to proceed as follows.

We can refund back the purchase price of the latest Signature Membership to Shawbrook Bank, following this we will then re-apply for a new loan with Shawbrook Bank to bring everything back in line as to how it was, with Mr G... owning his Fractional Property Owners Club.

Unfortunately, we are unable to reinstate the old B...loan as this has been settled and is no longer activate (sic).

Please confirm this arrangement is agreeable and we can then proceed with the administration process.

*This was then chased on 15 January 2019 by C where they attached a new loan document as they’d not had this back. And in the last email from C I’ve been provided with, dated 17 January 2019, they’ve said:*

Many thanks for your e-mail.

Please be aware that your case has been escalated to the highest authority possible and they are fully aware of all the details.

Our position has not and will not change. We would like to finally clarify the position and establish how we move forward.

We agreed to cancel your Signature Collection purchase of 9 July 2018 only. As such your membership status reverts back to the Fractional Property Owners Club membership purchased on 2 June 2016.

To facilitate this, we proposed to make a capital repayment of the purchase value of your Signature Collection Membership towards your current Loan Agreement with Shawbrook Bank. This would reduce the term of the loan agreement but not the monthly repayments. Regrettably this option was not acceptable to you.

We are able to arrange a new Finance Agreement in line with the with (sic) B... loan used for the purchase of your Fractional Property Owner Club Membership so that the amount, repayments and duration would match.

Please understand, the process of cancellation will not proceed until this new loan is in place. I have sent you the application form which I await back duly completed and signed. During this process please be aware that you need to maintain all payments to Shawbrook Bank to ensure your credit rating is not effected. These repayments will be refunded to you by Shawbrook Bank, once the cancellation process has been completed.

To reiterate, you are currently a member of C... Signature Collection with occupation rights of a two bedroom apartment in... . Management Fees have been billed on this membership and are currently due. On completion of your Signature Collection cancellation your Fractional Property Owners Club Membership will be reinstated and again, Annual Management Fees will be payable. However the Management Fees paid towards your Signature Collection Membership will be credited towards the Fractional Property Owners Club Membership once the cancellation has been processed.

Mr G..., we sincerely want to resolve this issue, but are unable to do so without your cooperation in this matter.

*Our Investigator asked Mr G whether he had returned the loan paperwork or not. In response, he said:*

When we cancelled our contract for the new product, there was nothing in the new contract which stated that if we cancelled the new product that you would need to revert back to the old product.

*Mr G went on to say C should have returned the funds to Shawbrook, and because they didn't Shawbrook are expecting him to pay for this. In respect of that Mr G says:*

The cost of the new product equaled (sic) the old product and the upgrade for the new product. The loan agreement would cover the cost for the Fractional points C... were selling. In any case I do not have any legal requirement under the contract to sign any new contract. Shawbrook knows this well that is why they are unable to force this matter in a court of Law.

Shawbrooks (sic) response is disingenuous as they have left out material facts of the matter acknowledging to my legal team that they were in the process of cancelling my contract.

*Mr G added he'd cancelled the contract in time, Shawbrook had acknowledged that, and the sale of Fractional Points is now deemed illegal.*

*As I've already explained above, I'm satisfied it's more likely than not Mr G didn't cancel the agreement in time. I've also not seen anything to prove Shawbrook actually cancelled the contract as Mr G has suggested at times. And, although Mr G says Shawbrook are leaving information out – I don't agree with that. I can see Shawbrook provided emails from C to Mr G's representative asking him to complete a new agreement. Although I don't agree Mr G did cancel in time, if he had of done so this is exactly the position he would have ended up in anyway – being asked to sign a new agreement for only the amount of the loan with B.*

*The reason this was important is because C have made it clear they wanted Mr G's written instructions in order to cancel the upgraded timeshare membership he'd purchased – and in doing so then the amount paid for the timeshare could be refunded – leaving just the amount for the loan with B. C's correspondence says Mr G never returned the new paperwork as he was asked to – and Mr G's reply to our Investigators appears to support that. C said they wouldn't take any action without this agreement being returned – and that appears to have included not refunding the £12,250 to Shawbrook – on the basis Mr G never cancelled the upgraded timeshare membership.*

*This decision isn't about C's actions, but about Shawbrook's. They've told us C never returned the £12,250 which was for the timeshare upgrade. And it seems clear from the correspondence the £18,278 which repaid the loan with B was also still owed – as the loan with B couldn't be reconstructed because B no longer offered loans for this type of lending anymore.*

*Mr G has said there was nothing in the contract which says he's required to sign a new contract – and Shawbrook were in the process of cancelling the policy. He's right, there isn't. But, as I mentioned at the start, I'm not looking at this strictly under the law – I'm looking at this on a fair and reasonable basis. In addition, Mr G's points are made in the belief he cancelled the loan / timeshare agreements in time and this was confirmed by Shawbrook – which I don't agree with.*

*In reviewing all of the evidence provided, I'm not satisfied Mr G did cancel the loan / timeshare agreements within the deadline of 23 July 2018. Despite that, Shawbrook and C offered to amend things in line with how Mr G wanted – which was to reduce his timeshare membership back to the previous level it was, refunding the cost of that, and leaving just the amount of the loan to B outstanding. To do this, Mr G needed to engage with the process, and agree to repay the £18,278 and reduce his timeshare membership. It seems by not agreeing to reduce his membership, this has remained open and available to him by C – so they've kept the £12,250 cost of that increased membership.*

*As a consequence of that, I think Mr G owes both the £18,278 used to repay the B loan, plus the £12,250 cost of the timeshare membership with C – along with any other costs Shawbrook have added. I've got an arrears notice sent in October 2023 showing the amount currently owed is £32,353.73. Because of that I don't think Shawbrook are doing anything unfair or inappropriate by contacting him and asking that he repay this debt. I have noted Mr G and Shawbrook have said any adverse information has been removed from his credit file – but if Shawbrook had recorded adverse information I'd likely have said that was fair too given I've found Mr G does reasonably owe this money.*

*I'm aware Mr G has said the sale of this kind of timeshare is now illegal – and has provided a court judgment regarding this. I've not considered this in detail, because Mr G's complaint isn't that the timeshare was mis-sold, it's that he cancelled it within the cancellation period. So, this leaves the option open for Mr G to raise a new complaint that the timeshare was mis-sold if he wishes to as I've not considered it in this complaint.*

## **Responses to my provisional decision**

Shawbrook replied and said they have nothing further to add.

Mr G replied, and said there were three key reasons why he intended to challenge my decision:

- Fair and reasonable – Shawbrook have said the contract was terminated in the correct way. My comments it wasn't are "*bizarre*" considering he has signed witness statements along with Shawbrook's own admission. Mr G adds "*Clearly the intention to cancel is 100%*".
- Contract law – under contract law he can't be held liable as he has no contract
- The product sold has been deemed illegal – he's had no use of this product, so I'm suggesting he pay for something deemed illegal, and the court rulings have upheld our own findings about these issues

He's added more detail to various sections of my provisional decision, and I'll address what I consider to be the key points as I go along.

## **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.

Mr G's complaint is that he wants Shawbrook to stop contacting him about this debt, because he cancelled the agreement within the cancellation period – therefore, in his view, leaving him owing no money.

I need to make it clear that I can't adequately decide the outcome of this case, without considering whether Mr G did or didn't actually cancel the contract. And, even if he did, whether that would mean on a fair and reasonable basis he didn't owe Shawbrook any money.

I also need to reiterate that my role isn't to decide things on a strict legal basis. Mr G has said under contract law he can't be held liable as he has no contract. But, this goes back to the point I've made in the paragraph above – I firstly need to decide whether I think he did or didn't still have a contract with Shawbrook first. After I've decided that, then I can consider whether I think Shawbrook are acting fairly and reasonably or not.

Mr G has said my comment that C offered to put him back into the position he was in as a gesture of goodwill, but they'd now rescinded the offer because he never returned the revised loan agreement was incorrect. He says Shawbrook in writing clearly told him he's correctly cancelled the agreement. He added I'm conflating the two issues, a legal contract termination of a loan by Shawbrook, and C where it has been subsequently proven the product provided is now illegal. Mr G adds neither company has been in a position to take him through the courts because they have no legal grounds to do so.



I do accept Shawbrook told Mr G he'd cancelled his contract – and I mentioned that in my provisional decision. But they've since said Mr G didn't correctly cancel it. As a consequence, I need to consider this. It can't be a situation of I have to accept Shawbrook's first answer, and not take account of any further evidence.

And in respect of the fractional points being considered illegal, that isn't what the court judgment which refers to our decisions says. Two financial businesses challenged the outcomes we'd reached in two decisions, saying we thought the fractional points timeshares had been mis-sold. The court said we hadn't made an error in our decision making. So, although Mr G says the sale of fractional points is illegal, I've not seen that *all* sales of fractional timeshares are illegal as Mr G seems to suggest. But, again, even if Mr G was mis-sold the timeshare that isn't what this complaint is about. Mr G's complaint is that he doesn't think Shawbrook are entitled to ask him to repay the money he borrowed. All I'm deciding here is whether I think Shawbrook are allowed to do so.

I explained in my provisional decision why I didn't think Mr G had cancelled his contract with Shawbrook. Mr G has said he did and to support this he says the letters of cancellation were sent on time and witnessed by two separate individuals. Mr G adds the reason he called is because he hadn't received the letter confirming the cancellation. He said it's simply not fair and reasonable to suggest he didn't cancel the contract correctly, when all the evidence suggests he did.

In respect of the two witnesses the cancellation notice is signed by two separate people and dated 20 July 2018. But, this doesn't mean the letters were actually sent at that time. They could have been, I don't dispute that – but objectively I can't say for certain they were, so I need to look at the wider circumstances.

This includes the phone call Mr G made – which he says was to check on the status of the account as he'd not received the cancellation letter. I think it's more likely than not if Mr G had mentioned about the account being cancelled, the note would refer to that. I've set out the note in my provisional decision above – and the note doesn't mention this. In addition, if Mr G was genuinely concerned about the cancellation of the agreement, I'd have expected him to have followed up much sooner than between his call on 3 August 2018, and the first documented evidence Shawbrook or C can show they received on 13 August 2018.

I mentioned in my provisional decision the act of taking photos of the cancellation documents is the act of someone who is cautious. Mr G on this point made the following comments *"Again this statement is a matter of opinion, you are correct that I took the pictures as the nature of companies selling fractional shares have a reputation for not always being truthful in their dealings which has subsequently proven to be true."* So, if I accept Mr G is a cautious man, which he seems to agree with, I have to question why when he's called up on 3 August 2018 to enquire about the cancellation of the agreement – and is told nothing has been registered – he then does nothing about this for ten days, despite his concerns about these companies not always being truthful.

I also pointed out his cancellation document was dated 20 July 2018 which was a Friday – and in order for Mr G to meet the cancellation period these had to be received by Shawbrook and C on 23 July 2018 – a Monday. Mr G chose to post these documents instead of emailing them – as he did on 13 August 2018. In response Mr G says in a court of law a person has to have a signed and witnessed statement. Again, I'm not considering how the law would deal with matters here – I'm deciding matters using the fair and reasonable remit I'm required to use.

Mr G has also provided some information regarding the acceptance of the postal rule – which includes three edicts to apply:

1. The acceptance must be sent through the post or some other form of communication
2. The acceptance must be properly stamped and addressed
3. The acceptance must be posted in a timely manner

Mr G says this eliminates the dispute of whether the letter was received on time or not. But I'm afraid I don't agree – as nothing I've been provided with proves the letter was actually posted – so I'm not satisfied this applies.

I want to be clear that I believe Mr G is giving me his very best recollections – and I have no intention here to call into question his integrity. But memories can and do fade, and weighing everything up I think it's fair and reasonable for me to place more weight on the evidence from the time. This evidence does include Mr G's signed and witnessed cancellation document – but it also includes a phone call with no mention of cancellation on 3 August 2018, and an email on 13 August 2018. Overall, I think it's more likely than not Mr G didn't cancel his contract with Shawbrook in time.

As I remain satisfied that is the situation, I now need to address Mr G's comments about how he isn't liable for this debt, and matters could have been progressed differently.

Mr G has said:

- C should have paid the money back to Shawbrook and the new product would have had a value of around £30,000
- There was no legal obligation for him to sign a new contract as there was no physical product he was benefitting from or using
- The fractional points could have been sold for £30,000 and should have been
- He's never used the fractional points timeshare upgrade so hasn't benefitted from this and shouldn't have to pay for it

Whether the fractional points could have been sold or not I don't know – and I say I don't know because that would have been something C would have dealt with, not Shawbrook. And while C is inevitably playing a large part in this complaint, I'm deciding only whether Shawbrook are entitled to expect Mr G to repay the money.

I do accept Mr G didn't use the upgraded timeshare membership – C have confirmed that. But, Mr G was told, repeatedly, by C how to cancel the upgraded membership which was to sign a new contract. I've already explained in my provisional decision why I think that wasn't unreasonable of them to expect that.

Ultimately, Shawbrook paid out £18,278 to B on Mr G's behalf. This is money Mr G owed B, which Shawbrook repaid on Mr G's instructions. So, he owes this. And he owes the £12,250 which Shawbrook paid to C in good faith.

I have noted Mr G's comments that Shawbrook and C can't take him to court because they have no legal grounds on which to do so. I can't comment to that, as I don't know. All I can say is for all the reasons I've mentioned above I can't fairly and reasonably ask Shawbrook not to contact Mr G for repayment of the loan.

### **My final decision**

For the reasons I've explained above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 August 2024.

Jon Pearce  
**Ombudsman**