

## The complaint

Mr E and Miss R complain that Shawbrook Bank Limited (the “Lender”) failed to accept its liability for the mis-selling of timeshares it had financed the purchase of in November 2016 and August 2017. They also complain the Lender irresponsibly granted them loans they couldn’t afford to make these purchases.

## What happened

I issued a provisional decision on Mr E and Miss R’s complaint on 13 January 2025, in which I set out the background to their complaint and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision.

As a result, it’s not necessary for me to go into all the details again of the events leading up to the complaint, but in very brief summary:

- Mr E and Miss R purchased points in a timeshare scheme in November 2016 and August 2017, from a timeshare company (the “Supplier”). The first purchase cost £6,050 and the second one cost £9,807.
- Both purchases were financed by loans from the Lender. The first loan was for £6,050 with 120 monthly payments of £96.14, while the second loan consolidated part of the first loan, meaning it was for £16,006.97, with 120 monthly payments of £236.24.
- Mr E and Miss R said they had financial objections to making the purchases. They were not confident they could afford them. However, they say the Supplier persuaded them to continue by giving them misleading or false information about a scheme through which they could rent out their timeshare holdings to reduce their outgoings.
- Mr E and Miss R got into financial difficulty and later complained to the Lender about the timeshare points having been mis-sold to them. They also complained that they didn’t think adequate checks had been carried out before lending to them.

In my provisional decision, I explained that I thought the complaint ought to be upheld. While my reasoning is set out in full in the appended provisional decision, I’ll again summarise briefly here:

- I noted the Lender had had a duty to lend responsibly, in accordance with regulations set out by the Financial Conduct Authority (“FCA”) in its Consumer Credit Sourcebook (“CONC”). Summarising its responsibilities, I noted that it needed to:
  - Assess Mr E and Miss R’s ability to repay the loans in a sustainable way, meaning that they should be able to make their repayments on time from income or savings, while meeting other reasonable commitments.
  - Carry out its assessment in a way that was proportionate to the characteristics of the lending being proposed, and Mr E and Miss R’s financial

situation.

- I considered the assessments the Lender had carried out before agreeing the two loans, and concluded that on neither occasion had its assessment been proportionate to the circumstances. I thought the checks the Lender had carried out had revealed information which ought to have prompted it to make further enquiries before lending.
- In particular, for the first loan I noted Mr E and Miss R had very large amounts of credit card debt in relation to their income, and they had borrowed up to their credit limits. I thought proportionate checks in the circumstances would at least have entailed obtaining some understanding of Mr E and Miss R's regular expenditure, which it appeared was something the Lender had not taken into account.
- For the second loan, I noted the monthly repayments expected were significantly higher. I also observed that it was apparent from the Lender's enquiries at the time that Mr E and Miss R had consolidated their credit card debts but had continued to borrow on their credit cards, reaching 25% of their credit limit within a few months. I thought this suggested a reliance on credit or inability to meet expenditure with income. I also noted payments had been missed on utilities accounts within the past few months. In the circumstances, I considered the Lender ought to have carried out detailed enquiries into Mr E and Miss R's financial situation to verify their income and expenditure, before agreeing the second loan.
- I went on to reconstruct what I thought it was likely the Lender would have found, had it carried out proportionate checks before agreeing both the loans. I considered that it would have been apparent from these checks that Mr E and Miss R would have been unable to repay either loan in a sustainable way, due to their income and expenditure being such that they would have been unable to make the repayments out of their income.
- I therefore concluded that the Lender had not lent to Mr E and Miss R responsibly, and this had caused them to be treated unfairly and suffer a financial loss. I considered that, had it not been for the Lender's decisions wrongly to grant the two unaffordable loans, Mr E and Miss R would not have gone ahead with their purchases from the Supplier, so fair compensation would involve unwinding the purchases as far as practicable.

In practice, I considered that unwinding the purchases would involve refunding all loan repayments and the management charges associated with the points Mr E and Miss R had purchased, along with compensatory interest. I also considered Mr E and Miss R would need to account for any benefit they'd received from the purchases, such as "Travel Savings Bonuses" (a form of cashback) given by the Supplier, and any holidays taken, so long as the Lender factored in that Mr E and Miss R already had points with the Supplier, purchased years earlier.

I asked both parties to comment on my provisional decision. Mr E and Miss R did not reply to the provisional decision. The Lender said that it didn't entirely agree with the provisional decision, as it felt some of Mr E and Miss R's expenditure suggested financial mismanagement rather than the loans being unaffordable. Nevertheless, it said it would agree to settle the complaint in line with the provisional decision.

The case has now been returned to me to decide.

## **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.

I note that Mr E and Miss R have not responded to the provisional decision, so if they disagree with it then I'm not aware of the reasons why. The Lender, although putting forward some reasons for disagreeing with the provisional decision, has ultimately agreed to settle the complaint.

Having reviewed the evidence again, I see no reason to depart from the findings I made in my appended provisional decision, and it follows that for the same reasons, I conclude the Lender's decisions to lend to Mr E and Miss R in 2016 and 2017 were not responsible lending decisions, causing them a loss.

On the matter of what I would consider to be fair compensation, I have made a minor amendment to more properly reflect the fact that Mr E and Miss R had points already with the Supplier and, had they not made the purchases financed by the Lender, they may have been able to use these to take all their holidays without needing to use the ones purchased in 2016 and 2017.

I asked the Lender and Mr E and Miss R for comments on my intended amendment. Mr E and Miss R again did not reply. The Lender reiterated that it would settle the complaint in line with my instructions.

## **Fair Compensation**

My directions to the Lender are that it must take the following actions:

- 1) Refund all payments made by Mr E and Miss R towards both loans, including any sums paid to settle the debt, and cancel any outstanding balances.
- 2) Refund the annual management charges paid by Mr E and Miss R for their membership with the Supplier, insofar as those charges are associated with the 13,000 points purchased using the two loans.
- 3) The Lender can deduct from the refunds calculated in 1) and 2), the value of any promotional giveaways Mr E and Miss R took advantage of – such as the "Travel Savings Bonuses" – and the market value of any holidays they took using the 13,000 points purchased using the two loans.\*

I'll refer to the output of steps 1) to 3) as the "Net Repayments".

- 4) Simple interest\*\* at 8% simple per annum should be added to each of the Net Repayments from the date each one is made until the date the Lender settles this complaint.
- 5) Remove any negative information recorded on Mr E and Miss R's credit files in connection with the two loans.
- 6) If Mr E and Miss R's membership with the Supplier is still in place at the time of this decision, as long as they agree to hold the 13,000 points on behalf of the Lender (or assign the points to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities associated with the 13,000 points financed using the loans.

\*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr E and Miss R took, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage. However, any deductions must be made in a way which recognises that Mr E and Miss R had 13,000 points financed by the irresponsibly lent loans, and 11,000 points which were not financed by these loans and which could also have been used to take holidays with the Supplier. In practice, this should mean that where Mr E and Miss R took holidays but used no more than 11,000 points to do so, there should be no deduction from the redress in relation to these holidays, as they could simply have been taken using their existing holdings.

Where Mr E and Miss R did use more than 11,000 points to go on holiday in a year, then a deduction can be made in respect of any points they used over and above this amount.

\*\*HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

### **My final decision**

For the reasons explained above, and in my appended provisional decision, I uphold Mr E and Miss R's complaint and direct Shawbrook Bank Limited to take the actions outlined in the "Fair Compensation" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Miss R to accept or reject my decision before 10 March 2025.

Will Culley  
**Ombudsman**

## **COPY OF PROVISIONAL DECISION**

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our investigator, so I'm issuing this provisional decision to give the parties to the complaint an opportunity to comment further, before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **27 January 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If Shawbrook Bank Limited accepts my provisional decision, it should let me know.

### **The complaint**

Mr E and Miss R complain that Shawbrook Bank Limited (the "Lender") failed to accept its liability for the mis-selling of timeshares it financed in November 2016 and August 2017. They also complain the Lender irresponsibly granted them loans they couldn't afford.

### **What happened**

Mr E and Miss R had, prior to April 2004, been customers of a UK-based timeshare company. They had a "floating week" with this company, which allowed them to take annual holidays.

It seems the timeshare company got into financial trouble and Mr E and Miss R's timeshare was transferred to another company, which I'll refer to as the "Supplier". The Supplier operated a points-based timeshare system, and Mr E and Miss R converted their existing timeshare into 6,000 points (to be redeemed annually against holidays) in April 2004, for £4,725.

Mr E and Miss R went on to make three more purchases with the Supplier. In March 2005 they bought an additional 5,000 points in the Supplier's system for £6,365, and they say they were more or less satisfied with their timeshare at that point.

No further purchases were made until November 2016 and August 2017. It is these two purchases which are the subject of this complaint. The first of the purchases took place on 15 November 2016, and involved the addition of a further 5,000 points to Mr E and Miss R's holdings with the Supplier. These points cost £6,050 and they were paid for with a loan from the Lender, in joint names, repayable at £96.14 per month for 120 months.

Mr E and Miss R say they told the Supplier they couldn't afford to pay for more points and the annual management fees associated with them, or a loan to pay for them. They say that in order to overcome their financial objections, the Supplier's representatives made false statements to them about a rental scheme.

Mr E and Miss R say they were led to believe by the Supplier, that they could rent out any points they didn't use for holidays in a given year, and this rental income would be approximately equal to the management fees associated with the points. They also say they were led to believe they'd get a cash payment for points they had already "banked".

When Mr E and Miss R tried to use the rental scheme, they say that nobody at the Supplier

seemed to know anything about it. They went back to speak to the Supplier and complain about this the following year, in August 2017. They say they also expressed concerns to the Supplier about how much interest they were paying on the loan with the Lender.

Mr E and Miss R say the Supplier's representatives explained that if they purchased more points, meaning they'd have a bigger loan with the Lender, they'd benefit from a lower rate of interest and could refinance with a different lender more easily. They also say they were told more points would bring them greater membership benefits, and that the Supplier's representatives gave further reassurances about the rental scheme and explained in detail how it worked, providing an illustration showing how renting out 20,000 points would generate an annual income of £1,700.

Mr E and Miss R ended up purchasing a further 8,000 points in the Supplier's timeshare scheme for £9,807. This was financed by another loan from the Lender, which also consolidated the outstanding loan from the previous year. The total amount borrowed under the second loan was £16,006.97, with repayments of £236.24 per month for 120 months after a three-month deferral period.

Later, Mr E and Miss R said they found the rental scheme was "not working" and it had simply been a tool to sell them the product. They said they were able to deposit 9,000 points into the scheme but the equivalent weeks were not rented to anyone and so they simply lost the points they'd deposited and received no return. They also described having financial difficulties and struggling to keep up with their mortgage repayments, and said that appropriate checks hadn't been made into their ability to afford the loans, noting they'd had bad credit at the time.

Mr E and Miss R complained to the Lender in August 2019 about the problems they'd had. The Lender replied on 3 October 2019, rejecting their complaint in full. I could summarise the Lender's key points as follows:

- Mr E and Miss R had signed documents when they'd bought the points in 2016 and 2017, which confirmed they understood the Supplier didn't guarantee they would be able to rent out their points, and that they had confirmed they were not relying on any rentals to cover their annual management charges. So it was difficult to say the points had been mis-sold on this basis.
- Mr E and Miss R had been given a 14 day cooling off period on each occasion to check that they were happy with the arrangements, and this would have relieved any pressure they might have felt to go ahead.
- The Supplier provided adequate information about the management charges prior to each purchase.
- Mr E and Miss R had ticked a box next to a statement which confirmed they could afford the financial obligations associated with their purchases, including any loans they'd taken out.
- It had made an appropriate assessment of Mr E and Miss R's ability to afford each loan, in line with what had been required of it under the relevant regulations. Having carried out these assessments it had considered the loans were affordable.

Dissatisfied with this response, Mr E and Miss R referred their complaint to the Financial Ombudsman Service for an independent assessment. One of our Investigators looked into the case, but didn't think it should be upheld. He didn't think the Supplier had misrepresented the rental scheme to Mr E and Miss R, nor did he think there was sufficient

evidence to show that the Lender had granted the loans to them irresponsibly.

Mr E and Miss R disagreed with our Investigator and appealed his assessment, which is why the case has now been passed to me to decide. While the case was waiting to be assigned to an Ombudsman, we received more evidence relating to Mr E and Miss R's complaint about the Lender's decision to grant the loans. I've considered this evidence when arriving at my provisional decision.

### **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.

And, having done that, I currently think Mr E and Miss R's complaint should be upheld on the basis that the Lender failed to carry out proportionate checks before agreeing to lend to them (in relation to both loans), meaning it failed to discover that both of the loans were unaffordable. But before I explain my reasoning in full, 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 something that either party has said, that does not mean I have not considered it.

I do not intend to address Mr E and Miss R's complaint about how the points were sold to them by the Supplier, and the Lender's potential responsibility for that under the principles of connected lender liability. That's because the compensation which they would be entitled to receive as a result of the Lender having failed to lend to them responsibly, is the same as what they'd have been entitled to receive had their complaint been upheld for another reason. In short, I don't need to make findings on the rest of their complaint, so I haven't done so.

### ***The Lender's duty to lend responsibly***

At the time Mr E and Miss R took each loan, the Lender was regulated by the Financial Conduct Authority ("FCA") and it was required to observe the FCA's rules on consumer credit lending when considering applications for loans from potential customers. These rules are set out in the FCA's Consumer Credit Sourcebook, or "CONC". They set out what was expected of the Lender before agreeing to lend to Mr E and Miss R.

CONC 5.2 dealt with the assessments the Lender needed to carry out before making its agreements with Mr E and Miss R:

#### **CONC 5.2.1 R**

*(1) Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer.*

*[Note: section 55B(1) of CCA]*

*(2) A firm carrying out the assessment required in (1) must consider:*

*(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

*[Note: paragraph 4.1 of ILG]<sup>1</sup>*

*(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

*[Note: paragraph 4.3 of ILG]*

*(3) A creditworthiness assessment must be based on sufficient information obtained from:*

*(a) the customer, where appropriate; and*

*(b) a credit reference agency, where necessary.*

*[Note: section 55B(3) of CCA]*

*...*

#### CONC 5.2.3 G

*The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:*

*(1) the type of credit;*

*(2) the amount of the credit;*

*(3) the cost of the credit;*

*(4) the financial position of the customer at the time of seeking the credit;*

*(5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;*

*(6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;*

*(7) any future financial commitments of the customer;*

*(8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*

*(9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).*

*[Note: paragraph 4.10 of ILG]*

#### CONC 5.2.4 G

*(1) To consider all of the factors set out in CONC 5.2.3 G in all cases is likely to be disproportionate.*

*[Note: paragraph 4.11 of ILG]*

*(2) A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of the credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates*

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<sup>1</sup> "ILG" refers to the Office of Fair Trading's *Irresponsible Lending Guidance*, which CONC effectively codified into rules.



*to the amount of credit granted and the total charge for credit relative to the customer's financial situation.*

*[Note: paragraph 4.11 and part of 4.16 of ILG]*

*(3) A firm should consider the types and sources of information to use in its creditworthiness assessment and assessment required by CONC 5.2.2R (1), which may, depending on the circumstances, include some or all of the following:*

- (a) its record of previous dealings;*
- (b) evidence of income;*
- (c) evidence of expenditure;*
- (d) a credit score;*
- (e) a credit reference agency report; and*
- (f) information provided by the customer.*

*[Note: paragraph 4.12 of ILG]*

...

*(3B) Where there is more than one customer acting together as 'joint borrowers', the lender should consider whether it may be appropriate to assess each customer in accordance with CONC 5.2.1R or CONC 5.2.2R separately (as well as collectively), having regard to the risk to that customer arising from the credit being sought were the customer to be treated as being solely responsible for obligations of the joint borrowers under the agreement. (Where the borrower is a partnership or an unincorporated association, the members or partners may be treated as a single customer.)*

...

CONC 5.3 went on to provide further guidance to the Lender on what it should have taken into account when making its assessments, and made rules on what were considered to be unfair business practices in relation to lending:

#### CONC 5.3.1 G

*(1) In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*

*[Note: paragraph 4.2 of ILG]*

*(2) The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

*[Note: paragraph 4.1 (box) and 4.2 of ILG]*

*(3) A firm in making its creditworthiness assessment or the assessment required by CONC 5.2.2R (1) may take into account future increases in income or future decreases in expenditure, where there is appropriate evidence of the change and the repayments are expected to be sustainable in the light of the change.*

*[Note: paragraph 4.9 of ILG]*

*(4) If a firm takes income or expenditure into account in its creditworthiness assessment or its assessment required under CONC 5.2.2R (1):*

- (a) the firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;*
- (b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer;*
- (c) its assessment should be based on what the firm knows at the time of the assessment.*

*[Note: paragraph 4.13, 4.14 and 4.15 of ILG]*

*(5) An example of where it may be reasonable to take into account expected future income would be, in the case of loans to fund the provision of further or higher education, provided that an appropriate assessment required by this chapter is carried out and there is an appropriate exercise of forbearance in respect of initial repayments, for example, deferring or limiting the obligation to repay until the customer's income has reached a specified level. Any assumptions regarding future income should be reasonable and capable of substantiation in the individual case and the products should be designed in a way to minimise the risks to the customer.*

*[Note: footnote 21 to paragraph 4.9 (box) of ILG]*

*(6) For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:*

*(a) without undue difficulties, in particular:*

*(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*

*(ii) without having to borrow to meet the repayments;*

*(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and*

*(c) out of income and savings without having to realise security or assets; and "unsustainable" has the opposite meaning.*

*[Note: paragraphs 4.3 and 4.4 of ILG]*

...

*(11) Where a firm requests information from a customer for its creditworthiness assessment or its assessment required by CONC 5.2.2R (1) and the information provided by the customer is false and the firm has no reason to know this is the case, the firm should not contravene CONC 5.2.1 R or CONC 5.2.2 R.*

*[Note: paragraph 4.10 of ILG]*

...

### CONC 5.3.2 R

*A firm must establish and implement clear and effective policies and procedures to make a reasonable creditworthiness assessment or a reasonable assessment required by CONC 5.2.2R (1).*

*[Note: paragraph 4.19 of ILG]*

### CONC 5.3.3 G

*Under the procedures required by CONC 5.3.2 R a firm should take adequate steps, insofar as it is reasonable and practicable to do so, to ensure that information (including information supplied by the customer) on an application for credit relevant to a creditworthiness assessment or an assessment required by CONC 5.2.2R (1) is complete and correct.*

*[Note: paragraph 4.29 of ILG]*

#### CONC 5.3.7 R

*A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).*

*[Note: paragraph 4.31 of ILG]*

### ***The meaning of the rules as they apply to this case***

It's possible to summarise the above rules relatively briefly: the Lender had to assess Mr E and Miss R's applications for the loans to check if they would be able to afford to repay them in a sustainable way. Its assessments had to be proportionate to the circumstances, taking into account the characteristics of the lending being proposed, and Mr E and Miss R's financial situation.

In order to be sustainable, repayments would need to be able to be made on time and out of income or savings, without having to realise security or assets, and while meeting other reasonable commitments. The Lender had to assess whether the commitments Mr E and Miss R were signing up to were likely to adversely impact their financial situation. In doing the above, the Lender needed to take adequate steps to ensure the application information it was relying on was complete and correct.

### ***The Lender's decision to lend the first loan (November 2016)***

Having set out the regulatory expectations, I move on to the checks the Lender carried out prior to agreeing the November 2016 loan. Based on the evidence the Lender has submitted more recently, it appears it relied on the following information:

- An application form signed by Mr E and Miss R, which contained the following salient information:
  - Mr E was employed with a gross annual income of £22,000.
  - Miss R was employed with a gross annual income of £12,000.
  - They had a mortgage with £70,000 outstanding and monthly repayments of about £500.
- The results of a credit check, which contained the following relevant data:
  - Mr E and Miss R had a mortgage with a balance of about £63,000 and repayments of about £500.
  - Mr E and Miss R had seven credit cards between them with a combined limit of £19,500, and current balances equal to £18,964 (97% of their credit limit).
  - Mr E and Miss R had one other loan with a balance of £830.

- Mr E and Miss R had £1,300 in overdraft limits between them, with £700 in use at the point the check was carried out.
- Mr E had fallen behind on his credit card payments three times in the past 36 months, but apart from this both applicants consistently kept up with their credit commitments.

The credit check did not reveal how much Mr E and Miss R were paying towards their credit cards.

It's unclear if the Lender considered any other information, such as information relating to Mr E and Miss R's expenditure, before agreeing the November 2016 loan. The Lender would, however, have been aware that the underlying purchase would be likely to increase Mr E and Miss R's expenditure in terms of them paying higher management fees (due to them buying more points). Based on notes on the Lender's systems, the application was "Referred". This normally means that an application has not been accepted automatically and will be checked by a person. Further notes were added by an individual at the Lender about 4-5 minutes later, stating the application had been "Accepted as Proposed", but not detailing any further checks that were carried out.

To recapitulate the details of this loan – the amount borrowed was £6,050 over 123 months (120 months in repayment), with repayments of £96.14 per month. The total charge for credit was £5,486.80, and the interest rate was 14% per year. While the repayments were relatively low, it was also not an inexpensive loan, and there was a long period of time over which Mr E and Miss R would need to make their repayments sustainably.

Having considered the information the Lender was aware of at the point it approved this loan, along with the details of the borrowing being applied for, I don't think it carried out proportionate checks into Mr E and Miss R's ability to repay it in a sustainable way. Most concerning, in my view, is how high Mr E and Miss R's credit card balances were relative to their income, and how close to their limits they were. In the circumstances, I think it would have been proportionate if the Lender had taken steps to establish Mr E and Miss R's regular expenditure to check if they were in a position to make their repayments in a sustainable way.

I've examined Mr E and Miss R's bank statements from the relevant time, and their own recollections of their income and expenditure, to build up a picture of what I think the Lender is likely to have discovered had it carried out enquiries into their expenditure. I should stress that although I have used bank statements to carry out a reconstruction, I am not saying the Lender ought to have obtained bank statements from Mr E and Miss R at the time – only that it ought to have carried out enquiries into their expenditure.

I discovered Mr E and Miss R paid about £515 per month towards their mortgage, and another £511 towards various credit cards. Their council tax and other regular bills such as energy, water and telecoms came to about £375 per month. Travel costs, represented by road tax, insurance and petrol, came to about £175 per month. Various other insurance policies represented a further £73. Mr E and Miss R were living in their overdraft and incurring around £50 in overdraft and other account charges per month. A regular payment order was set up to pay the Supplier £89 per month for management fees (which would be increasing to £147 with the new points). In terms of food and other groceries, it appears Mr E and Miss R spent, on average, around £570 per month.<sup>2</sup>

Altogether, this regular expenditure comes to around £2,358 per month (without the increased management charges), against an income after tax of around £2,450 per month.

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<sup>2</sup> Averaged over three months.

So Mr E and Miss R had approximately £90 left over. This would have been insufficient to make their repayments under the proposed loan with the Lender in a sustainable way.

I appreciate there is some room for error when calculating expenditure, however even if Mr E and Miss R's expenditure had been a little less, making the repayments technically affordable, any month on month variation in expenditure would have risked them missing payments or other regular commitments. I think it's unlikely, in light of what I've found, that Mr E and Miss R would have been able to make the repayments towards this loan in a sustainable way, and I think the Lender, acting responsibly, would have declined their application had it carried out proportionate checks. The Lender approved the application however, which I think has caused Mr E and Miss R to be treated unfairly and suffer a loss.

I think it's worth me noting here that the Supplier, which acted as the Lender's credit broker, appears to have been aware of Mr E and Miss R's financial concerns. As mentioned earlier in this decision, Mr E and Miss R say that they shared their concerns with the Supplier, and it appears they were given £500 by the Supplier towards their repayments for the first loan, and £750 towards their repayments towards the second loan.<sup>3</sup>

### ***The Lender's decision to lend the second loan (August 2017)***

It appears the Lender's decision relating to the second loan relied on similar information as the first loan:

- An application form signed by Mr E and Miss R. This contained the following important information:
  - Mr E was employed with a gross annual income of £26,000.
  - Miss R was employed with a gross annual income of £12,000.
  - Mr E and Miss R had a mortgage with a balance of £61,000 and monthly repayments of £514.
- The results of a credit check, which contained the following relevant data:
  - Mr E and Miss R had a mortgage with a balance of approximately £61,000 and monthly payments of £514.
  - Mr E and Miss R had a loan with a balance of £16,583 outstanding, and repayments of £370 per month, taken out within the last 4 months.
  - Miss R had a separate loan with a balance of £563 and repayments of £29 per month.
  - Mr E and Miss R had seven credit cards between them with a total credit limit of £21,540, and outstanding balances of £5,293.
  - Mr E and Miss R had an overdraft limit available between them of £1,300, of which £369 was in use at the point of the credit check.
  - Mr E had missed payments on two utilities accounts within the last three months.

As with the check for the first loan, no data was returned about the repayments being made towards Mr E and Miss R's credit cards. It's unclear if the Lender considered any other information – but it hasn't said that it did. As with the first loan, it would have been aware that

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<sup>3</sup> I understand these payments were described by the Supplier as a "TSB" or "Travel Savings Bonus", but it's apparent from an email from the Supplier's sales representative for the second sale (dated 15 August 2017) that certainly the £750 payment was intended to cover Mr E and Miss R's loan repayments on a temporary basis while they tried to obtain refinancing.

Mr E and Miss R's expenditure would be increased in terms of management charges, given the nature of the purchase it was financing.

The application was, like the first loan, not automatically approved by the Lender and was "referred" for consideration by an underwriter. Approximately eight minutes later, a member of staff at the Lender recorded a note on the application which listed some aspects of Mr E and Miss R's financial situation. This included a (presumably internal) credit score and a debt-to-income ratio. The member of staff noted that there was a "good credit background" and "no adverse findings". About three minutes later, another member of staff recorded a note saying he agreed with the previous note and the application was accepted.

Summarising the details of the second loan again – the amount borrowed was £16,006.97. After a three month deferral period during which no payments were expected, the repayments were due to be £236.24 per month for 120 months. The amount of interest was £12,341.83, and interest rate was 12.2% per year. This time around, the repayments represented a greater percentage of Mr E and Miss R's combined income. There were also signs, in my view, of increased credit stress between the first and second loan applications.

In particular, I think it was apparent that Mr E and Miss R had consolidated their credit card debt into a loan. While this may have been a sound financial decision which reduced their monthly outgoings, I note that their total credit limit had increased by around £2,000, and they had £5,293 in outstanding credit card balances (24.5% of their new limit). This indicated that they'd either been unable to clear their credit card balances in full with their consolidation loan or (more likely in my experience) they had begun spending on their credit cards again after consolidating the existing debt, because of a reliance on credit or inability to meet their everyday expenditure without borrowing. The fact that payments across two utilities accounts had recently been missed was also, in my view, a sign that Mr E and Miss R were likely to be struggling financially.

In the circumstances, and in light of the above, I'm unconvinced the application should have been accepted based on the information the Lender had gathered. I think a responsible lender ought to have either declined this application or taken steps to obtain a very detailed and verified picture of Mr E and Miss R's financial situation before agreeing the loan. I expect that detailed enquiries were unlikely to be practical in the circumstances of the application, however I have once again used Mr E and Miss R's recollections along with their bank statements to build up a picture of their financial situation at the time, and of what the Lender would have likely seen had it carried out proportionate checks.

Had the Lender carried out detailed enquiries into Mr E and Miss R's financial situation, I think it would have found their income was approximately £2,492 per month. In terms of credit repayments, their mortgage came to £514, and they were paying £370 per month towards the loan which had consolidated some of their other debts. They were still paying around £215 per month towards other debts, including credit cards and another loan.

Other household bills had increased since the last application. Council tax, utilities and telecoms bills came to around £470 per month. Travel costs, represented by fuel, insurances and road tax, came to about £200 per month. Other insurance policies accounted for a further £68, while various bank charges made up another £80 per month. Management charges to the Supplier had grown to £147 per month. Finally, Mr E and Miss R's spend on household groceries had decreased to about £340 per month. Mr E and Miss R remained in their overdraft during the months leading up to the application, and regularly went over their limit, causing regular payments to bounce.

Comparing Mr E and Miss R's income and expenditure at this time shows they had between £80 and £90 left over each month after meeting their regular commitments.<sup>4</sup> This was not enough to make the monthly payments on the prospective loan with the Lender, so it's difficult for me to see how they would have been able to make these repayments in a sustainable way. Ultimately, I do not think that a responsible lender which had carried out sufficient enquiries into Mr E and Miss R's financial situation prior to making a decision on their application, would have agreed to the second loan. The Lender approved this application as well however, which has caused Mr E and Miss R to be treated unfairly and suffer a loss.

## **Fair Compensation**

My starting point for what would constitute fair compensation in this case, is that had it not been for the Lender's decisions wrongly to grant the two unaffordable loans, Mr E and Miss R would not have gone ahead with their purchases from the Supplier. So the aim of any compensation should be to put Mr E and Miss R – as far as is practicable – in the position they'd have been in, had these transactions not taken place. In other words, fair compensation would seek to unwind the two purchases which were financed by the loans from the Lender. However, it will be necessary to take into account the fact that Mr E and Miss R were existing members with the Supplier and would still have had a membership and a certain number of points, if these purchases hadn't gone ahead.

So, I'm currently minded to direct the Lender to take the following actions:

- 7) Refund all payments made by Mr E and Miss R towards both loans, including any sums paid to settle the debt, and cancel any outstanding balances.
- 8) Refund the annual management charges paid by Mr E and Miss R for their membership with the Supplier, insofar as those charges are associated with the 13,000 points purchased using the two loans.
- 9) The Lender can deduct from the refunds calculated in 1) and 2), the value of any promotional giveaways Mr E and Miss R took advantage of – such as the "Travel Savings Bonuses" – and the market value of any holidays they took using the 13,000 points purchased using the two loans.\*

I'll refer to the output of steps 1) to 3) as the "Net Repayments".

- 10) Simple interest\*\* at 8% simple per annum should be added to each of the Net Repayments from the date each one is made until the date the Lender settles this complaint.
- 11) Remove any negative information recorded on Mr E and Miss R's credit files in connection with the two loans.
- 12) If Mr E and Miss R's membership with the Supplier is still in place at the time of this decision, as long as they agree to hold the 13,000 points on behalf of the Lender (or assign the points to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities associated with the 13,000 points financed using the loans.

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<sup>4</sup> This doesn't include the existing loan from the Lender, which was due to be consolidated. With this loan included, Mr E and Miss R in fact had a deficit budget in the lead-up to the application for the second loan.

\*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr E and Miss R took, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage. However, any deductions must be made in a proportionate manner, recognising that Mr E and Miss R had 13,000 points financed by the irresponsibly lent loans, and 11,000 points which were not financed by these loans and which could also have been used to take holidays with the Supplier. In practice, this should mean that where Mr E and Miss R took holidays, 54% of the points used should be assumed to be from the purchases financed by the Lender.

A worked example follows of what this could mean in terms of a refund – this is only an illustration to help understand the redress, and doesn't necessarily correspond with the actual charges paid or holidays taken in this case:

#### Example

In one year, Mr E and Miss R paid management charges of £2,400. This is equivalent to £0.10 per point. A full refund of their management charges for the 13,000 points they purchased using finance from the Lender would therefore be £1,300 for that year. But they also used 10,000 points to go on holiday in the same year. If it's assumed that 54% of these points were from the purchases financed by the Lender, then they used 5,400 points from those purchases for this holiday. So they should only receive a refund for 7,600 points – meaning they would receive a refund for that year of £760.

\*\*HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

#### **My provisional decision**

For the reasons explained above, I'm currently minded to uphold Mr E and Miss R's complaint, and direct Shawbrook Bank Limited to take the actions set out in the "Fair Compensation" section above.

I now invite the parties to the complaint to let me have any further submissions they'd like me to consider, **by 27 January 2025**. I will then review the case again.

Will Culley  
**Ombudsman**