DRN-5624931

The complaint

Mr C and Ms B's complaint relates to a loan they had with Shawbrook Bank Limited, which financed the purchase of a timeshare product from a timeshare provider (the "Supplier"). Mr C and Ms B complain Shawbrook has failed to accept responsibility for the mis-sale by the Supplier of the timeshare product, and for them struggling to pay for the loan.

What happened

Mr C and Ms B purchased a "Trial" membership with the Supplier in September 2017, which I believe they traded in for membership of a fractional club in December 2017.

Later, on 25 October 2019, Mr C and Ms B traded in their fractional club membership to upgrade to a membership of a timeshare product from the Supplier which I'll refer to as the "Fractional Club". After trading in the existing membership, the Fractional Club membership cost £12,616. This was financed by a loan from Shawbrook. This loan consolidated both the cost of the Fractional Club membership and the £18,939 still owing under the loan for the existing membership provided by a third-party lender. So, the loan with Shawbrook was for £31,555. Under the loan's terms, Mr C and Ms B were expected to make 180 monthly payments of £364.63.

Fractional Club membership provided two main things – an annual allocation of "points" (1,420 in this case) which Mr C and Ms B could exchange for holiday accommodation in the Supplier's portfolio, and a right to a share of the net sale proceeds of a property named on the contract, when the property was sold in a specified number of years.

Mr C and Ms B complained to Shawbrook in June 2021 and it appears they mentioned the following issues:

- The product was mis-sold and misrepresented by the Supplier
- They were pressured into signing the agreement
- Rather than saving money they were struggling to pay for the loan and service charge due to a downturn in their financial situation after the sale, despite being unable to use the product

Shawbrook didn't uphold the complaint. It said that no pressure was applied during the sale and that Mr C and Ms B been given a 14-day cooling off period to use if they felt the membership wasn't suitable. It said sufficient information was provided to Mr C and Mrs B for them to make an informed decision about the product. Shawbrook recognised COVID-19 had restricted the ability to travel for a time but that the product had been available to use since July 2020. It felt the right affordability checks had been carried out in respect of the loan and that it wasn't responsible for the change in their circumstances.

Mr C and Ms B then referred their complaint to the Financial Ombudsman Service. At this stage I could summarise their points of complaint as follows:

- The product was sold as an upgrade from their existing timeshare that offered ease of booking and a better service overall. This hasn't been the case as no holidays were available to them at the desired times and customer service has been '*terrible*'.
- They've struggled to pay for the product due to issues with Ms B's work and financial situation.

One of our investigators then issued an assessment in December 2023. They didn't think the complaint should be upheld. They explained that because they had taken out finance with Shawbrook, Mr C and Ms B did have certain protections under Section 75 of the Consumer Credit Act 1974 ('CCA'), which included being able to make a claim against Shawbrook in respect of misrepresentations which had been made by the Supplier or breaches of contract. However, they didn't think there was sufficient evidence that Mr C and Ms B had a valid claim for either.

Mr C and Ms B asked to appeal our investigator's assessment. They emphasised that they were told by the Supplier during the sale that they could exchange the week they'd been allocated – which was at the end of every September – in return for points. This could only be done at a cost of 150 Euros each year but that wasn't made clear during the sale.

The complaint was passed to me to review afresh.

Having considered everything, I came to the same conclusion as our Investigator and thought Mr C and Ms B's complaint should not be upheld. I issued a provisional decision (PD), setting out my thoughts and invited both parties to respond with anything further they wished me to consider before I issued a final decision. The PD included the following:

'*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 do not currently think Mr C and Ms B's complaint should be upheld.

But before I explain why, 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. 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's 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.

Before going on to look at the specifics of Mr C and Ms B's complaint, I think it would also be useful to set out how it is that Shawbrook could potentially be required to provide redress to them in respect of the things they say the Supplier did (or didn't do). After all, it wasn't Shawbrook who sold the Fractional Club membership to them.

Mr C and Ms B haven't specified in their complaint the precise legal grounds on which they seek redress, but I wouldn't necessarily expect them to be aware of these in detail. The two main avenues which they can seek redress through are a claim under Section 75 of the CCA, or through a complaint about Shawbrook's participation in an unfair credit relationship under Section 140A of the CCA. Shawbrook also had a duty to lend responsibly to Mr C and Ms B. If it didn't do so, it may be liable to compensate them and/or arrange for corrections to be made to their credit files.

Section 75 of the CCA

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event 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 C and Ms B could make against the Supplier.

Certain conditions must be met if the protection provided by Section 75 is to apply. These include, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Shawbrook doesn't dispute that the relevant conditions are met in this complaint. And as I'm satisfied Section 75 applies, if I find the Supplier is liable for having misrepresented something to Mr C and Ms B at the time the membership was sold to them, or was in breach of contract, Shawbrook is also liable.

The application of Section 140A is more complicated. Insofar as it's relevant to Mr C and Ms B's case, it means that the credit relationship between them and Shawbrook can be found to have been unfair because of anything done (or not done) by, or on behalf, of Shawbrook, before the making of the credit agreement. An unfair credit relationship can also be based on the terms of a related agreement (such as the purchase agreement for the Fractional Club membership) and, when combined with section 56 of the CCA, on anything done or not done by the Supplier on Shawbrook's behalf before the making of the agreement or any related agreement.

Section 56 has the effect of making the Supplier Shawbrook's agent for the purposes of the negotiations leading up to the October 2019 purchase. None of this is disputed by Shawbrook.

However, just because the Supplier may have done something wrong and breached a legal or equitable duty, doesn't necessarily mean that the relationship between Mr C and Ms B and Shawbrook will have been made unfair. It's important to consider all of the relevant facts before concluding that this is, or was, the case. I will cover this in more detail later, but first I've considered whether Mr C and Ms B had a valid claim against Shawbrook under Section 75.

Did Mr C and Ms B have a valid claim against Shawbrook under Section 75 of the CCA?

I recognise Mr C and Ms B's concerns about the way the Fractional Club membership was sold to them, but I'm not currently persuaded there was an actionable misrepresentation by the Supplier at the time of the purchase in October 2019, or any subsequent breach of contract. A misrepresentation in this case would mean a false statement made by the Supplier to Mr C and Ms B, and which caused Mr C and Ms B to buy the Fractional Club membership.

The concerns Mr C and Ms B have set out include the allegation that the Supplier led them to believe the purchase would make it easier for them to book and take family holidays. If there was evidence that the Supplier had said this, it wasn't true, and it caused Mr C and Ms B to go ahead with the purchase, then that would be an actionable misrepresentation.

However, there's not much evidence for any of these things. Some of the paperwork Mr C and Ms B signed at the time of sale shows the Supplier would have explained they'd be

given preferential access to bookings through the purchase, but this doesn't indicate bookings were in any way guaranteed.

I can understand Mr C and Ms B's frustration at the impact of COVID-19 and the travel restrictions that ensued not long after their purchase, but that was beyond the control of the Supplier.

I note that Mr C and Ms B are unhappy about the fee levied in order for them to exchange or transfer their allocated week into points. However, this fee was set out in the document titled 'Information Statement', which they signed. The document also explained that all bookings were subject to availability.

In light of the above, I don't think there's sufficient evidence that Mr C and Ms B had a claim for an actionable misrepresentation by the Supplier which they could bring against Shawbrook by virtue of Section 75 of the CCA.

I've also considered whether any of the concerns expressed by Mr C and Ms B could be an allegation that the Supplier had breached its contract with them.

I've carefully read the documents which make up the contract between Mr C and Ms B and the Supplier, and the reasons they give for being unhappy. However, I can't see that Mr C and Ms B had a valid claim against Shawbrook under Section 75 of the CCA for breach of contract either.

Was the relationship between Mr C and Ms B and Shawbrook rendered unfair by something the Supplier did or didn't do?

Mr C and Ms B set out one primary concern which could have made the credit relationship between them and Shawbrook unfair.

Namely, that Mr C and Ms B were subjected to high pressure selling by the Supplier. I acknowledge that the Supplier's sales process was likely to have been lengthy and Mr C and Ms B may have felt exhausted by the end of it. But they haven't really explained what the Supplier said or did during the sales process which made them feel as though they had no choice but to upgrade their existing membership to this Fractional Club membership. Mr C and Ms B were given a cooling off period of 14 days to change their mind about the purchase, and they've not provided a compelling explanation for why they didn't cancel the purchase during that time, if they felt they had been pressured into it by the Supplier.

With all this being the case, I think there's insufficient evidence to demonstrate that Mr C and Ms B made the decision to purchase the Fractional Club membership in October 2019 because their ability to exercise that choice was significantly reduced by pressure from the Supplier.

Another issue I've thought about here is whether the Supplier had marketed or sold the Fractional Club membership to Mr C and Ms B as an investment.

If the Supplier did this, then it would have been a breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'), which specifically prohibit marketing or selling timeshares in this way.

Based on what I know about how the Supplier sold and marketed memberships of the Fractional Club at the time Mr C and Ms B made their purchase, I think it's possible that the Supplier marketed the product to them as an investment, either expressly or implicitly,

alongside promoting its holiday-related benefits. This would have been a breach of the relevant regulation and, if this had gone on to have a material impact on Mr C and Ms B's decision to purchase the membership, it could have rendered the credit relationship between them and Shawbrook unfair.

However, I'm not currently satisfied the Supplier either did breach the relevant regulations, or that, if it did, the breach had a material impact on Mr C and Ms B's purchasing decision. I say this mainly because Mr C and Ms B haven't specifically alleged the Supplier sold the product to them as an investment at any stage in making their complaint. Nor have they suggested that this feature was a significant factor in them deciding to go ahead with the purchase. Rather they've explained how other features were more important to them.

So, overall, I don't think any breach by the Supplier of Regulation 14(3) of the Timeshare Regulations – if there was one – rendered the credit relationship between Mr C and Ms B and Shawbrook unfair for the purposes of Section 140A of the CCA.

Was Shawbrook's decision to lend to Mr C and Ms B irresponsible?

The regulations in place at the time of sale said Shawbrook had to assess Mr C and Ms B's application for the loan to check if they would be able to afford to repay it in a sustainable way. Its assessment had to be proportionate to the circumstances, taking into account the characteristics of the lending being proposed, and Mr C and Ms B'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. Shawbrook also had to assess whether the commitments Mr C and Ms B were signing up to were likely to adversely impact their financial situation. In doing the above, Shawbrook needed to take adequate steps to ensure the application information it was relying on was complete and correct.

I set out the details of the loan earlier in this decision. Based on the available evidence, it seems Shawbrook relied on the details provided by Mr C and Ms B in their joint loan application. These included that they had three dependants. While Mr C was retired, he had a gross annual income of £46,600. Ms B was a director with a gross annual income of £36,600.

I can't say with certainty what additional information, if any, Shawbrook gathered with a view to carrying out proportionate checks. But, given the available information about Mr C and Ms B's position in 2019, it'd difficult for me to find that they've lost out even if Shawbrook's checks weren't proportionate.

I note that Ms B's financial situation may have deteriorated after October 2019 to the extent that repayments became difficult to meet. But these events occurred after Shawbrook agreed to lend and so it couldn't have known of the change in circumstances at that time.

Ultimately, I don't think there's enough evidence for me to be able to conclude Shawbrook lent to Mr C and Ms B irresponsibly. So, I don't think Shawbrook is liable to compensate them for this.

If there is any further information on this (or any other points raised in this provisional decision) that Mr C and Ms B wish to provide, I would invite them to do so in response to this provisional decision.

My provisional decision

For the above reasons, my provisional decision is that I don't uphold this complaint.'

The Lender said it had no comments to add to my PD.

Mr C and Ms B didn't reply to my PD.

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.

Having done so, and in the absence of further evidence or information provided by the parties in response to my PD, I see no reason to depart from the outcome I reached previously.

My final decision

For these reasons, my final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr C to accept or reject my decision before 11 July 2025.

Nimish Patel
Ombudsman