

## **The complaint**

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

## **Background to the complaint**

Mr and Mrs S initially purchased a Trial membership from a timeshare provider (the 'Supplier') in February 2018. They went on to upgrade their membership in August 2018 and purchased a timeshare (the 'Fractional Club 1'). Mr and Mrs S have not complained about their Trial membership or Fractional Club 1, which was funded by a different lender. I understand Mr and Mrs S may be unhappy with how Fractional Club 1 membership was sold too, in which case they'll need to contact the other lender directly. My decision will not consider their concerns about this membership.

On 22 August 2019 (the 'Time of Sale'), Mr and Mrs S entered into another timeshare agreement (the 'Fractional Club 2') with the Supplier to buy 1,330 fractional points at a cost of £19,673 (the 'Purchase Agreement'). But after trading in their Fractional Club 1 membership, they ended up paying £5,750 for membership of the Fractional Club 2.

The Fractional Club 2 membership was asset backed – which meant it gave Mr and Mrs S more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs S paid for their Fractional Club 2 membership by taking finance of £23,444 from the Lender (the 'Credit Agreement'). This finance included £17,694 to pay off some outstanding finance used to pay for Mr and Mrs S' Fractional Club 1 membership.

Mr and Mrs S wrote to the Lender in November 2020 to complain about a misrepresentation by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA.

In August 2018, Mr and Mrs S shared their future holiday plans with the Supplier and explained they wanted to take a two-week holiday in August every year. Mr and Mrs S proceeded to purchase a membership following the information they received from the sales representatives. When they were on holiday in August 2019, Mr and Mrs S say a sales representative mentioned that they wouldn't be able to meet their holiday requirements with the number of points they held. This led to Mr and Mrs S purchasing an additional 260 points for £5,750.

Mr and Mrs S are unhappy with their Fractional Club 2 membership as they say they are unable to use their membership in the way they hoped – something they say they were told they would be able to do by the Supplier at the Time of Sale. They are unhappy as they don't believe the number of points they have will ever be sufficient to meet their holiday needs.

Mr and Mrs S say that they have a claim against the Supplier in respect of the

misrepresentation set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs S.

The Lender dealt with Mr and Mrs S' concerns as a complaint and issued its final response letter on 14 April 2021, rejecting their complaint.

Mr and Mrs S then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I spoke to Mr and Mrs S on 14 April 2025. During this call, they reiterated their concerns about the way their Fractional Club 2 membership was sold to them.<sup>1</sup> They maintain they were told they would be able to take a two-week holiday in August every year with their family if they increased their points but Mr and Mrs S say this isn't true.

Having considered everything that had been submitted, I thought the outcome reached by the Investigator was correct – I didn't think Mr and Mrs S' complaint ought to be upheld, but I thought the reasons not to do so could be expanded on. As such I set out my initial thoughts in a provisional decision (the 'PD') and invited all parties to respond with any new evidence or arguments that they wished me to consider before I made my final decision.

My PD said:

*I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.*

*In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time. And having done that, I do not currently think this complaint should be upheld.*

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

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

*Section 75 of the CCA protects consumers who buys goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.*

*In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs S could make against the Supplier.*

*Certain conditions must be met if the protection afforded to consumers is engaged,*

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<sup>1</sup> A copy of this call recording was not requested by either party in response to my provisional decision.

*including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier misrepresented something to Mr and Mrs S at the Time of Sale, the Lender is also liable.*

*As I set out at the start of my decision, Mr and Mrs S say that Fractional Club 2 membership had been misrepresented by the Supplier because they were told they would be able to holiday during the last two-weeks of August every year but Mr and Mrs S say this is not possible even after increasing their points in August 2019.*

*A misrepresentation is when a false statement of fact has been made which leads a consumer into entering a contract. Mr and Mrs S allege this has happened so I've considered all of the information and evidence I've been supplied with. I'm not currently persuaded that the Supplier did make a false representation at the Time of Sale and I'll explain why.*

*The Supplier says it discussed an enhanced Fractional Club Membership with Mr and Mrs S in August 2018, but Mr and Mrs S said it wasn't affordable for them. This led to them purchasing the Fractional Club 1 membership described as a 'single fraction', which the Supplier says provided one free upgrade a year. When Mr and Mrs S purchased the Fractional Club 2 membership in August 2019, they increased their points and obtained a 'multi-fraction' membership, which the Supplier says provided them with two free upgrades a year and '2 for 1' deals. This was written on the pricing sheet that was completed at the Time of Sale, suggesting it was discussed at the time and was a clearly stated benefit of Fractional Club 2 membership.*

*The Supplier has provided information showing Mr and Mrs S' reservation history which details all the holidays they booked. It also provides a breakdown of the points that were used for these bookings. In August 2021, Mr and Mrs S booked a two-week holiday and the Supplier applied two free upgrades to this booking. The total number of points used in August 2021 was 1,256. The Supplier initially told Mr and Mrs S that this holiday used 1,560 points. Regrettably, I think it's partly what's led to Mr and Mrs S' concerns that they were misled at the Time of Sale. The Supplier has, however, since confirmed that this was an error and the points used was, in fact, 1,256 – as indicated on the spreadsheet supplied.*

*What this means is that Mr and Mrs S have been able to take a two-week holiday in August using the benefits that their Fractional Club 2 membership provides. I therefore can't agree that the Supplier misled them at the Time of Sale in the way they allege or otherwise made a false statement of fact.*

*Furthermore, Mr and Mrs S would have been shown the Resorts Directory which details all of the resorts available and the points required for each resort. Having held a Fractional Club membership and viewing the Resorts Directory at the Time of Sale, I think it's more likely than not that Mr and Mrs S would have been aware of the types of holidays available to them. Having considered all the information and evidence I have on file, I'm persuaded Mr and Mrs S were attracted to the 'multi-fraction' membership as it provided them with the opportunity to go on holidays in August. I say this as Mr and Mrs S did go on holiday in August 2021 using their points and the upgrades available to them under their Fractional Club 2 membership. What's more, I can see from the Resorts Directory that their points do allow them to take a two-week holiday in August at various locations for example Kagga Kamma in South Africa or at Park Royal Acapulco in Mexico. With more choices, when taking advantage of the other benefits of their membership like two free upgrades a year.*

*Based on the time of year Mr and Mrs S want to take holidays, I appreciate there would be*

*higher demand, but availability of holidays was/is subject to demand which is stated on some of the sales paperwork signed by Mr and Mrs S at the Time of Sale.*

*Looking at Mr and Mrs S' reservation history, I can see they used more points than they were allocated at the Time of Sale when they travelled to Turkey in 2022 - using 2,180 points. I also note that Mr and Mrs S' Fractional Club 2 membership provided '2 for 1' deals but the Supplier has said this would typically be available in the low season. So, I agree that this additional benefit as part of their membership may have been of little use to Mr and Mrs S but for the reasons I've set out above, I'm not convinced this means the Supplier made a false representation at the Time of Sale for the reason Mr and Mrs S allege.*

*While I recognise that Mr and Mrs S have concerns about the way in which their Fractional Club 2 membership was sold, they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the reason they allege. I'm not persuaded that there was a false statement of fact made by the Supplier.*

*For this reason, I do not think the Lender is liable to pay Mr and Mrs S any compensation for the alleged misrepresentation of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.*

## **The responses to the PD**

Shawbrook Bank Limited responded and agreed with the PD. It had nothing further to add. Mr and Mrs S responded and reiterated their main concern being that their points allocation would not allow them to take a two-week holiday in August every year – something that they requested at the Time of Sale. Mr and Mrs S acknowledge they have been able to take holidays but say this is due to (1) being given extra points for signing up at the Time of Sale and (2) unused points being rolled into the following year giving them additional points to use.

## **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 appreciate my outcome will come as a disappointment to Mr and Mrs S but nothing in what they've said changes the outcome I reached in my PD. Ultimately, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs S' Section 75 claim.

As I mentioned in my PD, I need to be satisfied that the Supplier made a false statement of fact at the Time of Sale which induced Mr and Mrs S to enter into this contract.

Mr and Mrs S' complaint centres around being told by the Supplier that they could holiday for two-weeks in August every year using their Fractional Club 2 membership. Having looked at their reservation history, in particular their booking in August 2021, Mr and Mrs S were able to take a holiday using less points than they were allocated – in this case the Supplier applied two free upgrades to this booking which is one of the benefits under their Fractional Club 2 membership.

I also looked at the Resorts Directory which details all of the resorts available to Mr and Mrs S and it does appear like Mr and Mrs S would be able to take a two-week holiday in August in various locations, with even more choices if taking advantage of the two free upgrades available to them under their membership.

Taking this into consideration, I'm not persuaded the Supplier misled Mr and Mrs S at the

Time of Sale in the way they allege, nor do I think a false statement of fact was made by the Supplier.

I acknowledge there may be occasions where Mr and Mrs S may not be able to take certain holidays. I say this because like any holiday accommodation, availability is not unlimited – given the higher demand at peak times, like school holidays, for instance. This is stated on some of the sales paperwork signed by Mr and Mrs S at the Time of Sale.

For this reason, I do not think the Lender is liable to pay Mr and Mrs S any compensation for the alleged misrepresentation of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

### **My final decision**

For these reasons, I do not uphold Mr and Mrs S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 30 October 2025.

Sameena Ali  
**Ombudsman**