DRN-5844463

The complaint

Mr C and Mrs W complaint is, in essence, that Shawbrook Bank Limited ("Shawbrook") acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under s.140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under s.75 CCA.

Background

In July 2016 ("Time of Sale"), Mr C and Mrs W took out a timeshare membership ("the Membership") from a timeshare provider ("the Supplier"). This membership entitled them to take holidays on a set week at a set apartment every year from 2018, but it also gave them an interest in a share in the net sale proceeds of that apartment ("the Allocated Property") after their membership term ended after 14 years. They entered into an agreement with the Supplier to buy the Membership at a cost of €19,072 ("the Purchase Agreement").

Mr C and Mrs W paid for the Membership by taking finance of £15,950 from Shawbrook ("the Credit Agreement") in both of their names.

Mr C and Mrs W – using a professional representative ("PR") – wrote to Shawbrook on 20 November 2019 ("the Letter of Complaint") to raise a number of different concerns. In short, it was alleged that the Supplier misrepresented matters at Time of Sale that Shawbrook was liable to answer under s.75 of the Consumer Credit Act 1974 ("CCA"), in that:

1. The Membership was an investment product that could be sold at any time and guaranteed a return on their initial investment with a profit at the latest in 2030.
2. There was a guaranteed rental programme for their timeshare week, which would provide them with the funds to pay the annual management fees due plus a profit.
3. The Supplier would install lift access to the Allocated Property, which was situated on the 6th floor.

In February 2020, Shawbrook dealt with Mr C and Mrs W's concerns as a complaint and issued its final response letter, rejecting it on every ground. The same month, PR referred Mr C and Mrs W's complaint to this Service.

The complaint was then assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. PR, on Mr C and Mrs W's behalf, disagreed with the Investigator's assessment and asked for an Ombudsman's decision. But before that happened, PR sent details of a second complaint that it had made to Shawbrook in January 2014. This complaint alleged that Membership was presented by the Supplier as an investment, which was in breach of Reg.14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations"), leading to an unfair credit relationship as defined by s.140A CCA.

A second Investigator looked at the complaint again in light of the new matters raised, but again rejected the complaint on its merits. In doing so, they noted that there was no direct evidence from Mr C and Mrs W, which meant it was very difficult to know exactly what happened at the Times of Sale. PR responded to say that the complaint had been brought

based on their instructions and should therefore be assessed based on what PR had submitted. The complaint has now been passed to me for a final decision.

The legal and regulatory context

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.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done that, I do not think this complaint should be upheld. However, 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. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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

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

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Shawbrook does not dispute that the relevant conditions are met. But for reasons I will come on to below, it is not necessary to make any formal findings on them here.

I have set out above the alleged misrepresentations that PR says the Supplier made to Mr C and Mrs W. In addition to what was said above, PR points to the following as evidence that the representations were made:

- Following the sale, Mr C and Mrs W were given a cheque for €1,375. PR says this was an advance on the rental income they would get for letting out their timeshare week. PR also says Mr C and Mrs W were told they would be able to rent out their week for at least €1,300 in subsequent years.
- Mr C and Mrs W were hesitant about taking out Membership, so it was agreed between them and the Supplier that the cooling off period would be extended from 14 days to 18 days. During this period Mr C and Mrs W said they wished to cancel, but were persuaded not to by the Supplier by being told that Membership was an investment with a guaranteed rental scheme.
- Mr C and Mrs W used their holiday week in 2018 and asked for it to be rented out in 2019, but this was unsuccessful.

- The Supplier has now closed its sales operation, meaning that there will be no resale or rental of the Allocated Property.

In our second Investigator's view, they said that without direct evidence from Mr C and Mrs W, they were unable conclude that the timeshare was represented in the way alleged or sold as an investment. In response, PR provided further submissions, but neither provided any direct evidence from Mr C and Mrs W, nor explained why it was not able to provide such evidence.

The Financial Ombudsman Service does not have the same strict rules of evidence that a Court would, so there is no set form by which we have to receive evidence and therefore I have taken into account what PR has said on behalf of Mr C and Mrs W in the Letter of Complaint and other correspondence. However, it is difficult to know precisely what it was that they allege they were told, given that the Letter of Complaint and subsequent correspondence is written in the form of argument rather than first-hand evidence or memories of what happened during the sale. So I have considered what has been said alongside the other available evidence in this complaint.

I will deal with each alleged misrepresentation in turn.

It has been alleged that the Supplier told Mr C and Mrs W that the Membership was an investment. PR says they were told the Membership guaranteed a return on their initial investment with a profit at the latest in 2030 and this was reiterated in a subsequent conversation when Mr C and Mrs W tried to cancel the Membership.

I have seen that the Supplier accepts that Mr C and Mrs W had an extended cancellation period and that they tried to cancel the Membership, but the changed their minds after speaking to a representative. So the evidence from the Supplier adds credence to what PR said happened. However, the Supplier also said that its record of the conversation was that Mr C and Mrs W negotiated an extra year of maintenance fees to be paid by the Supplier and an increase to the 'cash back'' cheque from £1,150 to £1,500 (in Euros).

I have seen a letter from the Supplier to Mr C and Mrs W from the Time of Sale that says it would pay the maintenance fee for 2018 and that upon completion of the agreement, it would send them a cheque for €1,375. However, around six weeks later, Mr C and Mrs W were sent a cheque for €1,785, which was an increase on the original amount agreed and fits with what the Supplier said happened. So I think it is just as likely that Mr C and Mrs W agreed to go ahead with the purchase because of the increase in the amount of the cheque rather than any assurance about the investment element of Membership.

I have also seen that Mr C and Mrs W also signed a one-page '*Declaration of Treating Customers Fairly Sales Practice*' form at the Time of Sale. The form said:

> *"5. I/We [Mr C and Mrs W] have not entered into this purchase purely for a wider investment opportunity or financial gain".*

So there is a conflict between the paperwork that Mr C and Mrs W signed and what PR says they were told orally. On balance, I simply do not have the evidence required for me to say that the Supplier sold the Membership as an investment or, in fact, what representations were made during the sale. The allegations contained within the Letter of Complaint are not specific enough for me to know what it was that Mr C and Mrs W say they were told about the Membership and they are contradicted by the declaration that they signed at the Time of Sale. I accept that the passage from the *Declaration of Treating Customers Fairly Sales Practice* form does not exclude the possibility that Membership was positioned as an investment, however this is denied by the Supplier. Without some explanation of what Mr C

and Mrs W understood by this (and the other documentation they signed), I am unable to make a finding about what they were or were not told by the Supplier during the sale.

Turning to the allegation that there was a rental programme offered, PR says that Mr C and Mrs W were told that there was a guaranteed rental programme for their timeshare weeks, which would provide them with the funds to pay the annual management fees due plus a profit. PR also said that the cheque Mr C and Mrs W got was an advance on the rental fees to be paid – I have seen a copy of the cheque and it is not in dispute that it was paid.

Mr C and Mrs W used their holiday week in 2018, the first year they could have done following the sale. But that does not fit with the idea that the cheque was an advance on rental income, as they did not rent out their first available holiday week at the Time of Sale. I find it inherently unlikely that the Supplier would have given an advance on the possibility that Mr C and Mrs W would have rented out their week at some unspecified future date. This was a conclusion that our Investigator also reached, and PR did not specifically dispute it in response to the view. So it seems to me that the evidence is not consistent with the allegation that the cheque was an advance on the rent to be paid.

The Supplier has said that it did not offer or operate a rental programme as alleged. I have looked at the paperwork provided by the Supplier and I cannot see any reference to a rental scheme, which is surprising given what PR said happened. Further, I note again that there was a disclaimer that went to say Membership was not to be seen purely as an investment opportunity or a way to make a financial gain, which does not fit with what PR says Mr C and Mrs W were told that there was a guaranteed annual profit over the cost of their annual maintenance fees. So although I have considered what PR has suggested happened, on balance and in the absence of evidence from Mr C and Mrs W, I do not find that the Supplier told them that there was a guaranteed annual rental income of €1,300 or that it otherwise misrepresented to them the rental opportunities that the Memberships gave them.

Finally, beyond a bare allegation in the Letter of Complaint that Mr C and Mrs W were told that a lift would be installed to the sixth floor of the apartment building, I have seen no further evidence that this was said or that it was untrue that the Supplier did plan to do so. I note that PR has not made any further submissions on this point since the initial complaint and again I do not have enough evidence as to the specific allegation that was made, so I make no finding that they were told anything about this issue that was untrue.

So, while I recognise that Mr C and Mrs W - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under s.75 CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I have set out above, I am not persuaded that there was. And that means that I do not think that Shawbrook acted unreasonably or unfairly when it dealt with this particular s.75 CCA claim.

Section 75 of the CCA: the Supplier's breach of contract

As noted above, Shawbrook could also be jointly liable to answer any of the Supplier's breaches of the Purchase Agreements.

It has been said during the course of this complaint that the Supplier has ceased trading, so if Mr C and Mrs W were no longer able to receive something they were entitled to under their Purchase Agreements, that could amount to a breach of contract. In response, the Supplier has said that is closed its sales offices, but it continued to provide operational services.

Mr C and Mrs W say that the Supplier said it would open a resale department, but this did not happen. However, the Supplier denies this was the case and I cannot see there being

any express or implied contractual term that such a service was or would be made available. So I cannot say there was a breach of contract for this reason.

Further, it has not been said, suggested or evidence provided to demonstrate that they are no longer:

1. a member of the scheme;
2. able to use their Membership to holiday in the same way they could initially; and
3. entitled to a share in the net sales proceeds of the relevant Allocated Property when their Membership ends.

So, from the evidence I have seen, I do not think Shawbrook is liable to pay Mr C and Mrs W any compensation for a breach of contract by the Supplier. And with that being the case, I do not think Shawbrook acted unfairly or unreasonably in relation to this aspect of the complaint either.

Section 140A of the CCA: did Shawbrook participate in an unfair credit relationship?

I have already explained why I am not persuaded that the Memberships were actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with S.140A CCA in mind if I am to consider this complaint in full – which is what I have done next.

Having considered the entirety of the credit relationship between Mr C and Mrs W and Shawbrook along with all of the circumstances of the complaint, I do not think the credit relationship between them was likely to have been rendered unfair for the purposes of s.140A CCA. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The provision of information provided by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
2. The commission arrangements between Shawbrook and the Supplier at the Time of Sale and the disclosure of those arrangements;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mr C and Mrs W and Shawbrook.

The Supplier's sales & marketing practices at the Time of Sale

The way in which the Supplier allegedly sold Membership to Mr C and Mrs W could give rise to an unfair credit relationship. In particular it is alleged that the sale breached Reg.14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations"), meaning that the Membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

Shawbrook does not dispute, and I am satisfied, that Mr C and Mrs W's Memberships met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Reg.14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of

Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr C and Mrs W were told by the Supplier that the Membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr C and Mrs W the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that the Membership included an investment element did not, itself, transgress the prohibition in Reg.14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It does not prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Membership. They just regulated how such products were marketed and sold.

To conclude, therefore, that the Membership was marketed or sold to Mr C and Mrs W as an investment in breach of Reg.14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that the Membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

I have carefully considered what PR has said about this issue, both in the original Letter of Complaint, subsequent correspondence with Shawbrook and this Service. I have also considered the Supplier's denials that it ever sold the Membership in the way alleged and the sales paperwork that includes the disclaimer I set out above.

I have thought about PR's arguments that they have lots of other clients who have made similar complaints, meaning there is evidence that the Supplier systemically breached Reg.14(3). However, for me to conclude that the Supplier did breach Reg.14(3) in this particular complaint, I would need to be satisfied that there was evidence that went to the central issue in hand. So although I accept that PR has made complaints on behalf of others, that does not mean I must conclude the Supplier sold or marketed Membership to Mr C and Mrs W as an investment.

I have also considered that, given the nature of the Membership being associated with the Allocated Property, there was a real risk that the Supplier could have breached Reg.14(3) at the Time of Sale – it seems to me more likely that a supplier could breach that regulation selling a product with an investment element, rather than a product without it. However, that in and of itself is not sufficient for me to conclude something has gone wrong.

As noted above, the Financial Ombudsman Service does not require evidence to be presented in a specific way or format. However, I simply do not have any direct evidence from Mr C and Mrs W about what the Supplier told them during the sale in question that made them think the Membership was being presented as investments. And despite this being made clear to PR in our Investigator's view, no further evidence has been provided. So having considered everything, I do not find it more likely than not that the Supplier

breached Reg.14(3) during the sale or, if it had been breached, that such a breach was an important and motivating factor in them taking out the Membership. And for that reason, I do not think the credit relationship between Mr C and Mrs W and Shawbrook was unfair to them for this reason.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that Shawbrook acted unfairly or unreasonably when it dealt with Mr C and Mrs W's s.75 CCA claim, and I am not persuaded that Shawbrook was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of s.140A CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct Shawbrook to compensate them.

My final decision

I do not uphold Mr C and Mrs W's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C and Mrs W to accept or reject my decision before 19 March 2026.

Mark Hutchings
Ombudsman