

The complaint

Miss F's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Miss F purchased membership of a timeshare that I'll call the 'Fractional Club' from a timeshare provider (the 'Supplier') on 20 December 2017 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1040 fractional points at a cost of £15,863 (the 'Purchase Agreement').

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

Miss F paid for Fractional Club membership by taking finance of £15,863 from the Lender (the 'Credit Agreement').

In 2019 Miss F, using a Professional Representative ('PR'), obtained a judgment against the Supplier in a Spanish Court. The court found that the agreement between Miss F and the Supplier was null and void, with one of the reasons for this being that Fractional Club membership had been sold as an investment.

Miss F wrote to the Lender on 20 October 2020 (the 'Letter of Complaint') saying that Fractional Club membership had been sold to her as an investment when it wasn't and asked for the Credit Agreement to be treated as null and void. She also referred to having been pressured by the Supplier into purchasing membership and to being subjected to unnecessary financial hardship.

The PR also wrote to the Lender on 20 November 2020 on behalf of Miss F referring to the Spanish Court judgment in her favour, arguing that this meant the Lender should cancel the Credit Agreement.

The Lender dealt with Miss F's concerns as a complaint and issued its final response letter on 14 January 2021, rejecting the complaint on every ground.

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

Miss F disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it was passed to me. I asked the Lender to address concerns I had about affordability of the loan and it responded to confirm it had carried out an appropriate review of her circumstances at the time and considered it was suitable for her. I issued a provisional decision explaining why I thought the complaint should be upheld the findings from which are set out below.

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I currently think this complaint should be upheld because I don't think the Lender acted fairly in agreeing the loan to Miss F in the circumstances of this complaint.

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.

We have set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I have considered our approach when deciding Miss F's complaint.

The Lender needed to take reasonable steps to ensure that it didn't lend to Miss F irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Miss F would be able to repay the loan in a sustainable way. There is no set list of what reasonable and proportionate checks should look like, rather greater thoroughness might be reasonably expected where a person on a lower level of income may be borrowing a high sum or taking out borrowing over a longer period which could potentially cost more in the longer term.

I have considered the checks that the Lender said it carried out before deciding to loan monies to Miss F. It has said that its affordability checks were carried out based on the information provided at point of application and that it may use credit scoring. It said that the system is often automated but in Miss F's case it was referred for manual review and that an underwriter carefully considered her circumstances before the loan was agreed.

However it doesn't appear from what the Lender has said that the underwriter obtained any additional information, about Miss F's finances, beyond what she provided in her application. I note what the Lender has said about it not always being necessary to carry out an assessment of a client's income and expenditure. However, I am mindful that the rules about making a creditworthiness assessment includes guidance that states that it is not generally sufficient for a firm to rely solely on a statement by the customer as to their income and expenditure. So, simply relying on what Miss F stated her income was without obtaining evidence of her income and failing to get any information about her actual expenditure didn't amount to reasonable and proportionate checks in my view.

The question I then need to decide is whether the Lender would still have concluded that the loan was sustainable for Miss F if it had carried out reasonable and proportionate checks. She has provided copies of her bank statements for the three months before she purchased Fractional Club membership. These do not show she was in receipt of monthly income that would have amounted to the stated annual income of £40,000. They also show that she was in receipt of child tax credit at the time and, from my understanding, this wouldn't have been payable to her if her income was anywhere near as high as that.

The bank statements show that Miss F was in credit at the end of each month, but not enough in my view to have made the monthly repayments on the Credit Agreement sustainable. Moreover, the sales notes from the Time of Sale show that the Supplier paid Miss F £900 cash back to help her with the first few months payments because she was starting a new business. This doesn't support a conclusion that if the Lender had carried out further and proportional checks it would have concluded that the loan was affordable to Miss F. To the contrary, I think it would have reasonably concluded that the loan wasn't sustainable and that it should refuse it accordingly.

In all the circumstances I am not persuaded that the Lender acted fairly and reasonably when it agreed the loan, because Miss F could not sustain the payments over the term of the loan.

In making that finding I have noted what the Lender has said about Miss F being able to maintain the loan payments for 18 months until June 2019 when she informed it she was going to struggle to continue payments. Insofar as it is suggesting that her payment of the monthly payments over 18 months is evidence of itself that the loan was affordable, then I don't agree. In short, this doesn't establish that the loan was sustainable when it was agreed by the Lender."

I set out what I thought the Lender should do to put things right and gave both parties the opportunity of responding to my provisional decision and providing any further argument or information they wanted me to consider before making my final decision.

Miss F agreed with my provisional decision but the Lender didn't. In summary the key points made by it are:

- It doesn't accept it relied solely on what the customer said in a manner that was inconsistent with the regulator's rules and guidance.
- As well as considering the information Miss F provided about her income and employment it considered credit reference agency data and her existing credit commitments, applying its structured affordability methodology which incorporated ONS-based expenditure assumptions and clearly defined decline and referral thresholds.
- The regulatory guidance doesn't require that it obtain evidence of income or bank statements in every case.
- Whilst the application generated an internal referral marker relating to disposable income, this didn't indicate that the lending was marginal or unsustainable.
- At referral stage the application was considered holistically, taking into account the customer's overall financial profile, the plausibility of her declared income, the absence of adverse credit indicators and the proportionality of the loan relative to her circumstances.
- The provisional decision places significant weight on bank statements and other information obtained several years after the lending decision and the fact that the statements may show different income patterns that differ from what was declared doesn't of itself show that it wasn't reasonable to rely on the information available to it in 2017.
- The receipt of child-tax credit can depend on a range of factors and there was nothing in the information available in 2017 that suggested Miss F's declared income was inaccurate or unreliable.
- The cashback payment of £900 isn't reliable evidence the loan was unaffordable or unsustainable and this was unknown to it at the time of lending.
- The maintenance of contractual payments over 18 months supports its position that the loan wasn't inherently unsustainable when agreed.
- Miss F only went into arrears in 2020 when her occupation would have been

particularly impacted by the Covid pandemic restrictions which was a material and unforeseeable change in circumstances.

- The assessment the ombudsman must make is whether its actions were fair and reasonable based on the information available at the time the lending decision was made, not whether a different conclusion might be reached with the benefit of hindsight or additional evidence obtained years later.

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 have considered everything that the Lender has said in response to my provisional decision but I am not persuaded I should change the conclusion I came to or the findings I made, which, for the avoidance of doubt, form part of the findings in this final decision unless I state to the contrary.

I will briefly address the points raised by the Lender in response to my provisional decision.

The Lender has suggested that I have used hindsight and additional evidence not available to it at the time it made the lending decision in coming to the conclusion that I have. But what I have done is consider whether the Lender carried out reasonable and proportionate checks at the time it made its lending decision in 2017 and concluded that it didn't. I have then considered what, more likely than not, would have happened if it had carried out such checks and found it would reasonably have concluded, from the information that would have been available to it through such checks, that the loan wasn't one Miss I could sustain. Nothing that the Lender has said in response to my provisional decision makes me think these findings are wrong.

The Lender says that the regulatory guidance doesn't mean it has to obtain evidence of income or bank statements in every case. But whilst I acknowledge that the guidance doesn't state that a Lender always needs to obtain evidence, in this case I think its failure to do so means its creditworthiness assessment wasn't reasonable or proportionate, as I explain below.

The guidance at the time (CONC 5.3.1R) made it clear that it isn't generally enough for a firm to rely solely for its assessment of income and expenditure on a statement of those matters made by the customer. The Lender says it checked credit reference agency data and Miss I's existing credit commitments at the time but nothing it has said suggests to me that it obtained any evidence that confirmed Miss I's income was as she said it was. As for expenditure, the Lender said that its methodology incorporated ONS based expenditure assumptions.

I am not satisfied that the Lender's reliance on what Miss I said her income was and on assumptions about her expenditure amounted to reasonable and proportionate checks. And in the circumstances I am not persuaded the Lender complied with its regulatory obligations when it made the decision to lend money to Miss I.

And, based on what I have seen in the bank statements covering the three months before the loan application, I am satisfied that if the Lender had sought further information about Miss I's income and outgoings, as I think it should have done, the information it would have obtained would, on balance, have shown that Miss I wouldn't be able to sustain the loan payments.

As for Miss I's being able to maintain the monthly payments, I have considered what the Lender has said about her only going into arrears after the Covid pandemic – although note she first missed a payment in June 2019. However, Miss I being able to maintain the loan payments doesn't establish it was sustainable when it was agreed by the Lender, especially given other evidence, on balance, doesn't support such a finding.

Conclusion

The Lender failed to carry out reasonable and proportionate checks when carrying out a creditworthiness assessment on Miss I and if it had carried out such checks at the time it made the decision to lend it would reasonably have concluded the loan wasn't sustainable and should have refused the loan application accordingly.

Putting things right

Having found that Miss F should not have been provided with the loan because it was not sustainable, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Miss F agrees to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Fair compensation

Here's what I think needs to be done to compensate Miss F with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr F's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the annual management charges Miss F paid as a result of Fractional Club membership.
- (I'll refer to the output of steps 1 and 2 as the 'Net Repayments' hereafter)
- (3) Simple interest at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint. HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Miss F a certificate showing how much tax it's taken off if he asks for one.
- (4) The Lender should remove any adverse information recorded on Miss F's credit file in connection with the Credit Agreement reported within six years of this decision.
- (5) If Miss F's Fractional Club membership is still in place at the time of this decision, as long as she agrees to hold the benefit of her interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify her against all ongoing liabilities as a result of her Fractional Club membership.

My final decision

I uphold this complaint for the reasons explained above and Shawbrook Bank Limited should calculate and pay the redress I have set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or

reject my decision before 16 February 2026.

Philip Gibbons
Ombudsman