

The complaint

Mr and Mrs L complain Shawbrook Bank Limited (the “Lender”) has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the “CCA”) and has participated in an unfair credit relationship with them under Section 140A of the CCA.

Mr and Mrs L are represented in their complaint by a professional representative (“PR”).

What happened

I’ve issued two provisional decisions to date on Mr and Mrs L’s complaint. The most recent provisional decision was issued on 18 February 2026, following the receipt of more information about Mr and Mrs L’s financial circumstances at the time the Lender agreed to give them the loan which is the subject of this complaint. In that provisional decision, I set out the background to the complaint and explained that I was now minded to uphold it.

A copy of the second provisional decision is appended to and forms part of this final decision, so I don’t need to go over the background again. I will say only that Mr and Mrs L bought a timeshare on 23 October 2017 which was financed by a loan from the Lender of £12,693, repayable over 15 years with repayments of £146.67 per month. Mr and Mrs L fell behind on their repayments and the loan was sold to a third party debt purchaser – “C” – in April 2021.

Mr and Mrs L later complained to the Lender about a variety of concerns – focused chiefly on alleged mis-selling of the timeshare by the broker which had arranged the loan. They also complained the Lender had lent to them irresponsibly.

In my second provisional decision, I concluded that the Lender had failed to carry out proportionate checks into Mr and Mrs L’s ability to repay the loan in a sustainable way and, had it done so, that it would have discovered that the loan was not sustainably affordable and (acting responsibly) would not have agreed to lend to them.

My full reasoning can be found in the appended document, but to summarise the most salient findings:

- The Lender had failed to carry out proportionate checks into Mr and Mrs L’s ability to repay the loan in a sustainable way because:
 - The Lender had seen that Mrs L had significant recent adverse credit history, including a default in the last three months and recent arrears on three other accounts. The Lender’s solution to this problem had been not to take into account Mrs L’s financial circumstances while still accepting her for the loan for the purpose of securing against credit risk – I thought this was clearly inappropriate and against regulatory guidance that the Lender’s assessment needed to consider more than the risk that the loan would not be repaid.
 - I also observed that while Mr and Mrs L’s revolving credit utilisation stood at 43% at the time the Lender made its decision, it was apparent they had

recently taken a consolidation loan which had reduced but not eliminated the balances on their revolving credit accounts (or that they had begun spending again on credit accounts having consolidating their debts). I considered the overall picture was that of two borrowers who were struggling financially.

- I considered proportionate checks in the circumstances would have involved ascertaining Mr and Mrs L's regular expenditure in order to get a clearer picture of whether they could afford to repay the prospective loan in a sustainable way. I noted that there could have been a number of reasonable methods of obtaining this information. This could have included bank statements, but didn't necessarily need to do so.
- I had considered Mr and Mrs L's bank statements from the relevant time as they were a snapshot of their financial position and I considered that, by using these, it was possible and reasonable to reconstruct what the Lender would likely have discovered had it made enquiries about Mr and Mrs L's regular expenditure at the time. I thought it was likely the loan would have appeared unaffordable because:
 - Based on their regular income and expenditure, it appeared Mr and Mrs L had more money going out than coming in, on a regular basis, even before considering things like groceries or the additional maintenance fee costs associated with the timeshare being purchased with the loan. So they didn't have the capacity to take on additional borrowing.

I concluded that the lending decision had not been a responsible one, and set out the actions I considered it would be fair and reasonable that the Lender take to put things right. Broadly speaking, this involved unwinding the loan and the associated purchase to the extent it was possible to do so, and making corrections to Mr and Mrs L's credit files.

I asked the parties to the complaint to respond to my second provisional decision. I have not heard anything from Mr and Mrs L or PR. The Lender responded to say it disagreed with my findings. While many of the Lender's points were ones it had made previously (and addressed in my second provisional decision), I could summarise its position as follows:

- It thought its checks had been proportionate because:
 - There had been nothing stated on Mr and Mrs L's application form that would have given cause for concern. It was reasonable to rely on the information provided on the form, and while Mrs L may have been on a zero hours contract, she didn't declare this at the time.
 - It acknowledged Mrs L had an adverse credit history, but this had been taken into account appropriately. It had reduced the approved loan amount, refusing to consolidate Mr and Mrs L's previous timeshare borrowing, because it had considered the risks.
 - It did not think Mrs L's adverse credit history was quite so bad as I'd outlined. It considered her recent consolidation of debt had restructured her financial position and was a sign of financial distress having been mitigated, not a sign of ongoing distress.
 - There had been nothing else about the application which flagged a need for further verification.
- It maintained that I had applied the wrong test when assessing its lending decision,

carrying out a reconstructed analysis of Mr and Mrs L's financial position at the time of the application, rather than considering whether its checks had been proportionate or not.

The Lender doesn't appear to have disagreed with my analysis of Mr and Mrs L's actual financial position – only that it wouldn't have discovered this through proportionate checks.

The case has now been returned to me once more.

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 don't propose to restate everything I said in my appended second provisional decision. As I've already said, that document forms a part of this final decision.

Proportionate checks

Ultimately, the Lender remains of the view that its checks at the time of the application were proportionate, and so if the loan turned out to be unaffordable then that is not because it made an irresponsible lending decision.

Firstly, while the Lender has asserted that I have applied the wrong test in this complaint, that isn't the case. I think I've applied the test the Lender has argued I ought to have applied, and I think that was clear in the second provisional decision. If the Lender is unfamiliar with how the Financial Ombudsman Service considers complaints about irresponsible or unaffordable lending, then further information can be found on our website.¹

I think it also remains clear from its response to the second provisional decision that the Lender was focused on credit risk rather than affordability risk when making its decision to lend to Mr and Mrs L. It has argued that its decision not to agree to the original applied-for amount (which involved consolidating a timeshare loan from another lender) is a sign that it had considered Mrs L's adverse credit position in an appropriate way.

I would note that, had the Lender agreed to the higher amount applied for, it would not have resulted in higher monthly outgoings for Mr and Mrs L – the *additional* borrowing would have been the same. The difference would have been that if Mr and Mrs L were to have had repayment difficulties, *all* of the credit risk would lie with the Lender, rather than it being split across multiple lenders. So it seems clear to me that the Lender's decision not to agree to the consolidation was not because it was concerned with affordability risk, but with the risk that it would not be repaid in full (i.e. credit risk). This is consistent with its underwriting notes at the time which said that it had decided to keep Mrs L's name on the loan despite her credit history, for the purposes of security. As I said in my second provisional decision, the approach the Lender appears to have taken to this lending decision is not in line with CONC 5.3.1 G.

The Lender has argued that there wasn't anything to suggest that it should have carried out further checks, but I disagree with that for all the reasons stated in the appended document and summarised above. I think the information it had acquired as part of the application process revealed that one of the joint applicants had recent signs of financial difficulties in the form of a default and several accounts in arrears. I think there was a general sense of

¹ <https://www.financial-ombudsman.org.uk/businesses/complaints-deal/consumer-credit/unaffordable-lending> [Retrieved 13 March 2026]

financial overcommitment and, while I can see the logic in the Lender's argument that the recent consolidation loan could have mitigated Mr and Mrs L's financial situation, they had significant levels of revolving credit debt at the time of application and my concerns about that were set out in the second provisional decision. I'd also add that, while the loan repayments were not especially large, the term of the loan was 15 years and so it was a long-term commitment. One factor which would generally, in my view, lead to more thorough checks being proportionate, is the requirement to make repayments sustainably over a long period of time, which was the case with this loan.

So I remain of the view that the checks the Lender carried out were not proportionate in the circumstances, based on what the Lender had discovered when it carried out its credit checks, and the characteristics of the proposed borrowing. I don't think it was acceptable to rely on unverified income² and no consideration of Mr and Mrs L's regular expenditure.

What proportionate checks would have shown

In my second provisional decision I used Mr and Mrs L's bank statements from the months prior to the lending decision to build up a picture of what I thought the Lender would likely have discovered had it carried out proportionate checks which *included* making enquiries into Mr and Mrs L's regular expenditure.

As I said above, the Lender doesn't appear to disagree with my analysis of Mr and Mrs L's actual financial position and that the loan was – in fact – unaffordable based on Mr and Mrs L's regular income and expenditure in the months leading up to the time of application. I think this is what the Lender would likely have discovered had it carried out proportionate checks, and that (acting responsibly) it would not have agreed the loan.

This means I remain of the view that the Lender's failure to carry out proportionate checks led to Mr and Mrs L being treated unfairly because they ended up with a loan which was not sustainably affordable. And so the Lender will need to take action to put things right.

Fair Compensation

As I said in the second provisional decision, my starting point for what would constitute fair compensation in this case, is that had it not been for the Lender's irresponsible lending decision then Mr and Mrs L would not have gone ahead with their purchase from the Supplier. With that in mind, the aim of any compensation should be to put Mr and Mrs L, as far as is practicable, in the position they'd have been in, had the purchase not taken place.

In other words, fair compensation would involve unwinding the purchase financed by the loan in question. The Lender appears to have no specific comment on my compensation proposals and, having considered them again, I remain of the view that they are fair and reasonable in the circumstances.

This means the Lender must take the following actions:

- 1) Buy back the debt from the third-party debt purchaser, "C"³.
- 2) Refund all payments made by Mr and Mrs L towards the loan (including any

² The Lender has argued that it was reasonable to rely on what Mr and Mrs L had to say about their financial situation, but I note CONC 5.3.1 G (4)(b) said: "*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*"

³ If C no longer owns the debt then the Lender will need to identify the current debt owner and make arrangements for it to be bought back.

payments made to a third party after the debt was sold), and cancel any outstanding balance.

- 3) Refund the annual management charges paid by Mr and Mrs L for the timeshare membership with the Supplier which was financed with this loan. This means any refund should only be of charges associated with the additional points Mr and Mrs L acquired with the purchase in question.
- 4) The Lender can deduct from the refunds calculated in the steps above, the value of any promotional giveaways Mr and Mrs L took advantage of, and the market value of any holidays they took using the *additional* points purchased with this loan.* Any deduction should take into account the fact that Mr and Mrs L would have been able to take holidays using their existing points. So if, for example, the holidays taken by Mr and Mrs L could have been taken using points from their previous purchase, then no deduction should be made in respect of those holidays.

I'll refer to the output of the steps above as the "Net Repayments".

- 5) Simple interest** at 8% simple per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles the complaint.
- 6) Remove any negative information from Mr and Mrs L's credit files in relation to the loan.
- 7) If Mr and Mrs L's membership with the Supplier is still in place at the time of this decision, as long as they agree to hold the additional points purchased using this loan on behalf of the Lender (or assign those points to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities associated with those points.

*I recognise 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 and Mrs L 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.

**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.

My final decision

For the reasons explained above, and in the appended second provisional decision, I uphold this complaint and direct Shawbrook Bank Limited to take the actions set out in the "Fair Compensation" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before **10 April 2026**.

A handwritten signature in blue ink, appearing to read 'Will Culley', with a horizontal line underneath.

Will Culley
Ombudsman

COPY OF SECOND PROVISIONAL DECISION

I've considered the relevant information about this complaint, following the receipt of further evidence and submissions after my first provisional decision.

Having done so, I'm minded to change the conclusions I reached previously, and so I need to give both parties an opportunity to provide further submissions before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **4 March 2026**. 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. If Mrs L and Mr L also accept, I may arrange for the complaint to be closed as resolved at this stage without a final decision.

The complaint

Mr and Mrs L complain Shawbrook Bank Limited (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

Mr and Mrs L are represented in their complaint by a professional representative ("PR").

What happened

I issued a provisional decision on this complaint on 24 October 2025, in which I concluded that the complaint ought not to be upheld. I'll summarise the background briefly:

- Mr and Mrs L made a series of purchases from a timeshare provider (the "Supplier"), with their final purchase being made on 23 October 2017. This complaint is about this final purchase. They bought a membership of a type of timeshare I'll call the "Fractional Club", which was an asset-backed timeshare giving them a right to a share in the net sale proceeds of an apartment named on their contract at the end of their membership. It also, like all timeshares, gave them holiday rights.
- The purchase was financed by a loan with the Lender, arranged by the Supplier. The loan was for an amount of £12,693, which was the cost of the timeshare. It had originally intended that the loan be bigger, and consolidate a loan from another lender (relating to a previous purchase), but the Lender decided not to do this. The loan was repayable over 15 years with repayments of £146.67 per month, and the total charge for credit was £13,707.60.
- Mr and Mrs L fell behind on their loan repayments and their loan agreement ended up being terminated by the Lender. The Lender then sold the debt to a third party debt purchaser – "C" – in April 2021.
- Mr and Mrs L later complained to the Lender, via PR, about various concerns that could broadly be described as mis-selling, for which they sought to hold the Lender responsible. The concerns included misrepresentations by the Supplier for which they considered the Lender responsible under Section 75 of the CCA, and various improper acts or omissions by either the Supplier or Lender which had rendered their

credit relationship with the Lender unfair to them.

In my first provisional decision I explained that I didn't think the complaint should be upheld. I didn't think there was sufficient persuasive evidence for the Supplier's alleged misrepresentations to Mr and Mrs L, and I noted that because the debt had been sold, the Lender was no longer responsible for the fairness of the credit relationship, meaning a successful claim could not be brought against it in respect of the credit relationship being unfair.

However, I noted that one of the concerns raised by Mr and Mrs L could be considered outside of the framework of a complaint made about an unfair credit relationship – and this was the concern that the Lender had failed to carry out appropriate checks before lending to them, thus lending to them irresponsibly.

The Lender was still responsible for its lending decision, outside of any unfair relationship complaint, and so I went on to consider this aspect of the complaint further. Having done so, I had some concerns that the Lender hadn't in fact carried out the kind of checks that it should have before lending to Mr and Mrs L.

I explained that the Lender had, at the time it received Mr and Mrs L's loan application through the Supplier, a duty to lend to them responsibly. The relevant rules around responsible lending at the time were to be found in the Financial Conduct Authority's Consumer Credit Sourcebook ("CONC").

I summarised the effect of the relevant CONC rules as follows:

"...the Lender had to assess Mr and Mrs L's application for the loan to check if they would be able to afford to repay it in a sustainable way. The Lender's assessment had to be proportionate to the circumstances, taking into account the characteristics of the lending being proposed, and Mr and Mrs L'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 and Mrs L 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."

I then considered the checks the Lender had carried out and what these had revealed. An application form had been completed and signed by Mr and Mrs L which said Mr L was employed with a gross annual income of £28,000 and Mrs L was employed with a gross annual income of £21,000. The form had also recorded that they had a mortgage with a balance of £41,000 and repayments of £385 per month.

The Lender had also carried out credit checks. I observed that the Lender's credit checks had revealed adverse credit information for Mrs L in particular. She had defaulted on a credit card account in the last three months and had been between one and three payments in arrears on three other accounts recently. The Lender had noted concern about this, but after some internal discussion its solution was apparently to base its lending decision on Mr L's financial situation only, but to leave Mrs L's name on the loan as a joint borrower "for security".

I opined that I wasn't sure if that had been appropriate, and that I thought Mrs L's financial circumstances ought to have been considered if she was to be treated as a joint borrower with responsibility for repaying the loan. Given what the Lender had seen when it carried out

its checks, and taking into account the terms of the loan, I thought it should have taken steps to establish Mr and Mrs L's regular expenditure to check if they were in a position to make their repayments in a sustainable way.

I went on to note that just because the Lender had failed to do what it should have done, didn't mean Mr and Mrs L's complaint should automatically be upheld. It was still necessary to show that – if the Lender had done what it should have done – it would have concluded that the prospective loan would not have been sustainably affordable for Mr and Mrs L.

And that was where Mr and Mrs L's complaint of irresponsible lending ran into difficulties. They had not provided evidence of their financial situation at the relevant time which would have allowed for the reconstruction of what the Lender would likely have seen had it carried out proportionate checks. There was no way to determine if the lending decision had been irresponsible.

I explained all of this in my provisional decision. In response to the provisional decision, PR supplied Mr and Mrs L's bank statements. I used these to reconstruct what I thought the Lender would likely have seen, had it carried out proportionate checks and asked Mr and Mrs L questions about their expenditure. Having done so, I shared what I'd found with the Lender as follows:

“Based on their bank statements, it appears Mr and Mrs L's regular credit commitments included their mortgage of £381 per month, bank loans including a secured loan totalling £700 per month, and a previous [Supplier] timeshare loan from [Other Lender] of £163 per month which was not being consolidated by your loan. It appears payments were also being made to a credit card. The amounts being paid towards this varied but a conservative estimate is around £50 per month. This brought Mr and Mrs L's regular credit commitments to around £1,294 per month.

Other regular expenditure in the months leading up to the acceptance of the loan included:

- *£395 per month on what appear to be various insurance policies.*
- *In the region of £100 per month in council tax (this is based on historic rates for the local council – as in some months payments can't be seen).*
- *£89 per month on energy.*
- *£140 per month on telecoms.*
- *£16 per month on mobile phone bills.*

This comes to approximately £740 per month on household bills and insurance policies.

I also observe Mr and Mrs L's account was regularly overdrawn, often far in excess of the agreed overdraft facility, leading to them incurring various charges. While I wouldn't necessarily have expected you to find out about unarranged overdraft charges as part of an assessment of regular expenditure, I note your credit check showed a balance of £218 overdrawn against a limit of £200, so you would have been aware it was possible charges were being incurred. More broadly, being in excess of the overdraft limit was another indicator of credit stress.

It would have appeared from the above overview of Mr and Mrs L's expenditure that their regular outgoings were at least £2,000 per month. I note that this figure does not include food or other groceries, or any other costs associated with the timeshare purchased using this loan.

Against the visible income arriving in the account (which is the only account showing for either applicant on the credit check), it seems likely Mr and Mrs L had more money going out than they had coming in on a regular basis. It doesn't look to me as though they had any capacity to take on additional borrowing – and I think it's more likely than not that you would have come to that conclusion had you carried out proportionate checks into their ability to afford the loan.”

I invited the Lender to comment. The Lender responded to maintain that it considered its lending decision had been responsible. I could summarise its arguments as follows:

- Its assessment had included verifying Mr and Mrs L's income and reviewing their credit files, and its review had not shown any arrears on existing borrowing or demonstrate adverse repayment behaviour that would have suggested inability to manage further borrowing.
- It acknowledged that its review had shown the current account was slightly overdrawn beyond its limit, but it didn't consider this an indicator that Mr and Mrs L would struggle with their repayments.
- Mr and Mrs L were only using, at the time of the application, 43% of their credit limits on revolving credit accounts, and their accounts were well-managed. They also had a hire purchase agreement with a balance of £9,300. They had a debt-to-income ratio of 47%.
- There was no requirement to obtain bank statements before accepting the application. The loan was primarily for the purpose of consolidating existing debt, reducing Mr and Mrs L's overall monthly commitments. In light of this, the incomes declared and the commitments seen, it thought its checks had been proportionate.
- It was critical of the reconstruction of Mr and Mrs L's finances because it relied on hindsight and on information not available to the Lender at the time and which it didn't think it was reasonable of it to have requested. That said, it didn't seem to disagree with my finding that the loan had been unaffordable based on Mr and Mrs L's actual income and regular expenditure.
- It considered I had applied the wrong test – assessing whether the Lender might have reached a different conclusion with the benefit of fuller documentation obtained at a later date, rather than what it would have been proportionate of it to have obtained at the time of the application.

As no agreement could be reached, the case has been returned to me to review again.

What I've provisionally decided – and why

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

I'm not going to go into all the other reasons why Mr and Mrs L have complained to the Lender. I have already done so in my first provisional decision, a copy of which all parties to the complaint have in their possession. I'll say only that I remain of the view that those parts

of the complaint should be unsuccessful, for the same reasons.

I will instead focus on the matter of the Lender's decision to approve the loan for Mr and Mrs L, as I am now of the view that this was not a responsible lending decision and that the Lender should compensate Mr and Mrs L appropriately.

Having read the Lender's response to the observations I shared with it recently, I am not convinced that it has considered the commentary in my first provisional decision alongside my later observations.

Because the Lender has disagreed with the observations I shared and which I've quoted above, I think it's necessary for me to set out the Lender's responsibilities at the time of the application in full.

At the time Mr and Mrs L took the 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 and Mrs L.

The Lender's responsibilities under the relevant regulations

CONC 5.2 dealt with the assessments the Lender needed to carry out before making its agreements with Mr and Mrs L:

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]1

(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 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 5.5.2R (1).

[Note: paragraph 4.31 of ILG]

The meaning of the rules as they apply to this case

I've already outlined above what the essential impact is of the rules I've just set out, but for the sake of keeping all the relevant parts of this decision together, I repeat it again here:

"...the Lender had to assess Mr and Mrs L's application for the loan to check if they would be able to afford to repay it in a sustainable way. The Lender's assessment had to be proportionate to the circumstances, taking into account the characteristics of the lending being proposed, and Mr and Mrs L'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 and Mrs L 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 to Mr and Mrs L

I explained in the first section of this provisional decision the process the Lender appears to have gone through when deciding to lend to Mr and Mrs L, and the information which came back when it checked Mr and Mrs L's credit files:

"An application form had been completed and signed by Mr and Mrs L which said Mr L was employed with a gross annual income of £28,000 and Mrs L was employed with a gross annual income of £21,000. The form had also recorded that they had a mortgage with a balance of £41,000 and repayments of £385 per month.

The Lender had also carried out credit checks. I observed that the Lender's credit checks

had revealed adverse credit information for Mrs L in particular. She had defaulted on a credit card account in the last three months and had been between one and three payments in arrears on three other accounts recently. The Lender had noted concern about this, but after some internal discussion its solution was apparently to base its lending decision on Mr L's financial situation only, but to leave Mrs L's name on the loan as a joint borrower "for security".

The Lender said in response to the observations I shared with it recently, that it had seen no evidence of adverse repayment history when it checked Mr and Mrs L's credit files. But that's clearly incorrect. As I've already said, Mrs L had one default registered in the last three months, and had been between one and three payments in arrears on three other accounts recently. All of this is apparent from the credit check results the Lender has shared with the Financial Ombudsman Service.

It may be that the Lender is discounting the information from Mrs L's credit file, in line with the comments its underwriting team made about basing its lending decision on Mr L's financial situation. But I don't think that was appropriate in light of the fact that the Lender decided to accept Mrs L as a joint borrower. This made her responsible for repayment of the loan, along with Mr L, and so it would have been inappropriate in my view for the Lender to have discounted her financial situation when arriving at its lending decision. It's apparent from the Lender's comments – that Mrs L was kept as a joint borrower "for security" – that it was concerned with credit risk rather than affordability risk. This appears to go against the guidance in CONC 5.3.1 G (1).

The Lender has made other comments that I have found puzzling. For example, it has said the loan was primarily a consolidation loan intended to reduce Mr and Mrs L's regular outgoings, but that's not the case either. The loan was *originally* proposed by the Supplier as a consolidation loan, but ended up being in *addition* to the borrowing which was proposed to be consolidated. The loan was for a timeshare which also increased Mr and Mrs L's expenditure due to additional timeshare rights coming with increased annual maintenance fees.

Taking everything into account, I remain of the view expressed in my first provisional decision, that, given what the Lender could see of Mr and Mrs L's situation, it failed to carry out proportionate checks before lending to them. Mrs L, at least, had visibly been struggling to manage repayments on existing credit commitments recently, suggesting she was overcommitted financially. It was also apparent that Mr and Mrs L had recently taken out a consolidation loan – which when combined with the recent adverse payment history, was suggestive of them having difficulties managing their existing commitments. I would add to this that the Lender's comment that Mr and Mrs L were using only 43% of their revolving credit limits at the point of application, is not of assistance to its case. This suggests either that Mr and Mrs L had been unable to consolidate all their debts, or had begun spending on their revolving credit accounts again after consolidating their existing debt, because of a reliance on credit or inability to meet their everyday expenditure without borrowing.

I think it would have been proportionate in the circumstances for the Lender to have obtained information about Mr and Mrs L's regular expenditure. It could have done this by looking at their bank statements, by asking them to fill out a form, or by other reasonable methods. The Lender has said there was no requirement for it to obtain bank statements, which I accept. But they are an example of the kind of information it could have considered.

I've considered Mr and Mrs L's bank statements because they are a record of their actual financial situation at the time of the loan application, and are therefore reflective of the answers I think the Lender would have received had it carried out proportionate checks and made enquiries at that time about their regular expenditure.

I've already outlined earlier in this provisional decision that Mr and Mrs L's regular expenditure indicated that they regularly had more money going out than they had coming in, which is not a surprising finding given the results of the Lender's credit check. Ultimately, I think it's unlikely that a responsible lender, having carried out proportionate checks, would have considered Mr and Mrs L would be able to repay the proposed loan in a sustainable way.

In light of this, the fact that the Lender approved Mr and Mrs L's application has, in my view, caused them 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 irresponsible lending decision then Mr and Mrs L would not have gone ahead with their purchase from the Supplier. With that in mind, the aim of any compensation should be to put Mr and Mrs L, as far as is practicable, in the position they'd have been in, had the purchase not taken place.

In other words, fair compensation would involve unwinding the purchase financed by the loan in question.

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

- 8) Buy back the debt from the third-party debt purchaser.
- 9) Refund all payments made by Mr and Mrs L towards the loan (including any payments made to a third party after the debt was sold), and cancel any outstanding balance.
- 10) Refund the annual management charges paid by Mr and Mrs L for the membership with the Supplier which was financed with this loan. This means any refund should only be of charges associated with the additional points Mr and Mrs L acquired with the purchase in question.
- 11) The Lender can deduct from the refunds calculated in the steps above, the value of any promotional giveaways Mr and Mrs L took advantage of, and the market value of any holidays they took using the *additional* points purchased with this loan.* Any deduction should take into account the fact that Mr and Mrs L would have been able to take holidays using their existing points. So if, for example, the holidays taken by Mr and Mrs L could have been taken using points from their previous purchase, then no deduction should be made in respect of those holidays.

I'll refer to the output of the steps above as the "Net Repayments".

- 12) Simple interest** at 8% simple per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles the complaint.
- 13) Remove any negative information from Mr and Mrs L's credit files in relation to the loan.
- 14) If Mr and Mrs L's membership with the Supplier is still in place at the time of this decision, as long as they agree to hold the additional points purchased using this loan on behalf of the Lender (or assign those points to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities associated

with those points.

*I recognise 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 and Mrs L 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.

**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.

My (second) provisional decision

For the reasons explained above, I am now minded to uphold Mr and Mrs L's complaint, and direct Shawbrook Bank Limited to take the actions set out in the "Fair Compensation" section above.

Will Culley
Ombudsman