

## The complaint

Mrs W complains that Shawbrook Bank Limited acted unfairly and unreasonably by not upholding her complaint about a loan they provided to purchase a timeshare product.

## What happened

In or around June 2013 (the “Time of the Sale”), Mrs W was on holiday using an existing timeshare product she held jointly with her husband. During that holiday, they agreed to meet with their existing timeshare provider – who I’ll refer to as “C”.

During that meeting, Mrs W (and her husband) agreed to trade in their existing timeshare product towards the purchase of a different “Fractional” timeshare product (the “FPOC”). The purchase price agreed was £8,898 which was funded under a Fixed Sum Loan Agreement with Shawbrook in Mrs W’s sole name. In addition, it was agreed that the new loan would consolidate existing borrowing Mrs W (and/or her husband) had relating to earlier timeshare purchases. As a result, the total of the new loan agreed was £18,097, repayable over 180 months.

In January 2021, Mrs W complained to Shawbrook. She said the loan had been mis sold to her by C, In particular, Mrs W said:

- C told her she needed to buy more timeshare product points to ensure she could guarantee the holidays she wanted;
- she told C that she wasn’t financially able to complete the purchase, had no savings and her credit rating wasn’t good;
- C said they could secure her a loan with Shawbrook which wouldn’t cost much more than she was already paying;
- at no time did she have any contact with Shawbrook; and
- she was put under pressure to take up the loan having been given false information about why the loan was required.

Shawbrook didn’t uphold Mrs W’s complaint. They said Mrs W had been given all the necessary information to enable her to make an informed decision about the purchase and the loan. And she’d also been given opportunity to read and understand all the required documentation and declarations before signing them and hadn’t raised any concerns. This despite a cooling off period of 14 days being highlighted for both the product purchase and the associated loan. Shawbrook also confirmed they’d carried out checks in line with their regulatory obligations to assess her credit worthiness and ensure she wasn’t likely to become over indebted.

Unhappy with Shawbrook’s response, Mrs W asked this service to look into her complaint further. So, one of this service’s investigators considered all the information and evidence available. Having done so, our investigator didn’t think Shawbrook had acted unfairly or unreasonably by not upholding Mrs W’s complaint.

In view of this, Mrs W asked that her complaint be passed to an ombudsman to consider. So, Mrs W’s complaint has been passed to me in order that I can reach a final decision.

## 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.

### Relevant considerations

When considering what's fair and reasonable, DISP<sup>1</sup> 3.6.4R of the FCA Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address, in my decision, every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

### The complaint

The findings of this service's investigator appear to address a complaint that Shawbrook acted unfairly and unreasonably by not paying a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA"). However, I can't see that Mrs W has made any specific allegations about the product she purchased as part of the complaint she submitted to Shawbrook.

The complaint Mrs W made specifically relates to an allegation that C mis sold the loan agreement to her. In particular that she'd made it clear to them – at The Time of the Sale – that she couldn't afford the purchase and her credit standing wasn't good. But despite this, C still offered her a loan with Shawbrook. Mrs W believes this constitutes a mis sale and that she was pressured and "*blackmailed*" to take out the loan. So, in considering Mrs W's complaint, it's this aspect I've focussed upon.

### The complaint under Section 140A of the CCA ("S140A")

S140A looks at the fairness of the relationship between Mrs W and Shawbrook arising out of the credit agreement (taken together with any related agreement). And because the product purchased was funded under the credit agreement, they're deemed to be related agreements. Only a court has the power to make a determination under S140A. But as it's relevant law, I've considered it (where appropriate) when deciding what I believe is fair and reasonable.

Under S140A, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of the terms of the credit agreement itself and how the creditor (here that's Shawbrook) exercised or enforced their rights under the agreement. Such a finding may also be based on the terms of any related purchase agreement. Including when combined with Section 56 of the CCA ("S56") on anything done or not done by the supplier ("C") on Shawbrook's behalf before the making of the credit agreement or any related purchase agreement.

In cases such as this one, when restricted credit was granted, S56 created a statutory agency relationship between C and Shawbrook because it states that any negotiations between a debtor (Mrs W) and the supplier (C) before a transaction financed by a debtor-creditor-supplier agreement are deemed to have been conducted by the supplier as an agent of the creditor.

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<sup>1</sup> Dispute Resolution: The Complaints sourcebook (DISP)

I can't be certain about what specifically happened when Mrs W purchased the FPOC. In particular what she was told (or not told) about her application for the loan that was provided by Shawbrook. However, Mrs W is clearly concerned about the circumstances that led to her applying for her loan. So, I've thought about that alongside the evidence that is available from the time.

#### The pressured sale and process

Mrs W says she was pressured and "*blackmailed*" in to entering into the finance agreement with Shawbrook. I acknowledge what has said about this. So, I can understand why it might be argued that any prolonged presentation might have felt like a pressured sale – especially if, as Mrs W approached the closing stages, she was going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date.

Against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mrs W agreed to enter into the finance agreement in 2013 when she simply didn't want to. I haven't seen any evidence to demonstrate that she went on to say something to C or Shawbrook, after the purchase, suggesting she'd agreed to it when she didn't want to. And Mrs W hasn't provided a credible explanation for why she didn't subsequently seek to cancel the transaction within the 14-day cooling off period permitted under the loan agreement.

If she only agreed to apply for the loan because she felt pressured, I find this aspect difficult to reconcile with the allegation in question. I haven't seen anything substantive to suggest Mrs W was obviously harassed or coerced into the agreement. And because of that, I'm not persuaded that there's sufficient evidence to demonstrate that she made the decision to proceed because her ability to exercise choice was – or was likely to have been – significantly impaired.

I think it's also relevant that Mrs W had purchased timeshare products and upgrades from C on three occasions prior to the purchase in 2013. Shawbrook have confirmed that Mrs W had attended six meetings with C before, including three at the venue used in 2013. And on occasions she'd chosen not to purchase. It also appears she'd chosen to finance the purchases she did make with another lender each time.

Based upon this, I think it's reasonable to conclude that Mrs W was familiar with C's sales meetings, practices and the sales venue used. So, I'm not persuaded that she would've felt pressured to such a degree that she would've felt unable to leave the sales meeting in 2013 without agreeing to purchase the product discussed and apply for the loan with Shawbrook.

#### Were the required lending checks undertaken?

This aspect of Mrs W's complaint could be considered outside of S140A. In particular, in relation to whether Shawbrook undertook a proper credit assessment. Mrs W has raised concerns about whether a proper affordability check was completed referring to concerns she had about her credit standing and borrowing history at the time. In doing so, she points out that her loan application had been refused by other loan providers at the Time of the Sale.

Different lenders each have their own lending criteria based upon a number of variables. That may include their appetite to lend and to whom, together with their appetite towards certain sectors at any particular point in time. As lending appetites and criteria can vary from one business to the next, I don't believe one lenders refusal to lend should necessarily lead to another lender also choosing to decline an application for funding.

Ordinarily, responsibility falls with the lender (Shawbrook in this case) to conduct affordability checks as set out within the Office of Fair Trading's Irresponsible Lending Guidelines (applicable at The Time of the Sale). In response to Mrs W's complaint, Shawbrook said they

carried out checks in line with their regulatory obligations before agreeing to provide the loan.

Mrs W has been unable to provide any evidence to show that the loan was unaffordable for her. And I've not seen anything that supports any suggestion of financial difficulty from that time. Shawbrook have provided a statement showing the repayments Mrs W made throughout the life of her loan with them. It shows that all repayments were met as they fell due and that the loan was subsequently repaid in full in June 2022 – six years before the end of the term agreed.

If I were to find that Shawbrook hadn't complied with the regulatory guidelines and requirements that applied here – and I make no such finding – I would need to be satisfied that had such checks been completed, they would've revealed that the loan repayments weren't sustainably affordable for Mrs W in order to uphold her complaint here. Furthermore, I don't believe any regulatory failure would automatically mean that the loan agreement is null and void. It would need to be proven that any such failure directly resulted in a loss for Mrs W as a consequence.

As I've said above, I've seen no specific information about Mrs W's actual position at the time of the purchase and no supporting evidence that she struggled to maintain repayments. Because of that, I can't reasonably conclude the loan was unaffordable for her. Or that she suffered any attributable loss as a consequence.

#### Other matters

During the course of this service's investigations, Mrs W raised other concerns about her use of the product purchased. However, as these didn't form part of the original complaint submitted, Shawbrook haven't been given opportunity to consider them. And because of that I'm unable to comment on those points as part of the complaint I'm specifically looking at here.

#### Summary

I want to reassure Mrs W that I've carefully considered everything she's said and provided. Having done so, I haven't found any evidence to support the allegations included in her complaint. So, while I do appreciate she will be very disappointed, I can't fairly conclude that Shawbrook's response to her complaint was unfair or unreasonable. And because of that, I won't be asking them to do anything more.

#### **My final decision**

For the reasons set out above, I don't uphold Mrs W's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 19 June 2024.

Dave Morgan  
**Ombudsman**