DRN-4810947

The complaint

Mr and Mrs E say Shawbrook Bank Limited (Shawbrook) has unfairly declined a claim they made under section 75 of the Consumer Credit Act 1974 (as amended) (CCA).

What happened

Mr and Mrs E bought a number of timeshare memberships from a timeshare provider (the supplier), three of which were paid for using loans given by Shawbrook. In July 2015, they took out a membership costing £5,750, which was paid for with a ten-year loan of £8,625 from Shawbrook (this loan was for more than the cost as it also consolidated a loan taken for an earlier purchase from the supplier). In May 2016, Mr and Mrs E took out another membership for £7,250, paid for by taking a ten-year loan for that amount from Shawbrook. Finally, Mr and Mrs E took out a membership in February 2017 for £15,799, the whole cost of which was paid for by taking a ten-year loan from Shawbrook.

In March 2018, Mr and Mrs E, using the help of professional representatives, made a complaint to Shawbrook. They said payments for all three of the memberships funded by Shawbrook loans were taken on the day the agreements were signed, which was prohibited. They said they were promised exclusivity and a better standard of holiday but the holidays they could take were available to non-members more cheaply. They said the supplier was sold to a new company, making it impossible for them to book holidays directly. They said all of this meant they could make a claim under section 75 of the CCA. Mr and Mrs E's representatives also say they were pressured into buying the timeshares.

Shawbrook didn't respond to Mr and Mrs E within the eight weeks normally allowed for it to deal with complaints and so, in May 2018, Mr and Mrs E's representatives referred a complaint to us on their behalf.

After this, Shawbrook responded to set out its position. It said there were considerable discrepancies between what Mr and Mrs E said happened and what the evidence showed. It said the two purchases in 2016 and 2017 were initially paid for using Shawbrook loans but the loans were cancelled within the fourteen-day "cooling off" period and the supplier had recorded Mr and Mrs E had ended up paying for these memberships using a credit card. Shawbrook didn't accept the complaint made in relation to the 2015 membership and said it appeared Mr and Mrs E were happy with it.

One of our investigators explained that, on the evidence available, it looked like a Shawbrook loan was used only to fund the 2015 purchase. With respect to that purchase, our investigator said he didn't have enough to persuade him the supplier was likely to have made factual statements that, having been largely untrue, enticed Mr and Mrs E into the contract to buy the timeshare and take out the finance. He said that, as Mr and Mrs E's allegations of misrepresentation weren't supported by evidence, he didn't think there were any actionable misrepresentations at the time Mr and Mr E bought the timeshare.

In response to our investigator's view, Mr and Mrs E's representatives asked for an ombudsman to review their complaint. Also in their response, Mr and Mrs E's

representatives made a new argument, broadly saying, among other things, the type of timeshare Mr and Mrs E bought was being illegally sold and marketed as an investment**.**

In my provisional decision of 23 April 2024, I explained why I didn't intend to uphold Mr and Mrs E's complaint. I haven't had any responses from either of the parties to my provisional decision, which has now come to me for 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.

In deciding Mr and Mrs E's complaint, I've also taken into account relevant law and regulation, relevant regulator's rules, guidance and standards, relevant codes of practice and what I think is good industry practice.

Having done so, and for the reasons I gave in my provisional decision, I've decided not to uphold Mr and Mrs E's complaint. In my provisional decision, I said:

"*Mr and Mrs E's claim against Shawbrook is brought under section 75 of the CCA. This says that if the debtor (ie Mr and Mrs E) under a debtor-creditor-supplier agreement has, in relation to a transaction financed by the agreement, any claim against the supplier (ie the timeshare supplier) in respect of a misrepresentation or breach of contract, he or she has a "like" claim against the creditor (ie Shawbrook), who (with the supplier) is then jointly and severally liable to the debtor. I think the relationship between Mr and Mrs E, the timeshare supplier and Shawbrook means section 75 applies here.*

It's important to say, however, that I can't decide the outcome of Mr and Mrs E's section 75 claim. Only a court can do that. But it's relevant law I need to think about to decide if Shawbrook has acted fairly and reasonably in assessing Mr and Mrs E's claim and, if necessary, paying what was needed to settle it.

A claim under section 75 requires there to have been either a misrepresentation or a breach of contract by the supplier. So I've considered the allegations set out in Mr and Mrs E's claim to see if Shawbrook should've accepted it was liable to answer it. The evidence I have suggests only the 2015 timeshare purchase was funded using a Shawbrook loan, so it's only that purchase that I've considered in this decision.

The first allegation was that payment was taken on the day of signing the timeshare agreements which, under relevant legislation, was prohibited. I'm not sure this claim fits neatly under section 75 but, even if it did, I don't think there's evidence showing any payment was taken too soon. Shawbrook has explained it only released funds after the 14-day "cooling off" period had ended and I can't see any payment was sent to the supplier before then. So I can't see how this led to any liability under section 75.

The second allegation was that Mr and Mrs E were promised exclusivity and a better standard of holidays, when the same holidays were freely available more cheaply on the internet. I've not been given any evidence that exactly the same holidays were available more cheaply elsewhere. And the supplier disputes it represented to Mr and Mrs E that its resorts were exclusively for the use of its timeshare members – among other things, it says accommodation could be booked by non-members. On balance, there isn't enough for me to say Mr and Mrs E were told something that turned out to be untrue.

It seems to me Mr and Mrs E's representatives are also alleging there was a breach of contract by the supplier, as they say Mr and Mrs E were unable to book holidays when the

supplier was taken over by another company. But I've not seen any evidence to show Mr and Mrs E tried to, and couldn't, book a holiday – or that there was a breach of contract by the supplier in some other way. In fact, I've seen booking records showing Mr and Mrs E were able to take numerous holidays with the supplier. And, if they failed to book using their 2015 membership, I wouldn't have expected them to go on to make the further purchases they did.

As I've mentioned, Mr and Mrs E's representatives also allege they were "immediately pressured" into upgrading to a fractional timeshare when they went on holiday to one of the supplier's timeshare resorts. If the levels of pressure were so extreme they caused Mr and Mrs E to buy something they wouldn't have done otherwise, that could lead to something that's called an unfair debtor-creditor relationship under consumer credit law, for which Shawbrook could be legally answerable

But Mr and Mrs E haven't given us a witness statement setting out their detailed recollections of what happened during this sale. Mr E had previously attended a presentation by the supplier, so I think would've had some knowledge of the likely approach the supplier would take. From its records, the supplier has said the sales meeting lasted from about 16:00 to 18:30 – so it doesn't seem to have been a tremendously long presentation.

The limited information I have about what happened isn't sufficient for me to conclude it's likely Mr and Mrs E were subjected to unfair pressure when they bought the fractional timeshare. And Mr and Mrs E also had a 14-day cooling-off period in which they could've changed their minds, if they'd wanted to.

In response to our investigator's view, Mr and Mrs E's representatives also gave us a new argument. This argument has never been put to Shawbrook before but, in the interests of fully resolving Mr and Mrs E's concerns, I've decided I should look at it.

In essence, this new argument is that fractional timeshares, such as Mr and Mrs E's, were marketed and sold as investments and, in most cases, clients found it difficult to book holidays. Although not specifically stated, I think Mr and Mrs E's representatives are alleging these were acts and/or omissions by the supplier that were also acts and/or omissions for which Shawbrook was answerable under the provisions of consumer credit law relating to unfair debtor-creditor relationships that I've already mentioned.

The argument Mr and Mrs E's representatives make is very general in nature and doesn't set out how it applies to the specific circumstances of their complaint. For example, they say clients buying memberships generally didn't benefit from additional holidays or points and, as I've said, found it difficult to book holidays. But, in Mr and Mrs E's case, when they upgraded from their trial membership to the fractional timeshare, they did increase their membership points. And from the booking records I've seen, between August 2016 and October 2018, Mr and Mrs E took many holidays with the supplier, suggesting they didn't have too much difficulty making bookings.

The general nature of Mr and Mrs E's representatives' new argument – and the lack of evidence to support it in relation to the specific circumstances of Mr and Mrs E's complaint – means I don't have sufficient information to conclude it would be fair and reasonable to uphold Mr and Mrs E's complaint on the basis their representatives have put forward."
As I've mentioned, neither of the parties has responded to my provisional decision. And I've seen nothing to make me think I should change the conclusions I reached in it.

My final decision

For the reasons given in my provisional decision, which now form part of this final decision, I don't uphold Mr and Mrs E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 20 June 2024.

Jane Gallacher
Ombudsman