

The complaint

Mr and Mrs S have complained about a loan they took from Shawbrook Bank Limited ("Shawbrook").

What happened

On 2 September 2018, Mr and Mrs S took out a 'trial' membership from a timeshare supplier ("the Supplier"). This membership entitled them to take five weeks of holidays at the Supplier's properties (or elsewhere if they used an exchange programme) in a three-year period. The membership cost £4,395 and to pay for this, they took a loan for the total amount from Shawbrook. Mr and Mrs S didn't keep up their loan repayments and, in October 2019, Shawbrook defaulted the loan.

In August 2022, Mr and Mrs S complained to Shawbrook. They said that, on 10 September 2018, they gave notice to cancel the membership and associated loan agreement as they didn't want to use their membership. But they didn't get confirmation that their requests were received and neither the membership nor the loan were actually cancelled, negatively affecting Mr and Mrs S's credit files. They also asked for evidence that Shawbrook actually transferred funds to the Supplier, in particular they wanted to know Shawbrook's complete account balance before and after the loan was paid. They also asked for proof that the Supplier actually provided them with the services due under the agreement. Mr and Mrs S asked for £50,000 in damages.

Shawbrook acknowledged the complaint, but didn't send a full response to it. Unhappy with the time Shawbrook took to investigate, Mr and Mrs S brought their complaint to our service.

One of our investigators considered the complaint, but didn't think Shawbrook needed to do anything further to resolve it. She didn't think the evidence suggested that the membership, nor the loan, had been cancelled during the relevant withdrawal period. She also said that the loan was a standard consumer credit loan as part of which Shawbrook paid the Supplier the loan proceeds after it was taken out and she saw no reason for the loan to be set aside. Finally, our investigator said lenders like Shawbrook had duties to report information to credit reference agencies and no evidence of any inaccurate reporting had been provided.

Mr and Mrs S didn't agree with our investigator's view. They asked for recordings of the calls between themselves and the Supplier. Mr and Mrs S also said that just because the Supplier and Shawbrook didn't receive their letters doesn't mean they weren't sent. For example, they may have been lost in the post. They said that as they never used the membership, that demonstrated that it had been cancelled and they argued that they shouldn't have to repay the loan for a service they never used.

Mrs S also said that Shawbrook hadn't answered all of her communications about her complaint and that had affected her credit score, so she wanted compensation for that.

Finally, Mr and Mrs S said that they wanted to see a full breakdown of how the funds advanced had been spent by the Supplier and they wanted to see the precise allocation of funds, "*down to the penny*". Mr and Mrs S thought they were entitled to this under the

Consumer Credit Act 1974 (“CCA”), to demonstrate that the funds had been used for their intended purpose.

Our investigator responded to say that evidence was provided to demonstrate that Mr S had contacted the Supplier and Shawbrook on the same day in June 2019 to cancel the agreements, but there was no evidence of any attempt to cancel them before then. So, she thought the cancellation requests happened outside of the withdrawal period. She also didn’t think there was any duty under the CCA for Shawbrook to have to provide the information asked for, nor was there any other reason for her to recommend that Shawbrook cancel the loan.

Mr and Mrs S responded to say they still wanted evidence on how the loan proceeds were spent, given that they never received any services from the Supplier. As Mr and Mrs S disagreed with our investigator, the matter has been passed to me for a decision.

Before that happened, Shawbrook provided a recording of a call between it and Mr S, when he called to cancel the loan. Our investigator explained that this didn’t change her view on the complaint.

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.

When I’ve made a finding on what happened, I do so on the balance of probabilities – which, in other words, means I have based it on what I think is most likely to have happened given the available evidence and the wider circumstances.

How long did Mr and Mrs S have to cancel their membership and loan?

The Supplier’s membership documents include a page titled “SEPARATE STANDARD WITHDRAWAL FORM TO FACILITATE THE RIGHT OF WITHDRAWAL”. It sets out how Mr and Mrs S could have withdrawn from the membership within fourteen days of taking it out by writing to a specified address or by email. Mr and Mrs S signed to say they acknowledged receipt of the information on how to withdraw.

Shawbrook’s loan agreement contains information about how Mr and Mrs S could withdraw from the loan agreement. In summary, it says that if they exercised their right to withdraw from the membership, the loan would be automatically cancelled at no cost. Further, they could withdraw from the loan itself within fourteen days of it being executed, but they would have to repay in full the amount borrowed as the timeshare membership wouldn’t be automatically cancelled. Shawbrook gave an address, phone number and email address to provide notice of termination and also explained that, if the agreement was terminated, Mr and Mrs S would have to pay £1.35 interest per day from when notice to terminate was given to when the payment was made.

I think the evidence shows that Mr and Mrs S had fourteen days from taking out the membership and loan to cancel either or both of those agreements. And as they signed a form saying they had specifically been given information about how to cancel the membership, they would have been aware of that period.

Did Mr and Mrs S cancel in time?

Mr and Mrs S have provided copies of the letters they say were sent to Shawbrook and the Supplier to withdraw from both agreements. Both letters are signed and dated 10 September

2018. Mr and Mrs S say these were sent by post, but they didn't check they were received. Shawbrook and the Supplier confirmed they had no record of receiving these letters.

Having considered everything, I don't think the evidence suggests Mr and Mrs S cancelled the membership and loan.

The Supplier provided evidence that Mr and Mrs S had been in contact with it after the fourteen-day withdrawal period, which ended on 16 September 2018. In particular, on 27 September 2018 Mrs S told the Supplier that she had started a new job and couldn't arrange a holiday at that point. On 8 October Mrs S called to book a break over New Year and on 15 October Mr and Mrs S tried to book a holiday for December. The Supplier also have a record that Mr S called on 19 June 2019 to ask to cancel the membership as he was moving overseas. None of that fits with Mr and Mrs S either cancelling the membership within fourteen days or believing that they had done so – after all, it is difficult to explain why someone would try to use a membership that had been cancelled. I also find the Supplier's records believable as they fit with a call recording provided by Shawbrook.

I've heard a copy of a call between Mr S and Shawbrook on 16 June 2019, the same day the Supplier recorded that Mr S called to say he wished to cancel the membership as he was moving overseas. Mr S explained that he and his wife signed up for the Supplier's trial membership, but he said they cancelled it and hadn't used it, so he was calling to let Shawbrook know. The call handler said to Mr S that, as the loan was taken out the year before, he would need to ask the Supplier to pay back the funds before the loan could be cancelled. Mr S said that he '*had just*' rung the Supplier and they knew Mr and Mrs S weren't using the trial membership, but had told him to call Shawbrook. But the call handler confirmed that the Supplier needed to refund the advance before Shawbrook could do anything. Mr S said "*we were told we were allowed to at any stage, so they directed us to you, so are they playing games with us are they, do you think? We've got it in the contract here we can cancel it.*" Mr S said he'd call the Supplier back and repeat what he'd been told. And he also explained that he was leaving the country shortly and would close his account when he left. He said they were going to use the membership, but they wouldn't now he was moving away. Mr S didn't say at any stage during the call that they'd cancelled the membership the year before.

I think the call demonstrates that Mr S tried to cancel the membership and loan for the first time on 16 June 2019 and not within the fourteen-day withdrawal period. I find it surprising that, had Mr S believed he'd cancelled the membership earlier, he didn't mention it in this call. Rather, I think this call fits with what the Supplier had recorded – that Mr and Mrs S no longer wanted the membership as Mr S was moving overseas.

Further, I can see that Mr and Mrs S made repayments to the loan between October 2018 and May 2019, before they fell into arrears. Again, this fits with what Mr S said in the call recording in June 2019 – that he was moving overseas and would close his account. I can't see why Mr and Mrs S never questioned the loan repayments, nor is it clear to me why they would have repaid a loan that they thought had been cancelled shortly after it was taken out. On balance, I see no evidence to suggest Mr and Mrs S tried to cancel the membership and loan within the fourteen-day withdrawal period.

I also agree with our investigator that Shawbrook has a duty to accurately report to credit reference agencies the status of its customers' loans. I understand this may have a negative effect on Mrs S's credit rating if the loan is still in default, but I've not seen any evidence that Shawbrook have not reported matters accurately.

Finally, I can't see any other reason for Shawbrook to cancel or terminate the loan. I think Shawbrook lent money to Mr and Mrs S to buy the membership and that loan was arranged

as expected.

Do Shawbrook or the Supplier need to account for how the loan proceeds were used?

There is no duty on Shawbrook or the Supplier to account to Mr and Mrs S for where the loan proceeds went or how they were used. And I don't think it would be either reasonable or practical to ask either to do so.

When a bank, like Shawbrook, pays loan proceeds to a business, like the Supplier, they aren't normally paid in cash. Instead money is sent electronically from one account to another. From what I know about how these are paid, I also think it's likely that proceeds are paid in batches, so a lender might send a given supplier a sum equivalent to a number of loans at regular intervals, rather than send lots of individual amounts. For the avoidance of doubt, I have no reason to believe that Shawbrook didn't pay a sum of money to the Supplier in respect of Mr and Mrs S's loan. And just because it didn't send the Supplier cash, that doesn't mean the sum transferred didn't exist or that Mr and Mrs S aren't liable to repay the loan.

Also, the Supplier isn't the regulated financial business responsible to answer this complaint, so I don't have any power to tell it to supply details of what happened to the proceeds of Mr and Mrs S's loan. But in any event, I doubt the Supplier would be able to provide that information. That is because the proceeds would have been paid into a bank account and then used by the Supplier in the course of its business, not kept separately to only pay for the services Mr and Mrs S were entitled to. Further, just because Mr and Mrs S chose not to use the services they purchased, that doesn't mean they aren't liable to repay the loan to Shawbrook.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 29 August 2023.

Mark Hutchings
Ombudsman