

## The complaint

Mr M and Miss W's complaint is that Shawbrook Bank Limited ('SB') wrongly rejected, and failed to pay, a claim under Section 75 of the Consumer Credit Act 1974 ('CCA') relating to the purchase of a timeshare.

## What happened

### Background to the Complaint

In January 2014 ('Time of Sale') Mr M and Miss W took out a timeshare membership from a timeshare provider (the 'Supplier'), trading in an existing timeshare and paying more to acquire a number of 'Fractional Points'.

This purchase gave them the right each year during their term of membership to redeem annual Fractional Points allocated in exchange for the use of certain accommodation in the Supplier's nominated resorts and other benefits. And at the end of their projected membership term, they also had a share in the net sale proceeds of a property tied to their membership.

At the Time of Sale, Mr M and Miss W financed the cash element of the purchase by entering into an interest free Fixed Sum Loan Agreement with SB (the 'Loan Agreement'). Under the Loan Agreement they borrowed £6,000.00 which was to be repaid over 36 months from the date such sum was advanced by SB to the Supplier.

### Mr M and Miss W's Section 75 Complaint

Mr M and Miss W engaged a professional representative ('PR') and wrote to SB on 27 January 2017 and made a claim under Section 75 of the CCA for return of monies paid and cancellation of the Loan Agreement.

The PR said that:

- Mr M and Miss W were existing members of a holiday club but were told they could only get out of this club by upgrading their existing membership for better benefits, which was not true.
- Mr M and Miss W were told they would get better holidays and a much easier and faster booking system. However, after the Supplier had been taken over by a different company they had been told that holidays had to be booked at least a year in advance. Further, this take over meant that more people would be using the Supplier's resorts making booking harder.
- They could not book 12 months in advance due to work and family commitments
- They felt they were grossly mis-led, that the membership had been mis-sold and they wanted a return of their monies and cancellation of the Loan Agreement.

SB investigated and dealt with Mr M and Miss W's complaint and issued its final response letter on 23 March 2017. They said that they could not see any grounds to support the allegations raised based on the information provided and rejected the complaint.

They also said that:

- The membership bought in January 2014 lasted for a shorter period (ending in 2027-2029) than Mr M and Miss W's earlier membership, which was due to end in 2054.
- In March 2013 Mr M and Miss W had contacted the Supplier to enquire about relinquishing or selling their existing membership; however, Mr M and Miss W concluded they did not meet the criteria to do so and had elected to purchase the new membership as it was a shorter term.
- The change of membership made no difference to the availability of accommodation and the same booking windows applied.
- The Supplier had been acquired by a third party but that had no effect on the day-to-day operations of the Supplier, or on the availability bookable by their members.
- Having reviewed the Supplier's records there was nothing which would suggest that Mr M and Miss W had experienced any difficulties in booking accommodation.

As a result, Mr M and Miss W referred the complaint to the Financial Ombudsman Service on 28 March 2017.

The complaint was eventually referred to an investigator who on 20 December 2023 concluded that based on what she'd seen, she did not think that SB had acted unfairly and determined not to uphold the complaint.

The investigator also confirmed in her view that if Mr M and Miss W didn't accept what she said – and would like an Ombudsman to make a final decision on the complaint – they should provide any further evidence or representations by 3 January 2024. Mr M and Miss W replied on 21 December 2023, via their PR, asking that the matter should be referred to an ombudsman for decision. Hence this claim has been passed to me. However, other than making a request for referral as noted above, no further evidence or representation has been provided by either party.

## **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.

### My Investigation

I have reviewed the documents from the point of sale as well as looking at information provided in relation to the memberships Mr M and Miss W held before and after the relevant purchase.

Attached to and forming part of the membership agreement, are Terms and Conditions. Paragraph 3 thereof said:

*"3. We hope that You will have many great holidays using Your [Supplier] Fractional Points. However, please note that accommodation at peak times is highly demanded and all accommodation is subject to availability."*

The KEY INFORMATION document, Part 1 paragraph 3 sets out the nature and content of right(s) of redemption of points and said that:

*“Reservations can be made by you into the Owners Club and into the accommodation held in trust for the European Collection as early as 13 months prior to your planned arrival date.”*

It went on to say that for certain resorts the booking period was shorter: for resorts referred to as the Five Collections the booking window for Owners was up to 10 months prior to the date of arrival; and for Portfolio Resorts the booking window was 10 months prior to the date of arrival. The Key Information document said that:

*“All accommodation is subject to availability”.*

The Key Information document Part 3, 1. ADDITIONAL INFORMATION ABOUT THE RIGHTS ACQUIRED, paragraph 12, said:

*“All accommodation is available on a first come first served basis and is subject to availability and there is more availability at some resorts than others.”*

Paragraph 13, said:

*“Demand for accommodation is high during peak periods (such as school holidays), and Late Availability may not be available at these times. Where specific dates are required. Owners are advised to book well in advance of their desired travel dates to avoid disappointment.”*

There was also a “Customer Compliance Statement” (“CCS”) signed by Mr M and Miss W at the Time of Sale.

Paragraph 1 of the CCS said that:

*“We understand that all accommodation reservations must be made by using our annual allocation of [Supplier] Fractional Points and that we will have no automatic booking or usage rights to stay at accommodations in the Owners Club.”*

Paragraph 10 of the CCS said that:

*“We understand that the [Supplier] Fractional Points system offers us the flexibility of choosing the location, season, size of accommodation and length of stay to meet our particular needs, subject to availability.” (Emphasis added)*

Paragraph 11 of the CCS said that:

*“We understand that reservation requests into the Owners Club and into the European Collection Resorts can be made up to 13 months before the date of check-in. We also understand that bookings into all the other resorts in the Club® can be made up to 10 months prior to the date of arrival.”*

On page 3 of the CCS, directly underneath the signatures of Mr M and Miss W, it is said that: *“If there is anything that you are unsure of, that you feel is ambiguous or contradictory or which you have specifically relied on but which is not addressed in the paperwork, this is YOUR opportunity to have it clarified or confirmed in writing. Please make a note of your question on this Customer Compliance Statement before handing it back to your sales advisor. Alternatively, amend your copy of the Customer Compliance Statement and send it*

*to us during your cancellation period. Either way, we will ensure that any issues raised by you are fully addressed.*

*Additionally, if you think we can improve on our sales presentation in any way we would welcome your comments in the section below!*

*Additional questions /comments”*

The document ends at that point and there are no “*Additional questions or comments*” in it.

### The Legal and Regulatory Context

When coming to what I consider to be a fair and reasonable outcome to this complaint, I am required to take into account the law. In this complaint, amongst other things, I have specifically considered the CCA and the law on misrepresentation.

And, I am also required by DISP 3.6.4 R of the FCA’s Handbook to take into account the:

“(1) *relevant:*

(a) *law and regulations;*

(b) *regulators’ rules, guidance and standards;*

(c) *codes of practice; and*

(2) *([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”*

When evidence is incomplete, inconclusive, incongruent, or contradictory, I have made my decision on the balance of probabilities – which, in other words, means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

And having read and considered all the available evidence and arguments, I do not think this complaint should be upheld. I realise that will be disappointing to Mr M and Miss W but I hope they understand why.

### Mr M and Miss W’s Section 75 Complaint

It is clear that Mr M and Miss W entered into a contract with the Supplier for services financed by a debtor-creditor-supplier agreement in both their names. And as I am satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr M and Miss W, or for breach of the membership agreement, SB, as the creditor, is jointly liable.

### Misrepresentation

The essence of Mr M and Miss W’s claim is that the Supplier misled and mis-sold the timeshare product under the new membership.

A misrepresentation is, in very broad terms a statement of fact or law made by one party to a contract which is untrue, and which induces the other party into entering into that contract.

Mr M and Miss W have claimed that they were told that the only way out of their existing membership was to buy a new membership, but they have provided no evidence to support this. However, they did buy a new membership that shortened their existing membership and SB has said this was done after Mr M and Miss W had enquired about relinquishing or selling their existing membership, that they were advised on the options available and as

they concluded that none of the criteria for relinquishment applied to them, they elected to purchase a Fractional Points membership, with a shorter term. So, it appears that taking out the Fractional Points membership was done, in part, as a way of exiting their earlier timeshare membership and I think it likely the shorter membership term was also something that was important to them. It is difficult to know precisely what was said to Mr M and Miss W, but I do not think it was factually wrong to say that the new membership was both a way out of their older membership and was of a shorter duration. Further, I am not satisfied on the balance of probabilities, that Mr M and Miss W were told that taking out the new membership was the *only* way to exit their earlier one. It follows that I am not persuaded that there was any misrepresentation about how Mr M and Miss W could exit their existing membership.

As regards to Mr M and Miss W's claim that:

*"...they were told they would get better quality holidays and a much easier and faster booking system."* but discovered after the take-over that:

*"all holidays have to be booked at least a year in advance, and that [more] clients will be using the same resorts..... [making] booking harder and they cannot book holidays a year in advance due to work and family commitments."*,

no evidence has been presented to demonstrate that they did have such problems. Rather, I have seen that Mr M and Miss W were able to book accommodation in August 2014 and in December 2016 to January 2017, after which they made a complaint, and they have not provided any evidence of times they tried unsuccessfully to book.

Furthermore, as regards booking accommodation, there are numerous references to bookings being subject to availability. And that accords with common sense – it is unrealistic to expect a holiday supplier to be able to provide accommodation at any location, at any time of the year, at all times. So even if Mr M and Miss W were told that they would not have a problem booking holidays, I cannot say that meant they were told they would be provided with unlimited availability.

I recognise that Mr M and Miss W have concerns about the way in which their new membership was sold and/ or operated but S.75 of the CCA doesn't provide protection for all scenarios that might lead to a customer to be dissatisfied with a product or service. On balance, given the evidence in this complaint, I am not persuaded that SB acted unfairly or unreasonably when it dealt with Mr M and Miss W's Section 75 claim.

### Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that SB acted unfairly or unreasonably when it dealt with Mr M and Miss W's Section 75 claim.

### **My final decision**

For the reasons set out above, I do not think this complaint should be upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss W to accept or reject my decision before 24 April 2024.

Michael Hoggan  
**Ombudsman**