

The complaint

Mr and Mrs H complain that Shawbrook Bank Limited won't refund to them the money that they paid for some holiday club membership points. They're being represented in their complaint by a claims management company.

What happened

I understand that Mr and Mrs H had bought holiday club membership points from a holiday company six times between January 2000 and September 2015. They then entered into a purchase agreement to buy 5,000 more holiday club membership points from the holiday company in March 2016. The purchase price of the additional points was £4,199 and they entered into a fixed sum loan agreement with Shawbrook Bank for a loan of that amount. They agreed to make 120 monthly repayments of £60.73 to Shawbrook Bank.

Mr and Mrs H's representative made claims, on behalf of Mr and Mrs H, to Shawbrook Bank under sections 75 and 140A of the Consumer Credit Act 1974 in June 2021 about the purchase that Mr and Mrs H had made in March 2016. The claims included that: the points were mis-sold and misrepresented to Mr and Mrs H; the terms of the agreement were so egregious so as to be unfair and the payment of commission was hidden from view; no credit or affordability checks were carried out to establish whether Mr and Mrs H could afford the purchase; the holiday company breached the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 and the Consumer Protection from Unfair Trading Regulations 2008; Mr and Mrs H were pressured into entering into the loan agreement; and their relationship with Shawbrook Bank was unfair.

Shawbrook Bank set out in detail the reasons that it said that it was unable to uphold their claims including that: it was satisfied that Mr and Mrs H were willing to make an informed decision based on the information that they received in March 2016; appropriate checks for the type and amount of credit were carried out; and Mr and Mrs H had agreed that the holiday company was entitled to receive a commission in respect of the credit brokered (but the level of that commission wasn't such that it would create an unfair relationship).

Mr and Mrs H weren't satisfied with its response so a complaint was made to this service. Their complaint form says that: Shawbrook Bank paid a commission to the holiday company which wasn't declared to them; the holiday company failed to conduct a proper assessment of their ability to afford the loan, unduly pressured them into entering the contracts and used aggressive commercial practices to pressure them; and the product was misrepresented to them; all rendering the agreement unfair pursuant to section 140. It said that the claim should also be considered under section 75.

Our investigator didn't recommend that Mr and Mrs H's complaint should be upheld as he didn't think that Shawbrook Bank's decision to turn down their claims was unfair or unreasonable. He wasn't persuaded that there was a misrepresentation at the time of sale and he said that he hadn't seen enough to suggest that the relationship between Mr and Mrs H and Shawbrook Bank was unfair and that he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He thought that it was unlikely that a court would find that the failure to disclose commission created an unfair relationship and he

said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr and Mrs H.

Mr and Mrs H's representative, on behalf of Mr and Mrs H, has asked for this complaint to be considered by an ombudsman. It has provided a generic submission from counsel about the holiday company and the unfair terms that it uses and a witness statement from Mr and Mrs H. It has also raised its serious concerns about the way that the finance was sold to them. It says, in summary and amongst other things, that:

- Mr and Mrs H were sold a product with little or no benefit or value as non-members regularly holidayed at and were given easy access to the resorts without requiring to first purchase a membership or pay annual maintenance fees and there's little or no secondary market for the points;
- the points were an "*in perpetuity contract*" with unlimited liability for management charges which was concealed at the point of purchase; and
- Mr and Mrs H were pressurised into entering into an agreement on that day and were prevented from making an informed consumer 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.

Having done so, I agree with our investigator that Mr and Mrs H's complaint shouldn't be upheld for these reasons:

- I understand that Mr and Mrs H had had bought holiday club membership points from the holiday company six times between January 2000 and September 2015 and they then signed the purchase agreement in March 2016 to buy an additional 5,000 points;
- Mr and Mrs H also signed the loan agreement and Shawbrook Bank has referred to other documents that it says that they signed at that time including a right of withdrawal form, a customer compliance statement, a key information document, a joint application form, pre-contract credit information and an adequate explanation document – but copies of those other documents haven't been provided;
- Mr and Mrs H's representative made claims to Shawbrook Bank in June 2021 under sections 75 and 140A and Mr and Mrs H then made a complaint to this service;
- section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met) and section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor;
- I'm not determining the outcome of Mr and Mrs H's claims under sections 75 and 140A as only a court would be able to do that but I'm considering whether or not Shawbrook Bank's response to their claims was fair and reasonable in the circumstances;
- the June 2021 letter said that the holiday company represented to Mr and Mrs H that: they would be able to use the additional points to book their preferred holidays and they would also give them access to luxurious resorts with five star accommodation all over the world, they would guarantee weeks' worth of holidays each year; and they would solve their current issues with booking – and it says that those

representations were false and misleading, were made for the sole purpose of inducing Mr and Mrs H to purchase the points and, were it not for the misrepresentations, they wouldn't have purchased the points;

- Mr and Mrs H say in their witness statement that they were told in March 2016 that the additional points would allow them to holiday at a wider and more luxurious range of resorts and would allow their family to use points to holiday and that they were promised a lot by the holiday company when they made their purchases but the promises of exclusivity haven't come to fruition as non-members are able to book holidays at the resorts;
- Shawbrook Bank says that the holiday company's records from the time of sale show that one of Mr and Mrs H's motivations for purchasing the additional points was to gain access to one of the gold membership benefits which was accommodation upgrades and that Mr and Mrs H were able to change their booking to a larger accommodation size for a nominal cash sum on a greater number of occasions, and at a lower cost, than was possible for silver members;
- Mr and Mrs H also say in their witness statement that they often made complaints to the staff about the facilities at the resorts but Shawbrook Bank says that the holiday company has stated that there's nothing in its records to suggest that Mr and Mrs H have experienced difficulties securing their desired reservations using their points nor that they purchased the additional points to assuage any concerns that they might have been having about availability;
- Mr and Mrs H have provided no other evidence or information to show that they complained to the holiday company about the issues that they say were misrepresented to them (including the lack of exclusivity of the resorts and the range of resorts available) and none of Mr and Mrs H and their representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to them;
- Shawbrook Banks has described the purchases of points from the holiday company that Mr and Mrs H made between January 2000 and September 2015 and Mr and Mrs H say that they were promised a lot by the holiday company when they made their purchases – but they made purchases in January and November 2000, March and November 2003, January 2004 and September 2015 and I'm not persuaded that it's likely that they would have continued to buy more points if the promises that had been made to them by the holiday company hadn't been true;
- I'm not persuaded that there's enough evidence to show that the membership points that Mr and Mrs H bought in March 2016 were misrepresented to them by the holiday company or that they were induced into entering into that purchase agreement by any such misrepresentations;
- Mr and Mrs H's representative says that commission was paid between Shawbrook Bank and the holiday company which wasn't disclosed to Mr and Mrs H which created an unfair relationship but Shawbrook Bank says that Mr and Mrs H had agreed that the holiday company was entitled to receive a commission in respect of the credit brokered and the level of that commission wasn't such that it would create an unfair relationship;
- I've not been provided with any other evidence to show the amount of commission that Shawbrook Bank paid to the holiday company but from what this service has seen across the industry, when commission was paid it tended to be low and of less than 15% and I'm satisfied that Shawbrook Bank wouldn't have breached any duty in making any such payment – nor was it under any regulatory duty to disclose the

amount of any commission paid in these circumstances - and I don't consider that the level of commission that was normally paid in this type of situation would have been sufficiently high to mean that Shawbrook Bank should have appreciated that not disclosing the amount of the commission to Mr and Mrs H risked the relationship being unfair under section 140A;

- I've seen no evidence to show that Mr and Mrs H asked Shawbrook Bank for any information about the commission that it paid to the holiday company until their representative's letter to Shawbrook Bank in June 2021 – as they'd entered into the loan agreement in March 2016 I consider that it would be reasonable to expect them to have raised any concerns about the commission that was paid sooner than that;
- Mr and Mrs H's complaint form says that no credit or affordability checks were carried out to establish whether Mr and Mrs H could afford the purchase but Shawbrook Bank says that it carries out checks in line with its regulatory obligations and it uses lending industry standard products, including credit searches and information provided to it by prospective borrowers, to assess the likelihood of them defaulting on their repayment obligations and of them becoming overindebted – and that it's satisfied that these checks were appropriate for the type and amount of credit provided to Mr and Mrs H;
- it also says that the holiday company's records show that Mr and Mrs H were going to use their pension cover to make their monthly payments;
- none of Mr and Mrs H and their representative had provided detailed evidence about Mr and Mrs H's financial position in March 2016 or to show that the loan wasn't affordable for them at that time;
- I've seen no evidence to show that Mr and Mrs H asked Shawbrook Bank for any information about its credit or affordability checks before June 2021 – as the loan was made to them in March 2016 I consider that it would be reasonable to expect them to have raised any concerns about the credit or affordability checks before then;
- I'm not persuaded that there's enough evidence to show that a loan with a monthly repayment of £60.73 wasn't affordable for Mr and Mrs H when it was made to them in March 2016 or that the loan was mis-sold to them;
- Mr and Mrs H's complaint form also says that the holiday company unduly pressured them into entering the contracts and used aggressive commercial practices to pressure them – but Mr and Mrs H had bought membership points from the holiday company six times between January 2000 and September 2015 so they ought to have been aware of the sales practices that would be used by the holiday company before they bought the additional membership points in March 2016;
- I've seen no evidence to show that Mr and Mrs H contacted either the holiday company or Shawbrook Bank about the way that the membership points were sold to them in March 2016 until their representative's June 2021 letter to Shawbrook Bank and if they felt that they were unduly pressured into entering into the contracts and didn't want to buy the additional membership points I consider that it would be reasonable to expect them to have raised their concerns soon after they'd signed the contracts;
- Mr and Mrs H had signed the loan agreement which clearly set out their right to withdraw from that agreement without giving a reason within 14 days and Shawbrook Bank says that they also signed a separate standard form of the withdrawal notice that could be given to withdraw from the purchase agreement – but I've seen no evidence to show that they contacted either the holiday company or Shawbrook Bank to withdraw from the agreements within any applicable withdrawal period;

- I'm not persuaded that there's enough evidence to show that Mr and Mrs H were unduly pressured into entering into the purchase agreement or loan agreement or that the holiday company used unacceptably aggressive commercial practices to pressure them;
- Mr and Mrs H's representative says that the membership points were an "*in perpetuity contract*" with unlimited liability for management charges which was concealed at the point of purchase and it has provided a generic submission from counsel about the holiday company and the unfair terms that it uses but it would be for a court to determine whether or not any of the terms in those agreements were unfair;
- I'm not persuaded that there's enough evidence to show that the membership points continued in perpetuity and the purchase agreement that Mr and Mrs H signed said that the structure of the membership was governed by the articles of association and the associated legal documentation and that they should carefully read their legal/governing documents booklet and the key information document;
- Mr and Mrs H had owned membership points since January 2000 so I consider it to be reasonable to conclude that they knew that they'd be required to pay management charges for the additional membership points that they bought in March 2016 – and they say in their witness statement that their maintenance fees have increased substantially over the years and, due to their retirement and reduced income, they feel that they are no longer financially viable;
- I don't consider that the presence of an unfair (or potentially unfair) term alone is likely to mean that a court would conclude that it created an unfair relationship between a debtor and a creditor as the court would consider how the term operated in practice and whether the operation of that term caused the relationship to be unfair;
- I'm not persuaded that there's enough evidence to show that the terms of the documents have been applied or operated unfairly against Mr and Mrs H and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the documents created an unfair relationship between Mr and Mrs H and Shawbrook Bank;
- nor am I persuaded that there's enough evidence to show that there's been a breach of any applicable regulations for which Shawbrook Bank would be liable under section 75 or 140A;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs H's relationship with Shawbrook Bank was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mr and Mrs H and Shawbrook Bank in these circumstances;
- I sympathise with Mr and Mrs H for the issues that they've had with their membership points but I consider that Shawbrook Bank's response to the claims that had been made to it was fair and reasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Shawbrook Bank to refund to Mr and Mrs H any of the money that they've paid for the membership points, to cancel their loan agreement, to pay them any compensation or to take any other action in response to their complaint.

My final decision

My decision is that I don't uphold Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 10 October 2023.

Jarrold Hastings
Ombudsman