

## The complaint

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

## What happened

The holiday company says that Mr and Mrs L had bought some holiday club membership points in August 2015. Mr and Mrs L then entered into a purchase agreement to buy some more membership points from the holiday company in January 2017. The purchase price of the additional points was £8,625 and Mr and Mrs L also entered into a fixed sum loan agreement with Shawbrook Bank for a loan of that amount. They agreed to make 120 monthly payments of £127.29 to Shawbrook Bank, with the first payment to be made three months after the advance date. The loan was repaid in July 2017.

Mr and Mrs L wrote to Shawbrook Bank in January 2020 and said that it appeared that the holiday company wasn't permitted or authorised to arrange loans and they asked it to explain its position. Shawbrook Bank said that the holiday company was granted authorisation to broker credit by the Financial Conduct Authority in March 2016.

Mr and Mrs L's representative, on their behalf, then wrote to this service in July 2020. It said, in summary and amongst other things, that: the credit intermediary wasn't authorised to arrange the loan; the membership points were misrepresented to Mr and Mrs L; there was an unfair relationship between Mr and Mrs L and Shawbrook Bank pursuant to section 140A of the Consumer Credit Act 1974; there was no evidence that a credit check was conducted before the loan was granted; the high interest rate was also an indication of an unfair relationship; and Mr and Mrs L weren't provided with a cooling off period.

Our investigator didn't recommend that Mr and Mrs L's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale. She said that she hadn't seen enough to suggest that the relationship between Mr and Mrs L and Shawbrook was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She didn't think that Mr and Mrs L being offered a scratch card or a meal made the relationship unfair and she said that they were given a 14 day cooling off period, there was no evidence that the holiday company was unable to trade or unauthorised, and the interest rate was clearly set out on the loan agreement. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr and Mrs L.

Mr and Mrs L's representative, on behalf of Mr and Mrs L, has asked for this complaint to be considered by an ombudsman. It has responded to our investigator's recommendation in detail and says, in summary and amongst other things, that:

- the ombudsman service isn't required to follow the relevant law, guidance and practice but to reach an evaluative assessment of the merits of Shawbrook Bank's decision;
- much of the information provided to Mr and Mrs L to induce them into purchasing the

timeshare were representations made verbally at the time of sale and, as discovered much later, differed from the written terms of the timeshare agreement;

- due to the spurious manner in which the timeshare product was sold to Mr and Mrs L, which involved a pressurised sales strategy, there are no records of the representations made to them during the course of the same;
- the holiday company guaranteed Mr and Mrs L that purchasing the membership would be an investment as it would increase in value and they could sell it at a later date;
- Mr and Mrs L only entered into the loan agreement because they relied on verbal representations made to them by the holiday company over the course of a lengthy sales presentation which they couldn't have reasonably known to be untrue or false, giving rise to a relationship which is unfair;
- this service has found against the holiday company and Shawbrook Bank as regards their conduct and products generally in a decision to which it has referred; and
- Shawbrook Bank's failure to conduct an assessment of Mr and Mrs L's affordability causes the loan to be void.

### **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 L's complaint shouldn't be upheld for these reasons:

- Mr and Mrs L first raised their concerns about the authorisation of the holiday company with Shawbrook Bank in January 2020 - I don't consider that their letter would properly be considered to be a complaint and Shawbrook Bank responded to it and said that the holiday company was granted authorisation to broker credit by the Financial Conduct Authority in March 2016;
- this service's records show that the holiday company was authorised by the Financial Conduct Authority in January 2017 when Mr and Mrs L entered into the loan agreement with Shawbrook Bank so I'm satisfied that the holiday company did have the required authorisation at that time;
- the claims of misrepresentation and an unfair relationship that were made by Mr and Mrs L's representative in its July 2020 letter are legal claims under sections 75 and 140A of the Consumer Credit Act 1974 - those claims don't constitute a complaint that this service can consider – this service can consider a complaint about Shawbrook Bank's response to the claims but those claims must first have been made to it;
- Mr and Mrs L's representative's July 2020 letter has been provided to Shawbrook Bank by this service – but it hasn't provided a substantive response to those claims;
- our investigator considered the claims that had been made in the July 2020 letter but didn't recommend that Mr and Mrs L's complaint should be upheld and, in the circumstances of Mr and Mrs L's complaint, I consider that it would be fair and reasonable for me to make a decision on the merits of those claims;
- 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 L'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;
- Mr and Mrs L signed documents in January 2017 including the purchase agreement, the terms and conditions, a separate standard form of the withdrawal notice that could be given, a key information document, the holiday company's compliance statement and declaration, a joint loan application form, the fixed sum loan agreement and Shawbrook Bank's customer compliance statement;
- Mr and Mrs L's representative's July 2020 letter described the misrepresentations that it says were made by the holiday company to Mr and Mrs L, including that they would be staying in luxury accommodation for holidays each year but the quality of the apartments provided to them couldn't reasonably be compared to the luxury studios shown to them;
- Mr and Mrs L had bought membership points that entitled them to use the holiday company's collection of properties but neither Mr and Mrs L nor their representative has provided detailed evidence to support their claim that the quality of the accommodation was misrepresented to them and I'm not persuaded that there's enough evidence to show that the standard of the accommodation was misrepresented to Mr and Mrs L;
- in its response to our investigator's recommendation, Mr and Mrs L's representative says that the holiday company guaranteed that purchasing the membership would be an investment as it would increase in value and they could sell it at a later date – but that claim wasn't included in the claims that were made to this service in its July 2020 letter;
- the holiday company's customer compliance statement and declaration that was signed by Mr and Mrs L says: *"We understand that the purchase of the Points is an investment in our future holidays, but that it should not be regarded as a property or financial investment and that any subsequent resale will depend on market conditions"*; and I'm not persuaded that there's enough evidence to show that the holiday company represented the points as an investment to Mr and Mrs L;
- I'm not persuaded that there's enough evidence to show that that membership points were misrepresented to Mr and Mrs L, that they were induced into entering into the purchase agreement by any such misrepresentations or that the holiday company breached the terms of the purchase agreement;
- Mr and Mrs L's representative has described the reasons that it says that the relationship between Mr and Mrs L and Shawbrook Bank was unfair, including that there's no evidence that a credit check was conducted before the loan was granted, the high interest rate is an indication of an unfair relationship, Mr and Mrs L weren't provided with a cooling off period and the sale involved a lengthy and pressurised sales strategy;
- Mr and Mrs L signed a joint loan application form in January 2017 in which they declared that they were homeowners with no mortgage, that Mr L was employed and that Mrs L was retired – they also signed Shawbrook Bank's customer compliance statement in which they declared that they were confident that the loan repayments would be met;

- the loan was made to them in January 2017 and was repaid in July 2017 – I consider that the evidence shows that Shawbrook Bank assessed the affordability of the loan before it was made to Mr and Mrs L and I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for them at the time that it was made to them or that the loan is void;
- Mr and Mrs L also confirmed in that customer compliance statement that they'd received the pre-contract credit information, a written adequate explanation document and the loan agreement – the loan agreement clearly set out the interest rate payable (on an APR, monthly and annual basis), the total charge for credit and the number and amount of the monthly payments – Mr and Mrs L agreed to the loan and, if the interest rate wasn't acceptable to them, I consider that it would be reasonable to expect them not to have done so;
- Mr and Mrs L signed the standard form of the withdrawal notice that could be given which said that they had the right to withdraw from the purchase agreement within 14 days without giving any reason and they also confirmed, in Shawbrook Bank's customer compliance statement, that they'd signed the holiday company's withdrawal form;
- the loan agreement also set out Mr and Mrs L's right to withdraw from the loan – but I've seen no evidence to show that Mr and Mrs L contacted the holiday company or Shawbrook Bank within any applicable withdrawal periods about withdrawing from either or both agreements;
- Mr and Mrs L signed the holiday company's customer compliance statement and declaration which said: *"We confirm that we have been treated courteously during the sales presentation, that we have been given plenty of time to consider if the product is right for us and we have not been put under and pressure to purchase our Points"*; and I'm not persuaded that there's enough evidence to show that Mr and Mrs L were unduly pressured into entering into the purchase agreement or the loan agreement in January 2017 or that the holiday company used unacceptable sales practices against them;
- Mr and Mrs L's representative has referred to a decision from this service in which it was found that the relationship between the debtor and creditor was unfair – but this service considers each complaint on its individual merits and that complaint related to a different type of product to the points that were bought by Mr and Mrs L;
- I'm not persuaded that any claim that Mr and Mrs L would be able to make under section 140A that their relationship with Shawbrook Bank was unfair would be upheld and I don't consider it to be likely that a court would conclude that the relationship was unfair;
- I consider that Shawbrook Bank's response to the letter that Mr and Mrs L sent to in January 2020 was fair and reasonable and that it would have been fair and reasonable for it not to have upheld the claims that were made in their representative's July 2020 letter – and I'm not persuaded that there's enough evidence to show that Shawbrook Bank has acted incorrectly in its dealings with Mr and Mrs L about the loan; and
- I sympathise with Mr and Mrs L for the issues that they've had with their membership points, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Shawbrook Bank to refund to them any of the money that they paid under the 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 L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 7 August 2023.

Jarrold Hastings  
**Ombudsman**