DRN-4034371

The complaint

Mr and Mrs M complain that Shawbrook Bank Limited didn't fairly or reasonably deal with claims under the Consumer Credit Act 1974 ('CCA') in relation to the purchase of a timeshare.

What happened

In June 2019 Mr and Mrs M attended a sales presentation with representatives from a timeshare company I will call C. They purchased a trial membership at a cost of £4,395. This was funded with a loan from Shawbrook.

In May 2022 they complained to C saying that they had been misled. They said that at the sales meeting they had explained they were not interested in the range of resorts C offered. However, they had been told that the offer included an opportunity to access the properties of another holiday company I will call T. Mr and Mrs M have said that they have not been able to find suitable accommodation. Apparently all the places they were offered were in remote areas which was not what they wanted.

C rejected their complaint and said they had been provided with full details of the accommodation it provided, including a multimedia presentation and a resort directory. It said that it also provided a three year complimentary membership with T which offered access to around 2,700 resorts. C also said that it had extended the trial period by 30 months in light of the pandemic, but T had not done so.

It also referred to the declaration Mr and Mrs M had signed which stated: "*We understand that we will only be entitled to occupation of weeks in Apartments and at Resorts available to our Trial Membership, accommodation varies from resort to resort, the allocation is subject to availably [stet]*".

After an exchange of correspondence with C Mr and Mrs M then made a claim to Shawbrook which it rejected. Shawbrook said that Mr and Mrs M had been provided with sufficient information at the time of sale in order to make an informed decision. It also noted that there had been a 14 day withdrawal period which had not been triggered.

Shawbrook pointed out that Mr and Mrs M had signed to say they had been provided with a full set of documents which set out what they were buying. It also noted that T was a separate company and C had no control over what it did. Overall it concluded that C had provided all that it had agreed to in the contract.

Mr and Mrs M brought their complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. She said that in order to be able to uphold the complaint she needed to have some supporting evidence. Mr and Mrs M didn't agree and said that they had supplied sufficient information for the complaint to be upheld.

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 doing that, I'm required by DISP 3.6.4R 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."

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

Having read and considered all the available evidence and arguments, I don't think this complaint should be upheld. I will explain why.

The S. 75 Claims for Misrepresentation

S. 75 of the CCA states that, when a debtor (Mr and Mrs M) under a debtor-creditor-supplier agreement has a claim of misrepresentation or breach of contract against the supplier that relates to a transaction financed by the agreement, the creditor (Shawbrook) is equally and concurrently liable for that claim – enabling the debtor to make a 'like claim' against the creditor should they choose to.

It's important to note that, as Shawbrook was the lender rather than the supplier, under the Act a claim is limited to one for misrepresentation or breach of contract, rather than general unhappiness with what was available under the contract.

I can understand that these sales meetings often took several hours and the sales agents would have spent time extolling the virtues of the product. Mr and Mrs M say that they were told that in response to them saying they wanted to stay in main resorts they were told this would not be a problem. I gather this made a difference such that they decided to sign the agreement. I also note that Mr M has told this service he did not read the agreement and accompanying documentation.

Not having been present at the sale it's not possible for me to say exactly what was said, and in what circumstances. But the terms of the contract set out fairly clearly what was being offered by C. It seems that Mr and Mrs M were relying on T to provide the accommodation they sought. However, all that C provided was complimentary membership of T and it cannot be held responsible for what T provided.

Given that this was important to Mr and Mrs M it would seem reasonable for them to have satisfied themselves that T was able to deliver what they wanted before signing. Alternatively they had 14 days to make sure what they had signed was what they wanted.

I have no reason to doubt Mr and Mrs M's recollections, but nor do I have any reason to doubt what C has said. As such I have to give due weight to the signed agreement and

accompanying documentation and I have seen nothing which shows that C misrepresented the product of breached the contract.

S.140A CCA

Although Mr and Mrs B have not raised a claim under s.140A I have considered whether they could have done. Only a court has the power to decide whether the relationship between Mr and Mrs M and Shawbrook wase unfair for the purpose of s. 140A. But, as it's relevant law, I do have to consider it if it applies to the credit agreement – which it does.

However, as a claim under Section 140A is "an action to recover any sum recoverable by virtue of any enactment" under Section 9 of the LA, I've considered that provision here.

It was held in Patel v Patel [2009] EWHC 3264 (QB) ('Patel v Patel') that the time for limitation purposes ran from the date the credit agreement ended if it wasn't in place at the time the claim was made. The limitation period is six years and the claim was not made within this period.

However, I'm not persuaded that Mr and Mrs M could be said to have a cause of action in negligence against Shawbrook anyway.

Their alleged loss isn't related to damage to property or to them personally, which must mean it's purely financial. And that type of loss isn't usually recoverable in a claim of negligence unless there was some responsibility on the allegedly negligent party to protect a claimant against that type of harm.

Yet I've seen little or nothing to persuade me that Shawbrook assumed such responsibility – whether willingly or unwillingly.

In conclusion I cannot safely conclude that Shawbrook did anything wrong in declining the claims made by Mr and Mrs M.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 21 August 2023.

Ivor Graham
Ombudsman