

The complaint

Mr and Mrs W are unhappy with the response received from Shawbrook Bank Limited ("Shawbrook") in relation to their complaint about a loan provided to fund the purchase of a Timeshare Product.

What happened

In or around September 2008, Mr and Mrs W agreed to purchase a timeshare product from a supplier who I'll refer to as "C". In order to fund the purchase, C arranged a loan for Mr and Mrs W through a regulated lender.

In April 2021, Mr and Mrs W wrote to the regulated lender to raise concerns and request information relating to their loan. In particular, Mr and Mrs W:

- said that following enquiries with the Financial Conduct Authority ("FCA"), It appears C - as the credit intermediary – weren't permitted or authorised to arrange loans under section 19 of the Financial Services and Markets Act 2000 ("FSMA");
- requested evidence of the checks they'd undertaken concerning the suitability of their loan, specifically including searches, credit checks, factors considered, their income assessment and steps taken to ensure C undertook a clear, lawful and transparent sales process when arranging the loan.

Mr and Mrs W thought the lender's arrangement with C was contrary to FSMA and caused them significant losses.

That lender forwarded Mr and Mrs W's letter to Shawbrook and told them the servicing of that account had been transferred to them. They asked Shawbrook to respond to Mr and Mrs W's concerns.

In their response to Mr and Mrs W, Shawbrook said their complaint was *"now time-barred under the time limits specified in [...] DISP 2.8.2R (2)"*¹.

Mr and Mrs W replied to Shawbrook's response using a professional representative (the "PR"). The PR thought Shawbrook hadn't adequately disclosed or address the issues raised and that their position as regards the Limitation Act 1980 (the "LA") was wrong. They provided greater detail about how they thought time limitation applied to the complaint arguing that it had been raised within three years of when Mr and Mrs W knew (or reasonably ought to have known) they had cause to complain.

The PR also explained why they thought Mr and Mrs W's complaint had been made in time under the LA. They went on to reference principles of the Resort Development Organisation ("RDO") Code of Conduct they thought applied and C should have adhered to. The PR also raised concerns about the assignment of Mr and Mrs W's loan to Shawbrook by the original Lender, suggesting that notice wasn't provided.

Having not received a further response from Shawbrook, the PR referred Mr and Mrs W's complaint to this service. In doing so, the PR referenced allegations of misrepresentations they believe were made by C during the sales process. The PR thought these

¹ The FCA's Dispute Resolution: Complaints Sourcebook

misrepresentations rendered the relationship between Mr and Mrs W, C and Shawbrook unfair.

One of our investigator's considered all the information available, during which Shawbrook reiterated their belief that the complaint was made too late under DISP 2.8.2R (2) and/or the LA.

Our investigator thought this service did have powers to consider Mr and Mrs W's complaint. They said the event being complained about was Shawbrook's response to a claim under sections 75 ("S75") and 140A ("S140A") of the Consumer Credit Act (the "CCA"). Further, that Mr and Mrs W believe the loan was unaffordable as the interest rate was too high and appropriate credit checks weren't performed.

Our investigator said Shawbrook's response to that claim was issued in July 2021. And as it was this response that was being complained about, they thought Mr and Mrs W's complaint had been raised in time. Our investigator also thought that while Mr and Mrs claim under S140A had been raised more than six years after the events complained of, as it was raised within three years of when they ought to have reasonably known they had cause to complain, it was raised in time.

It appears Shawbrook didn't respond to our investigator's findings. So, as an informal agreement couldn't be achieved, I was asked to consider Mr and Mrs W's complaint further. Having done so, I decided this service was able to consider Mr and Mrs W's complaint in relation to C's authorisation. In particular, because I thought their complaint had met the second part of the two-part eligibility test set out in DISP 2.8.2 (R). That being that Mr and Mrs W had raised their complaint within three years of the date on which they became aware (or ought reasonably to have become aware) that they had cause for complaint. However, I decided this service wasn't able to consider any of the other aspects that had been referred.

I then went on to consider the merits of Mr and Mrs S's complaint. Having done so, I issued a provisional decision on 23 August 2023, giving Mr W, Mrs W and Shawbrook the opportunity to comment or provide further evidence before issuing a final decision.

In my provisional decision, I said:

Authorisation to arrange the loan

The supplier of the timeshare product is clearly detailed in the purchase agreement and accompanying documentation. And although the name specified within the credit agreement differs slightly, this service's records show the names as linked trading names for C.

Prior to April 2014, consumer credit business was regulated by the Office of Fair Trading ("OFT"). Regulation of consumer credit business didn't fall under FSMA until 1 April 2014 when the FCA took over that responsibility. Our records show that at the time of the sale, when Mr and Mrs W's loan was arranged, C was subject to this service's Consumer Credit Jurisdiction. I'm satisfied they held the requisite license from the OFT together with the necessary authorisation to arrange the loan. So, I'm not persuaded that Mr and Mrs W's introduction to the original lender (now Shawbrook) was undertaken by an unauthorised credit broker.

"Assignment" of the loan to Shawbrook

I'm familiar with the transfer of loan servicing from the original lender to Shawbrook. I also understand communications were sent to all consumers impacted by that change. I've no reason to believe such a communication wasn't sent to Mr and Mrs W. While it maybe they didn't receive or notice that communication, I can't reasonably hold Shawbrook responsible for its ultimate delivery. They wouldn't have control over that. So, I don't intend to ask them to do anything more in this respect.

I want to reassure Mr and Mrs W I've considered everything that's been said and provided. While I do appreciate they will be disappointed, I currently don't intend to ask Shawbrook to do anything more here.

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.

Shawbrook have acknowledged receipt of my provisional decision and confirmed they have nothing further to add.

Despite follow up attempts made by this service, neither the PR nor Mr and Mrs W have responded to my provisional decision.

In the circumstances, I've no reason to vary from my provisional findings.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 25 October 2023.

Dave Morgan
Ombudsman