

The complaint

Mrs M complains that Shawbrook Bank Limited won't refund to her the money that she paid for some holiday club membership points. She's being represented in her complaint by a claims management company.

What happened

I understand that Mrs M had bought a trial membership of a holiday club from a holiday company in February 2011 and that she traded in the trial membership and bought 5,000 holiday club membership points from the holiday company in April 2012. She then entered into a purchase agreement to buy 5,000 more holiday club membership points from the holiday company in August 2015. The purchase price of the additional points was £4,350 and she entered into a fixed sum loan agreement with Shawbrook Bank for a loan of that amount. She agreed to make 120 monthly repayments of £54.20 to Shawbrook Bank but I understand that she paid off the loan in full in December 2015.

Mrs M's representative made claims, on behalf of Mrs M, to Shawbrook Bank under sections 75 and 140A of the Consumer Credit Act 1974 in June 2021 about the purchase that Mrs M had made in August 2015. The claims included that: the points were mis-sold and misrepresented to Mrs M; 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 Mrs M 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; Mrs M was pressured into entering into the loan agreement; and her relationship with Shawbrook Bank was unfair.

Shawbrook Bank set out in detail the reasons that it said that it was unable to uphold Mrs M's claims, including that: Mrs M had complained to it in about October 2015 about the interest on her loan and she said that she'd been a member for three to four years and this was the first thing that had gone wrong and had raised no other issues until June 2021; she repaid her loan in December 2015; Mrs M had made seven reservations with the holiday club between August 2015 and October 2019; it was satisfied that Mrs M was willing to make an informed decision based on the information that she received in August 2015; appropriate checks for the type and amount of credit were carried out; and Mrs M had agreed that the holiday company was entitled to receive a commission in respect of the credit brokered.

Mrs M wasn't satisfied with its response so a complaint was made to this service. Her complaint form says that: Shawbrook Bank paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her into entering the contracts and used aggressive commercial practices to pressure her; and the product was misrepresented to her; 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 Mrs M's complaint should be upheld as she didn't think that Shawbrook Bank's decision to turn down Mrs M's claims was unfair or

unreasonable. 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 Mrs M and Shawbrook Bank was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs M.

Mrs M's representative, on behalf of Mrs M, 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 Mrs M. It has also raised its serious concerns about the way that the finance was sold to Mrs M. It says, in summary and amongst other things, that:

- Mrs M was 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 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
- Mrs M was pressurised into entering into an agreement on that day and was 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 Mrs M's complaint shouldn't be upheld for these reasons:

- I understand that Mrs M had been a member of the holiday club since February 2011 and she then signed the purchase agreement in August 2015 to buy 5,000 more holiday club membership points;
- Mrs M also signed the loan agreement and Shawbrook Bank has provided unsigned copies of other documents that it says that she would have 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 signed copies of those documents haven't been provided;
- Mrs M's representative made claims to Shawbrook Bank in June 2021 under sections 75 and 140A and Mrs M 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 Mrs M'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 her claims was fair and reasonable in the circumstances;
- the June 2021 letter said that the holiday company represented to Mrs M that she would be able to use the additional points that she was buying in August 2015 to book her preferred holidays and would also give her access to more luxurious resorts

with five star accommodation but it says that those representations were false and misleading, were made for the sole purpose of inducing Mrs M to purchase the points and, were it not for the misrepresentations, she wouldn't have purchased the points;

- Mrs M says in her witness statement that she was told that all the resorts would be of the highest standard (but that wasn't the case and they continued to get worse as time went on as the resorts began to look tired and in need of a renovation) and that it was a members' only club and that it was exclusive (but it became apparent very early on that that wasn't the case);
- Shawbrook Bank says that Mrs M had bought a trial membership of the holiday club in February 2011, then traded in that trial membership and bought 5,000 membership points in April 2012 and bought 5,000 more membership points in August 2015 so I consider that it would be reasonable to expect her to have been aware of the condition of the resorts that she'd used and the basis on which members and non-members were able to use the resorts before she bought the additional points in August 2015;
- Shawbrook has provided evidence to show that Mrs M completed a supplier dissatisfaction form in about October 2015 about the interest on her loan in which she said that she'd be a member of the holiday club for three to four years and this was the first thing that had gone wrong and she made no comment at that time about the condition of the resorts or their exclusivity;
- Shawbrook Bank says that Mrs M made seven reservations with the holiday club between August 2015 and October 2019 but had raised no other issues with it until her representative's June 2021 letter;
- Mrs M says in her witness statement that she did make complaints to the resort staff about her issues with the standard of the resorts but she's provided no other evidence or information to show that she complained to the holiday company about the issues that she says were misrepresented to her and neither she nor her 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 her;
- I'm not persuaded that there's enough evidence to show that the membership points that Mrs M bought in August 2015 were misrepresented to her by the holiday company or that she was induced into entering into that purchase agreement by any such misrepresentations;
- Mrs M's representative says that commission was paid between Shawbrook Bank and the holiday company which wasn't disclosed to Mrs M which created an unfair relationship but Shawbrook Bank says that Mrs M had agreed that the holiday company was entitled to receive a commission in respect of the credit brokered;
- I've not been provided with any 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 Mrs M risked the relationship being unfair under section 140A;
- I've seen no evidence to show that Mrs M asked Shawbrook Bank for any information about the commission that it paid to the holiday company until her representative's

letter to Shawbrook Bank in June 2021 – as she'd entered into the loan agreement in August 2015 and repaid the loan in December 2015 I consider that it would be reasonable to expect her to have raised any concerns about any commission that was paid sooner than that;

- Mrs M's complaint form says that no credit or affordability checks were carried out to establish whether Mrs M 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 Mrs M;
- Mrs M's complaint form also says that she now has a debt of £4,000 but Shawbrook Banks says that Mrs M settled the loan with savings in December 2015;
- neither Mrs M nor her representative had provided detailed evidence about Mrs M's financial position in August 2015 or to show that the loan wasn't affordable for her at that time;
- I've seen no evidence to show that Mrs M asked Shawbrook Bank for any information about its credit or affordability checks before June 2021 – as the loan was made to her in August 2015 and was repaid in December 2015 I consider that it would be reasonable to expect her 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 £54.20 wasn't affordable for Mrs M when it was made to her in August 2015 or that the loan was mis-sold to her;
- Mrs M's complaint form also says that the holiday company unduly pressured her into entering the contracts and used aggressive commercial practices to pressure her – but Mrs M had bought a trial membership in February 2011 and 5,000 membership points in April 2012 (and Shawbrook Bank says that she'd agreed to make other purchases in May 2011 and August 2015 but had withdrawn from them) so I consider that she ought to have been aware of how the holiday company operated and the sales practices that it used before she bought the additional membership points in August 2015;
- Mrs M had completed a supplier dissatisfaction form in about October 2015 but there was no reference in that form to the holiday company unduly pressuring her into entering the contracts or using aggressive commercial practices to pressure her and I've seen no evidence to show that she contacted either the holiday company or Shawbrook Bank about the way that the membership points were sold to her in August 2015 until her representative's June 2021 letter to Shawbrook Bank - if she felt that she'd been 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 her to have raised her concerns when she completed the supplier dissatisfaction form or soon after she'd signed the contracts;
- Mrs M had signed the loan agreement which clearly set out her right to withdraw from that agreement without giving a reason within 14 days and Shawbrook Bank says that she 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 she 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 Mrs M was unduly pressured into entering into the purchase agreement or loan agreement or that the

holiday company used unacceptably aggressive commercial practices to pressure her;

- Mrs M'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 Mrs M signed said that the structure of the membership was governed by the articles of association and the associated legal documentation and that she should carefully read her legal/governing documents booklet and the key information document;
- Mrs M had been a member of the holiday club since February 2011 and she says in her witness statement that she was made aware that she would have to pay yearly maintenance fees;
- 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 Mrs M 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 Mrs M 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 Mrs M'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 Mrs M and Shawbrook Bank in these circumstances;
- Mrs M says that the issues that she's had with her membership points and her loan agreement have severely damaged her and her daughter's mental and physical health - I sympathise with Mrs M for those issues 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 Mrs M any of the money that she paid under the loan agreement, to pay her any compensation or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 October 2023.

Jarrold Hastings
Ombudsman