



The complaint

Mr and Mrs R complain that they were mis-sold a timeshare product and the loan used to pay for it. The loan was provided by Shawbrook Bank Limited. Mr and Mrs R are represented by a claims management business, which I'll call "C". Where I refer to Mr and Mrs R's submissions, I include those made on their behalf.

What happened

In July 2019 Mr and Mrs R were on holiday in the Canary Islands. They were invited to attend a presentation, at the end of which they agreed to buy from Anfi Sales SL a timeshare week at a resort on Gran Canaria. They paid £12,582, provided by way of a joint loan from Shawbrook.

In March 2020 C contacted Shawbrook, saying that the timeshare had been misrepresented to Mr and Mrs R, that the seller was in breach of contract and that the loan had created an unfair relationship. C subsequently said that Shawbrook had not properly assessed whether the loan was affordable and that Anfi Sales had not been properly authorised to arrange it.

C said that the timeshare had been misrepresented because Mr and Mrs R had been told that it was an investment, but it had no real value. C said as well that any commission paid by Shawbrook to Anfi Sales should have been disclosed, but it had not been.

Shawbrook, having contacted Anfi Sales, did not uphold the complaint. It said that the documentation made clear what the timeshare terms were, and that Mr and Mrs R had signed documents confirming that those terms had been explained to them. Shawbrook said that it was satisfied that the loan was affordable. It also said that no commission had been paid.

C referred the matter to this service, where one of our investigators considered what had happened. The investigator was not persuaded that there was sufficient evidence of any misrepresentation or breach of contract – although Anfi Sales was in administration, it appeared that services were still being provided.

Mr and Mrs R did not accept the investigator's assessment. In response, they explained that, having reviewed the timeshare contract, they had decided to terminate it in December 2019 – before they had used the timeshare property. They said that they had had difficulty in doing so. C said too that Anfi Sales had not been authorised to arrange the loan, which made it unenforceable.

Shawbrook noted that these were not matters which had been raised with it and which it had not had the opportunity to address. They should not, it said, form part of this complaint. The investigator agreed with that and did not express any view on them.

The case was then passed to me to review. I considered what had happened and issued a provisional decision, in which I said:

One effect of section 75(1) of the Consumer Credit Act 1974 is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a creditor. Those conditions includes :

- that the credit financed the contract giving rise to the claim; and
- that the credit was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.

The seller named on the timeshare contract was Anfi Sales SL, the same company as was named as the credit intermediary on the loan agreement. I am satisfied therefore that the loan was provided under existing arrangements between that company and Shawbrook and that section 75 could therefore apply. I have therefore considered what has been said about the sale.

As a matter of English law, a misrepresentation is, broadly speaking, a statement of fact or law made by one party to a contract, which (i) is untrue and (ii) induces the other into the contract.

The documents here indicate that the sale contract was governed by Spanish law, but I have approached this decision on the assumption that Spanish law is not materially different from English law, at least insofar as it relates to this complaint. The parties can tell me in their response if they believe there are material differences. Section 75(1) of the Consumer Credit Act applies to overseas contracts.

As part of the sale agreement, Mr and Mrs R signed a one-page Customer Compliance Statement, broken down into 15 separate statements. They confirmed, amongst other things, that:

- the presentation was conducted in a friendly and helpful manner;
- they had been given enough time to consider the documents;
- the loan payments were affordable;
- they understood that the purchase agreement and the statement were the entire agreement and they had not relied on any other oral representations.

If, as Mr and Mrs R have suggested, they had been told that the timeshare was an investment opportunity, I think it unlikely that they would have signed those statements. There was nothing in any of the documents suggesting that it was an investment. On the contrary, the sale contract said that any resale could not be guaranteed.

Mr and Mrs R have suggested that there was a breach of contract because Anfi Sales was placed into liquidation. Shawbrook says that the timeshare services are still being provided. Be that as it may, by the time of the liquidation, Mr and Mrs R had relinquished their timeshare in any event. Once that happened – as provided for in the contract – Mr and Mrs R were not entitled to receive further services. Their contract was at an end and so there can have been no breach.

I am not persuaded either that the loan agreement created an unfair relationship. It does not appear that any commission was paid, so the issue of disclosure does not arise. I do not believe either that Anfi Sales was acting as Mr and Mrs R's agent. It was selling a timeshare product, not advising them on a financial product.

I am not persuaded either that the loan was not affordable. Mr and Mrs R have not referred to any difficulties they might have had making payments. So, even if Shawbrook should have

carried out more detailed affordability checks, it does not appear that its lending decision would have been any different.

Finally, I agree with the investigator that any complaint which Mr and Mrs R might have about Anfi Sales' authorisation or about the events surrounding the termination of the timeshare contract are new issues. I will not comment on them, save to say that it remains open to Mr and Mrs R to raise them as a separate complaint with Shawbrook, should they wish to do so.

I decided – provisionally at least – not to uphold the complaint.

In reply to my provisional decision C asked that the issue around the authorisation of Anfi Sales be included as part of this complaint. The investigator responded by declining that request and arranging for a new complaint to be set up. I agree with that approach and make no further comment on the authorisation issue.

Other than that, neither Mr and Mrs R nor Shawbrook had anything to add following my provisional 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.

As neither party has provided any new evidence or arguments, I do not believe there is any reason for me to reach a different conclusion from that I reached in my provisional decision. I stress however that I have considered all the evidence and arguments afresh before reaching that conclusion.

My final decision

For these reasons, my final decision is that I do not uphold Mr and Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 26 September 2023.

Mike Ingram

Ombudsman