DRN-4349355

The complaint

Mr and Mrs H complain that they were mis-sold timeshare products. Because those products were financed with loans provided by Shawbrook Bank Limited ("Shawbrook"), they say that it is liable to meet their claims in the same way as the seller.

Mr and Mrs H have been represented by a firm of solicitors, which I'll refer to as "N". Where I refer to Mr and Mrs H's submissions, I include those made on their behalf.

What happened

Mr and Mrs H have explained that, in August 2019, they were invited to, and attended, a presentation about the Club La Costa Destinations Club. As a result of attending that presentation, they bought from Club La Costa (UK) Plc ("CLC") a 36-month trial membership in the Destinations Club. Under the agreement they could use up to five holiday weeks within the trial membership period. In addition they were given a "Prelude" promotion, which they had to take as their first holiday at a CLC resort in Spain or Tenerife.

The cost of the trial membership was £4,395, which was funded with a 36-month loan from Shawbrook.

Mr and Mrs H took their Prelude promotion holiday in September 2019. Again, they attended a CLC presentation, at the end of which they entered into an agreement with Club La Costa (UK) Sucursal en Espaňa (the Spanish branch of CLC) to buy full 15-year membership of the Club La Costa Vacation Club Limited and 1,250 Points Rights for a price of £16,265. To finance the purchase, Mr and Mrs H took out a £20,754 loan with Shawbrook over 15 years. The new loan covered the loan which had been taken out to pay for the trial membership.

In January 2021 N wrote to Shawbrook on behalf of Mr and Mrs H. N said that the letter was not a complaint but a letter of claim – that is, a letter written as a prelude to legal action. It said, in summary:

- The purpose of the meeting in August 2019 was to sell membership in CLC's Fractional Property Owners Club. This had not been made clear to Mr and Mrs H.
- Mr and Mrs H were told the product was an investment.
- The sales process was lengthy and pressured.
- The meeting in September 2019 was also a high pressure sales event, disguised as an update meeting.
- As had happened in August 2019, Mr and Mrs H were given no paperwork until the end of the event and had no time to read it.
- Mr and Mrs H were told that the product was an investment and they could benefit from the sale of property in which they had a share.
- CLC was placed into administration in November 2020. Documents show it was a sales arm with no interest in the properties in which it was selling fractional rights.
- The commission paid to CLC had not been disclosed.

- The contracts did not make it clear that the products sold were timeshare or long term holiday contracts.
- A single payment had been taken, in breach of regulation 26 of The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations").
- The effect of this and other breaches of consumer protection was that Mr and Mrs H had a claim against Shawbrook under section 75 of the Consumer Credit Act and that the loan agreements created an unfair relationship under section 140A of the same act.

Shawbrook did not treat N's letter as a letter of claim under the Civil Procedure Rules 1998 but as a "*complaint*" within the meaning of the Financial Conduct Authority's rules dealing with dispute resolution ("DISP"). It also sought comments from CLC. I summarise below the main points it made in its response;

- In both cases, Mr and Mrs H had a 14-day cooling-off period in which they could have cancelled their agreements with CLC and the loan agreements.
- They had signed statements to confirm that they had been given enough time to consider the loan agreements and had not been coerced into doing so.
- They had also signed a statement to say that they understood the trial membership was designed to test club membership, not to provide any kind of resale opportunity or investment.
- At no time was it suggested that Mr and Mrs H were buying an interest in any specific property.
- Mr and Mrs H were not given any investment advice.
- Holiday availability was not guaranteed, but in any event Mr and Mrs H had booked holidays in 2020. They had been unable to take them because of the Covid-19 pandemic.
- Mr and Mrs H were told that CLC might be entitled to commission. Details were available on request.

In conclusion, Shawbrook said that it thought the claims made were unfounded.

Mr and Mrs H referred the matter to this service. Our investigator did not however recommend that it be upheld. Mr and Mrs H did not accept the investigator's conclusions and asked that an ombudsman review the case.

I did that and issued a provisional decision, inviting both parties to make further submissions if they wanted to do so. I said:

Relevant legislation and its effect

Mr and Mrs H's complaint arises to a large extent from the actions of CLC at the time of sale and subsequently. There are some circumstances in which the Consumer Credit Act 1974 gives a debtor rights against a provider of credit in respect of the actions of a supplier of goods or services.

I must determine Mr and Mrs H's complaint by reference to what I consider to be fair and reasonable in all the circumstances – having regard, amongst other things, to any relevant law. I set out below extracts of the Consumer Credit Act which I consider to be most relevant in this case:

11 Restricted-use credit and unrestricted-use credit.

(1) A restricted-use credit agreement is a regulated consumer credit agreement—

…

(b) to finance a transaction between the debtor and a person (the "supplier ") other than the creditor

…

12 Debtor-creditor supplier agreements.

A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—

…

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier

…

19 Linked transactions.

(1) A transaction entered into by the debtor or hirer, or a relative of his, with any other person ("the other party "), except one for the provision of security, is a linked transaction in relation to an actual or prospective regulated agreement (the "principal agreement ") of which it does not form part if—

…

(b) the principal agreement is a debtor-creditor-supplier agreement and the transaction is financed, or to be financed, by the principal agreement

…

56 Antecedent negotiations.

(1) In this Act "antecedent negotiations " means any negotiations with the debtor or hirer—

…

(c) conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or (c), and "negotiator " means the person by whom negotiations are so conducted with the debtor or hirer.

(2) Negotiations with the debtor in a case falling within subsection (1)(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity.

…

75 Liability of creditor for breaches by supplier

If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following—

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement)

…

140B Powers of court in relation to unfair relationships

(1) An order under this section in connection with a credit agreement may do one or more of the following—

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;

(d) direct the return to a surety of any property provided by him for the purposes of a security;

(e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;

(f) alter the terms of the agreement or of any related agreement;

(g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons

…

I am satisfied that Shawbrook provided finance for both sales as a result of pre-existing arrangements it had with CLC. The effect of that is:

- *Shawbrook is responsible for statements made by CLC in connection with both the loans and the sales of the products financed by them.*
- *If Mr and Mrs H have a claim for breach of contract or misrepresentation against CLC, they have a "like claim" against Shawbrook.*
- *In considering whether either loan creates an unfair relationship between Mr and Mrs H on the one hand and Shawbrook on the other, I can take into account the sales contracts as well as the loan agreements.*

I have therefore considered Mr and Mrs H's submissions on these points.

Misrepresentation and breach of contract

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

Mr and Mrs H say that they were told that their purchase would be an investment and that they would share in the sale proceeds when fractional ownership properties were sold. That is not however supported by any of the sale documents – which in fact contradict that. They didn't buy a fractional ownership timeshare – by which I mean an arrangement whereby timeshare properties are to be sold after a fixed period and the proceeds of sale are shared among all the fractional owners.

It was clear from the contract that Mr and Mrs H signed that what they bought in September 2019 was a points-based timeshare interest, where they could exchange an annual points allocation for holiday accommodation and other benefits. They also signed statements saying that the primary purpose of their purchase was for holidays, not as an interest or investment in real estate.

Mr and Mrs H have suggested that the entering into administration of CLC means that it cannot fulfil its contractual obligations. That appears however to be based on a misunderstanding or misrepresentation of what those obligations are. They do not include the sale of fractional ownership rights – which in any case are not what Mr and Mrs H bought. Their own rights as club members are not affected by the administration of CLC, since club resorts are run and managed by different companies.

Section 140A claims

Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments.

In considering whether a credit agreement creates an unfair relationship, a court can have regard to any linked transaction.

I am satisfied that the two timeshare agreements in this case were "linked transactions" (that is, linked to each respective the loan agreement) within the meaning of section 19 of the Consumer Credit Act.

I have therefore considered whether the sales and subsequent events are likely to mean that the loan agreements (or either of them) created an unfair relationship.

N says that, in breach of the Timeshare Regulations, Mr and Mrs H were not told in advance that they were attending sales presentations. CLC disputes this. Be that as it may, Mr and Mrs H would have found out during the course of each presentation that it was a sales pitch. They were not obliged to proceed with a purchase, but chose to go ahead. It was perfectly clear from the sales documentation that they were buying a trial membership and then a 15-year points-based membership. So, even if Mr and Mrs H did not realise out the outset that they had been invited to a sales presentation, they knew before they agreed to purchase what the nature of each meeting was. And they could have withdrawn from any sale within 14 days.

Mr and Mrs H say too that they were pressured into buying. Again, that is denied by CLC. But I make similar observations to those I have made above. If Mr and Mrs H felt they had been unduly pressured or not given time to consider their decisions, they had 14 days in which to review them. The fact that they did not seek to exercise cancellation rights makes their allegations of undue pressure less credible.

N has noted that regulation 26 of the Timeshare Regulations prohibits a single payment for a long-term holiday product. However, the claim that this is what Mr and Mrs H bought is not

consistent with the claim that they bought a fractional ownership timeshare. In fact, they bought neither; they bought a trial club membership and then a points-based timeshare and club membership. Both were timeshare contracts within the meaning of regulation 7, so regulation 26 did not apply.

Only a court can make orders under section 140A and 140B of the Consumer Credit Act. I can however make a wide range of awards, and could, if I thought it fair and reasonable to do so, require a lender to, for example, refund loan payments or write off a loan. I do not believe however that I should do so here.

In the circumstances, I believe that Shawbrook's response to Mr and Mrs H's claims was reasonable.

Neither Mr and Mrs H nor Shawbrook responded to my provisional decision with any further evidence or arguments.

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 further evidence or arguments, I see no reason to reach a different conclusion from that set out in my provisional decision. In saying that, I stress that I have considered the case afresh before issuing this decision.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 8 November 2023.
Mike Ingram
Ombudsman