

## **The complaint**

Mrs K and Mr K say that Shawbrook Bank Limited, who I'll call "Shawbrook", unfairly declined their claim for misrepresentation under section 75 of the Consumer Credit Act 1974 (the 'CCA') in relation to a timeshare they were sold.

## **What happened**

Mrs K and Mr K bought a timeshare product from a company I will call "C" in October 2019. They financed the deal through a fixed sum loan with Shawbrook.

Mrs K and Mr K complained to Shawbrook in early 2022. They said that the timeshare and the associated finance agreement were misrepresented to them as:

- They were given false information about the loan agreement because they were told the interest rate was 2.35% but it turned out to be 11.3%.
- They were pressured into signing the loan documents without fully reading them.
- They were led to believe they wouldn't get all the benefits of the package if they took the documents away to read.
- They weren't told the loan agreement had a cooling off period.

Shawbrook didn't uphold Mrs K and Mr K's claim as they didn't think Mrs K and Mr K had provided sufficient evidence to support their claims of misrepresentation, and they thought the documentation provided in the various agreements set out the product in sufficient detail. They also explained that the fixed sum loan gave Mrs K and Mr K a right to withdraw from the finance agreement within 14 days. Our investigator agreed with Shawbrook but as Mrs K and Mr K didn't, the complaint has been referred to me, an ombudsman, for a final 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.

I know it will disappoint Mrs K and Mr K, but I don't think Shawbrook have been unreasonable to reject their section 75 claim. I'll explain why.

I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act (2000). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my final decision.

### ***The Consumer Credit Act 1974***

When something goes wrong and the payment was made with a fixed sum loan, as was the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

It's not for me to decide the outcome of a claim Mrs K and Mr K have under section 75 but I'm required to take the provisions into account when deciding whether the lender was reasonable to reject Mrs K and Mr K's claims.

### **The claim under section 75 of the CCA**

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 materially influenced the other party to enter into the contract.

Whilst I understand Mrs K and Mr K's assertions they were told the loan had a 2.35% interest rate, they've not been able to provide any documentation to support that claim and the fixed sum loan agreement they signed explains that the rate is 11.3%. I don't think Shawbrook therefore had sufficient evidence to suggest the loan was misrepresented on that basis.

The fixed sum loan also explains Mrs K and Mr K's right to withdraw from it within 14 days, and the timeshare information statement signed in October 2019 also sets out Mrs K and Mr K's right to withdraw from the timeshare agreement within 14 calendar days, without giving any reason. So, I don't think there is sufficient evidence to suggest Mrs K and Mr K were given false statements with regard to their withdrawal rights. And, as I'm persuaded it was explained to Mrs K and Mr K that they could withdraw from the timeshare agreement and its associated credit agreement within 14 days, I don't think it would be fair to suggest there is sufficient evidence they were likely to have been told they wouldn't receive all the benefits of the timeshare arrangement if they didn't sign immediately. The benefits of the agreement were clearly set out in the timeshare agreement and within the associated information statement.

For those reasons I don't think a court would be likely to uphold a claim under section 75 and I don't think Shawbrook were unreasonable to do so.

### **The claim under section 140A of the CCA**

Mrs K and Mr K say they were pressured into signing the loan.

Section 140A of the CCA looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement (taken together with any related agreement). If Mrs K and Mr K were unduly pressured I may think an unfair relationship was created. I therefore think this aspect of Mrs K and Mr K's claim should be considered under section 140A of the CCA.

Section 56 of the CCA is relevant to the claim under section 140A of the CCA as the pre-contractual acts or omissions of the supplier will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mrs K and Mr K and Shawbrook.

We know it is common that these sales often lasted for a number of hours and a focus was placed on the benefits of the timeshare and on overcoming any objections. But I've not seen anything to suggest Mrs K and Mr K weren't aware they could simply walk away, and I think the withdrawal clauses in the timeshare and credit agreements allowed them to do so once they'd read through the detail of the agreements in their own time.

Overall, therefore, I don't think a court would likely conclude that the relationship between Mrs K and Mr K and the lender was unfair based on the information provided. So, for that reason, I don't think Shawbrook has to do anything further in relation to Mrs K or Mr K's claim.

### **My final decision**

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 22 August 2023.

Phillip McMahon  
**Ombudsman**