DRN-4591027

The complaint

Mr and Mrs M's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr and Mrs M were long-time customers of a timeshare provider (the 'Supplier') and various predecessor companies. While this complaint relates only to their final two purchases from the Supplier in February 2014 and February 2017, I've set out briefly the history of their purchases below.

Mr and Mrs M made their first purchase in 1982, which I understand was of a fixed-week timeshare. They later bought into the Supplier's points-based holiday club system – the 'European Collection' – amassing 16,000 points by November 2013, over multiple purchases. These points could be redeemed annually for holiday accommodation in the Supplier's portfolio.

In November 2013, Mr and Mrs M traded in 7,000 of their European Collection points for an equal number of points in the Supplier's new 'Fractional Club'. After an allowance was given for the trade-in of their points, they paid a further £4,196 by card.

The first purchase about which Mr and Mrs M complain, was a further purchase of points in the Fractional Club on 25 February 2014 (the 'Time of Sale'). On this date, Mr and Mrs M traded in their remaining 9,000 European Collection points against 10,000 additional Fractional Club points ('Purchase Agreement 1'). They were given £9,000 consideration for the trade-in, after which there was a balance of £8,600 left to pay.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on Purchase Agreement 1 (the 'Allocated Property') after their membership term ends.

Mr and Mrs M financed this purchase by taking a loan with the Lender for the balance of the purchase price ('Credit Agreement 1'), repayable over 120 months at £141.61 per month. The loan was arranged by and paid to the Supplier. I understand it was settled in February 2015.

The second purchase Mr and Mrs M complain about was made on 17 February 2017 ('Purchase Agreement 2'). On this date they bought back into the Supplier's European Collection, purchasing 13,000 points for £14,300. They did not trade in any of their existing holdings as part of this purchase. Mr and Mrs M decided to cancel this purchase when they got home from the holiday they'd bought it on, but missed the cooling off period by one day. They also financed this purchase with a loan from the Lender ('Credit Agreement 2'), repayable over 60 months at £326.07 per month.

Mr and Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 20 September 2018 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Times of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreements and related Purchase Agreements for the purposes of Section 140A of the CCA.
3. The decisions to lend being irresponsible because (1) the Lender did not carry out the right creditworthiness assessment and (2) the money lent to them under the Credit Agreement was unaffordable for them.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mr and Mrs M say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier, in relation to Purchase Agreement 1:

1. told them that Fractional Club membership had a guaranteed end date in 15 years when that was not true because in reality it could last indefinitely.
2. told them that they were buying an interest in a specific piece of real estate when that was not true as they didn't own anything.
3. told them that Fractional Club membership was an "investment" which would give them a financial return, and a highly valuable asset when that was not true because it is worthless.
4. told them they'd be able to make money from a "Wish to Rent" scheme, which could be used to offset their annual maintenance fees.

And in relation Purchase Agreement 2, the Supplier had made the following misrepresentations at the Time of Sale:

1. Told them that it would give them greater holiday availability.
2. Told they were getting a discount on the points when they weren't.
3. Told them that they could make a profit from reselling the points, which wasn't true.
4. Told them the Supplier was buying new resorts, when it wasn't.

Mr and Mrs M say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs M.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint and an accompanying witness statement set out several reasons why Mr and Mrs M say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to them as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The Purchase Agreements contained terms which were unfair to them.
3. The decisions to lend were irresponsible because the Lender didn't carry out the right creditworthiness assessment and the loans were unaffordable.
4. The Lender paid an inadequately disclosed commission to the Supplier for the arrangement of the Credit Agreements.

The Lender dealt with Mr and Mrs M's concerns as a complaint and issued its final response

letter on 28 November 2018, rejecting it on every ground.

Mr and Mrs M then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits in relation to Purchase Agreement 1, but not Purchase Agreement 2.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs M at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs M was rendered unfair to them for the purposes of section 140A of the CCA.

Our Investigator did not think the complaint about the European Collection purchase should be upheld, reasoning that there was insufficient persuasive evidence the Supplier had made misrepresentations, or that the loan had been unaffordable. She acknowledged there could have been some failings in relation to the sale, but was not convinced these had led to an unfair credit relationship between Mr and Mrs M and the Lender.

Mr and Mrs M accepted our Investigator's assessment.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. The Lender argued, in essence, that Mr and Mrs M's decision to make their first complained-about purchase had not been materially influenced by any breach by the Supplier of Regulation 14(3) of the Timeshare Regulations. I could summarise the Lender's position as follows:

- There had been various disclaimers and declarations signed by Mr and Mrs M at the Time of Sale which made it clear that the Fractional Club product should not be regarded as a property or financial investment.

- The fact that Mr and Mrs M had purchased additional points at the Time of Sale on top of what they traded in, suggested they had made their purchase for holiday-related reasons. This was also supported by comments in their witness statement relating to the availability of holidays.

- Mr and Mrs M had secured a shorter-term contract by purchasing Fractional Club membership, which was a benefit to them as their existing European Collection contract had 40 years to run whereas Fractional Club membership would last 15 years.

- While accepting that the Supplier's sales notes had recorded Mr and Mrs M had purchased the Fractional Club points for a "return", this was too vague and non-specific to support a case that they'd made the purchase because they thought it was an investment in the sense it was something that would or could return a profit.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints –

which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context 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.

Before I continue – I need to clarify that as neither Mr and Mrs M nor the Lender have disputed our Investigator's findings regarding Purchase Agreement 2 and Credit Agreement 2, I have not focused on that part of the complaint. My decision is focused only on Purchase Agreement 1 and Credit Agreement 1. However, having considered what our Investigator had to say about Purchase Agreement 2 and Credit Agreement 2, I will say that don't see anything unreasonable about the conclusions they reached.

Having considered the available evidence and arguments, like our Investigator I think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr and Mrs M as an investment, which, in the circumstances of this complaint, rendered the credit relationship between them and the Lender unfair to them for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to Mr and Mrs M's complaint, it isn't necessary to make formal findings on all of them. This includes the allegations that the Lender made an irresponsible lending decision, that the contract contained unfair terms, and that various misrepresentations were made to Mr and Mrs M. That's because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Mr and Mrs M in the same or a better position than they would have been had those parts of the complaint been successful.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

Having considered the entirety of the credit relationship between Mr and Mrs M and the Lender along with all of the circumstances of the complaint, I think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances.

I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs M and the Lender.

The Supplier's breach of Regulation 14(3) of the Timeshare Regulations

The Lender does not dispute, and I am satisfied, that Mr and Mrs M's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But Mr and Mrs M say that the Supplier did exactly that at the Time of Sale – they say that in their earlier purchase (not financed by the Lender), the Supplier had:

"…stressed that this purchase was to be made as an investment. As we would be part owners of the property, we would receive a return and make a profit on our investment…"

And that, at the Time of Sale, the Supplier had *reinforced* this message:

"We were again told that if we converted the remainder of our existing ordinary points to fractional points we would be able to make a profit when the property was sold."

Mr and Mrs M allege, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because they were told by the Supplier that the Fractional Club membership was an investment that would allow them to make a profit.

The term "investment" is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, by reference to the decided authorities, "*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*" at [56]. I will use the same definition.

Mr and Mrs M's share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs M as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs M, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, the disclaimers the Lender has pointed to in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs M as a property or financial investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork.

So, I have considered:

(1) whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Fractional Club as an investment, i.e. told Mr and Mrs M or led them to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered them the prospect of a financial gain (i.e., a profit); and, in turn
(2) whether the Supplier's actions constitute a breach of Regulation 14(3).

And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

How the Supplier marketed and sold the Fractional Club membership

I've seen a variety of internal materials produced by the Supplier and dating to around the time it began selling Fractional Club membership. I think, in general, these materials indicate that the Supplier was concerned at a senior leadership level to avoid breaching Regulation 14(3). I've seen copies of Sales Policies, for example, which warned staff that promoting the Fractional Club product as an investment, or discussing resale values with potential purchasers, was considered unacceptable. I've also seen evidence that the Supplier did not consider promoting the residual value of the Allocated Property to be a part of its sales strategy. The documents I've seen indicate that the Supplier's management considered the strategy should be to market the product as something that could be used to go on holiday, but with a shorter term than other types of membership it offered.

On the other hand, it's apparent from the materials I've considered that the Supplier was aware that the sale of the fractional asset at the end of the term was a benefit to a potential purchaser. For instance, I've seen presentation slides dating to September 2012 which, in my view, implied that the Supplier's brand and other positive attributes would contribute to enhancing the value of the fractional asset at the end of the membership term. I am aware the Supplier now denies that these slides were ever used to promote the Fractional Club to potential customers[1], but based on the communications the Financial Ombudsman Service has received from the Supplier, it's apparent that there were members of staff at the Supplier who had different recollections of how the slides were used.

Additionally, I'm aware of other materials the Supplier or its agents or representatives are alleged to have used to promote the Fractional Club product, and which appeared explicitly to refer to it as an investment. The Supplier has previously told this service that these materials were not officially sanctioned and, if they had been used, it would have been in a very limited capacity. I make no suggestion that such materials were shown to Mr and Mrs M, and indeed they don't refer to being shown literature of that nature. I can't be certain of

[1] The Supplier has not, to my knowledge, denied the slides were ever used to *train* staff, only that they were shown to potential customers.

what was shown to Mr and Mrs M, or what specifically any sales representatives may have said to them, any more than the Supplier or the Lender can. But I think the analysis above highlights that there was the *potential* for the Fractional Club product to be sold in a way which did not accord with the Supplier's official policy. And I don't think the Supplier would have needed to have deviated very far from a simple description of how the Fractional Club product worked in terms of the sale of the fractional asset at the end of the term, to have fallen foul of Regulation 14(3). When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that *'[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3)).'*[2] And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.

So, if a supplier *implied* to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.

Indeed, if I'm wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 99 and 100 of S*hawbrook & BPF v FOS*, Mrs Justice Collins Rice said the following:

"[…] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, ***it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3). […] Getting the governance principles and paperwork right may not be quite enough.***

The problem comes back to the difficulty in articulating the intrinsic benefit of fractional ownership over any other timeshare from an individual consumer perspective*. […]* ***If it is not a prospect of getting more back from the ultimate proceeds of sale than the fractional ownership cost in the first place, what exactly is the benefit?*** *[…] What the interim use or value to a consumer is of a prospective share in the proceeds of a postponed sale of a property owned by a timeshare company – one they have no right to stay in meanwhile – is persistently elusive."*

"[...] although the point is more latent in the first decision than in the second, it is clear that both ombudsmen viewed fractional ownership timeshares – simply by virtue of the interest they confer in the sale proceeds of real property unattached to any right to stay in it, and the prospect they undoubtedly hold out of at least 'something back' – as products which are inherently dangerous for consumers. ***It is a concern that, however scrupulously a fractional ownership timeshare is marketed otherwise, its offer of a 'bonus' property right and a 'return' of (if not on) cash at the end of a moderate term of years may well taste and feel like an investment to consumers who are putting money, loyalty, hope and desire into their purchase anyway.*** *Any timeshare contract is a promise, or at the very least a prospect, of long-term delight. [...] A timeshare-plus contract suggests a prospect of happiness-plus. And a timeshare plus 'property rights' and 'money back' suggests adding the gold of solidity and lasting value to the silver of transient holiday joy."*

Considering the relevant circumstances at the Time of Sale, I think these contributed to a risk that the Supplier would market the Fractional Club product to Mr and Mrs M as an investment, in the absence of other significant selling points for them.

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[2] The Department for Business Innovation & Skills *"Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)".* https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf

It seems unlikely, for example, that Mr and Mrs M would have been attracted by the prospect of a shorter contract term. Given their ages, they were eligible to hand back their remaining European Collection points after three years – whereas converting those points to the Fractional Club meant being tied in for 15 years. Additionally, as customers of the Supplier who had a total of 16,000 points across the Supplier's European Collection and Fractional Club, their purchase offered them very little in the way of additional holiday rights, and indeed Mr and Mrs M suggest they only bought an additional 1,000 points, an increase in their holdings of about 6%, because this was deemed necessary to round up their membership to a whole number of weeks.[3]

Taking everything into account, I think it's more likely than not that the Supplier strayed from describing how the sale of the Allocated Property worked, and either stated or implied that Mr and Mrs M could or would make a profit when the Allocated Property was sold. In doing so, it breached Regulation 14(3) of the Timeshare Regulations.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs M and the Lender under the Credit Agreement and related Purchase Agreement.

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

It also it seems to me in light of *Carney* and *Kerrigan* that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs M and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Mr and Mrs M's testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase. I think this comes across in their witness statement, where I feel their focus when talking about Purchase Agreement 1 is very much on their share in the Allocated Property and the prospect of making a profit when this was sold. They do also refer to the Wish to Rent scheme, but I do not think that them having some interest in the Wish to Rent scheme is inconsistent with them having been motivated in their purchase by the prospect of the Fractional Club membership being an investment. And that's because the Wish to Rent scheme involved making money by renting out one's points and potentially making a speculative return if any of the people who the points were rented to went on to buy products from the Supplier.

[3] I acknowledge that Mr and Mrs M later went on to buy another 13,000 points in the European Collection, suggesting they may well have been motivated throughout by holidays. However, I'm not convinced this is significant, as Mr and Mrs M did attempt (albeit unsuccessfully) to cancel that purchase.

I think it's also worth pointing out that the Supplier's own sales notes, as recalled by the Lender, stated that Mr and Mrs M's reason for purchase was a "return". While the Lender has argued this is vague and open to interpretation, I think Mr and Mrs M's testimony puts the notes into context. I think the notes support an argument that a material factor in their purchasing decision was a return in the sense of making a financial gain or profit. And I think it is telling that the Supplier's notes *don't* say that Mr and Mrs M made their purchase for holidays or for a shorter contract term.

That doesn't mean they were not interested in holidays. But as Mr and Mrs M say (plausibly in my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from their European Collection membership. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Mr and Mrs M have not said or suggested, for example, that they would have gone ahead with the purchase in question had the Supplier not led them to believe that Fractional Club membership was an appealing investment opportunity. And as they faced the prospect of borrowing and repaying a substantial sum of money while subjecting themselves to long-term financial commitments, had they not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that they would have gone ahead with their purchase regardless.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs M under Credit Agreement 1 and Purchase Agreement 1 for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Fair Compensation

Having found that Mr and Mrs M would not have agreed to purchase further Fractional Club points at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put them back in the position they would have been in had they not purchased the additional points (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs M agree to assign to the Lender the relevant Fractional Points or hold them on trust for the Lender if that can be achieved.

Prior to their purchase, Mr and Mrs M had been existing members of both the Supplier's European Collection and Fractional Club, with a total of 16,000 points. Mr and Mrs M's remaining European Collection points (9,000) were traded in against the purchase price of the additional 10,000 Fractional Club points. Under their previous hybrid of European Collection and Fractional Club memberships, Mr and Mrs M had to pay annual management charges in relation to their membership and points holdings. So, had Mr and Mrs M not made the purchase in question, they would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs M from the Time of Sale should amount only to the difference between those charges and the annual management charges they would have paid had they still held their previous holdings (9,000 points in the European Collection and 7,000 in the Fractional Club).

So, here's what I think needs to be done to compensate Mr and Mrs M with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Mr and Mrs M's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.

(2) In addition to (1), the Lender should also refund the difference between Mr and Mrs M's Fractional Club annual management charges paid after the Time of Sale and what their annual management charges would have been had they not made the purchase in question.

(3) The Lender can deduct:

i. The value of any promotional giveaways that Mr and Mrs M used or took advantage of; and
ii. The market value of the holidays* Mr and Mrs M took using their Fractional Points *if* the Points value of the holiday(s) taken amounted to more than the total number of combined European Collection and Fractional Club Points they would *already* have been entitled to use at the time of the holiday(s) as ongoing members of those clubs. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.

For example, if Mr and Mrs M took a holiday worth 2,550 Fractional Points and they would have been entitled to use a total of 2,500 Points had they not made the purchase in question, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if they would already have been entitled to use 2,600 Points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(5) The Lender should remove any adverse information recorded on Mr and Mrs M's credit files in connection with the Credit Agreement reported within six years of this decision.

(6) If Mr and Mrs M's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of the Fractional Club Points they purchased under Purchase Agreement 1. This does not apply to the points purchased under a previous contract not financed by the Lender.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs M took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage. As stated above, any deductions will need to be proportionate to the points used over and above what Mr and Mrs M would already have been entitled to use.

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons explained above, I uphold this complaint and direct Shawbrook Bank Limited to take the actions set out in the "Fair Compensation" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 9 January 2026.

Will Culley
Ombudsman