DRN-4680638

The complaint

Ms J'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

Background to the Complaint

Ms J purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 30 April 2014 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy Fractional Rights (the 'Purchase Agreement'). She paid 14,367 euros for membership of the Fractional Club.

Fractional Club membership was asset backed – which meant it gave Ms J a share in the net sale proceeds of a property named on her Purchase Agreement (the 'Allocated Property') after her membership term ends. Until that time, she held the occupancy rights for a particular week in the Allocated Property.

Ms J paid for her Fractional Club membership by taking finance of £12,500 from the Lender (the 'Credit Agreement').

Ms J first wrote to the Lender on 2 January 2020 to request the reimbursement of the full cost of the Purchase Agreement because the Supplier had closed and, under Section 75 CCA, the Lender is jointly and severally liable for any misrepresentation or breach of contract.

The Lender dealt with Ms J's concerns as a complaint and issued its final response letter on 27 January 2020, rejecting it because it said the Supplier continued to operate. The Lender also said that Ms J said she was provided with misleading information at the Time of Sale, but that it found no evidence this was the case.

Ms J then referred the complaint to the Financial Ombudsman Service by phone. On the call she said, amongst other things, that the Fractional Club membership was sold to her as a way to get her money back from an existing timeshare she held with another provider, and that the Supplier had promised her that she would make a profit on the sale of the Allocated Property when the membership term ended.

Ms J's complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

On 5 February 2021, Ms J let our Service know that she wished to be represented by a professional representative (the 'PR'), who then provided additional information about the events at the Time of Sale.

In February 2024, a different Investigator looked at everything again. She thought that the Supplier had marketed and sold Fractional Club membership as an investment to Ms J at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and

Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on her purchasing decision, the Investigator concluded that the credit relationship between the Lender and Ms J was rendered unfair to her for the purposes of Section 140A of the CCA.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

On 3 June 2025, I issued a Provisional Decision ('the PD') on this complaint. The PD included the following:

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.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75 and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare Regulations.*
- *The Unfair Terms in Consumer Contracts Regulations 1999.*
- *Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations').*
- *Case law on Section 140A of the CCA – including, in particular:*

    - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
    - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
    - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
    - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
    - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
    - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
    - *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').*

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

The Supplier was not signed up to the RDO Code, nor was it required to be. However, I still think the RDO Code is a relevant consideration in that it sets out what good industry practice looked like at the Time of Sale.

My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I currently 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 Ms J as an investment, which, in the circumstances of this complaint, rendered the credit relationship between her and the Lender unfair to her 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 Ms J's complaint, it isn't necessary to make formal findings on all of them. This includes the allegations that the Fractional Club membership was misrepresented to her, or that the Supplier breached the contract, because even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Ms J in the same or a better position than she would be if the redress was limited to any or all of those aspects.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Ms J and the Lender was unfair.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and 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) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "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 […]". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "finance a transaction between the

debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Ms J's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in Plevin, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:

"By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer".

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law" before going on to say the following in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."[1]

So, the Supplier is deemed to be Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the

[1] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Ms J and the Lender, along with all of the circumstances of the complaint, and 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*
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; and*
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 Ms J 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 Ms J'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 Ms J says that the Supplier did exactly that at the Time of Sale – saying the following during her initial call with our Service about the Fractional Club:

"They were promising that at the end of the 15 years when they would be selling them all, then there would be a nice profit, although of course, the documentation would have said something quite different".

Ms J also says that the Supplier told her she could also make money before the sale date by renting her week in the years that she didn't use her holiday accommodation rights. She says she was told the Supplier had a rental programme and would handle this for her. She says the Supplier persuaded her to proceed by showing her some figures that suggested she would make in excess of what she had to pay in maintenance fees.

Ms J alleges, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because she was told by the Supplier that she would get more money back than what she paid when the Allocated Property would be sold.

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.

Ms J's share in the Allocated Property clearly, in my view, constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Ms J 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. So, I have considered all the available evidence to reach an answer on the following questions:

(1) *Is it 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 Ms J or led her to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered her the prospect of a financial gain (i.e., a profit); and, in turn*
(2) *Did 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 considered everything provided to me by both parties. In this case, there isn't much information about what processes the Supplier had in place for training its sales staff and what materials, if any, it used to market the Fractional Club membership to prospective customers such as Ms J.

During the course of Ms J's complaint, the Lender has confirmed that it doesn't hold any sales notes or training materials produced by the Supplier and it does not hold any details of any purchase history between Ms J and the Supplier. But it says that the Supplier did not have a rental programme. And it denies that the Supplier sold the Fractional Club membership as an investment.

In turn, Ms J has provided a detailed description of what she was told at the Time of Sale and what she says happened following that time.

I will start by noting that the Lender says:

"We have reviewed two documents that we have considered to be witness testimonies. The first is the original claim letter, that the customer has written and sent directly themselves. This document doesn't mention investment and primarily focuses on the Supplier closing and wanting to claim due to the closure.

The second piece of evidence is the phone call taken by [the Financial Ombudsman Service]. As mentioned previously, this call took place much later and it is evidenced that there has been [the PR's] involvement since the original complaint was submitted. It could also be suggested that [Ms J], now having contact with [the PR] and also possibly being made aware of [Shawbrook & BPF v FOS], has adapted their claim in the hopes of a successful outcome".

I have thought very carefully about this and am not persuaded that Ms J's recollections of the events at the Time of Sale were influenced by the PR. I don't agree that she has been inconsistent by raising the claim for a breach of contract first, then raising issues with how the Fractional Club was sold to her. I see no reason to conclude that she's changed her version of events simply by raising two different matters at different times – this is not a case where I think her evidence has evolved or changed over time. I would not expect Ms J to know all the reasons why something might have gone wrong with her purchase at once, or to be able to articulate those concerns in such a way as a professional person might. In fact, I think it was reasonable for her to first contact the Lender when she was concerned the Supplier had gone out of business before then expanding to include some of her other concerns later. And I note that her call with our Service took place on 10 February 2020 – which was soon after her initial claim for a breach of contract and was several years before the court judgment referred to by the Lender. Indeed, having listened to the phone call, Ms J is clear and consistent in recalling what she was told at the Time of Sale. And she does mention that she has been in contact with the PR, but that she didn't need their help to raise her complaint. So, I see no reason to conclude that her complaint has been influenced by the PR, or that I ought not to rely on what she's said for any other reason.

I've first thought about Ms J's allegation that she was promised by the Supplier at the Time of Sale that she would receive rental income in the years she didn't use her holiday accommodation rights, and that this would lead to her making a profit. Ms J says she rented her week through the Supplier in 2016 and 2017, and didn't pay her maintenance fees in those years, but was unsuccessful in her bid to rent the weeks through the Supplier.

The Lender says the Supplier confirmed it didn't have a rental programme.

The Supplier, in its response to Ms J's initial complaint, contradicts this, saying:

"First Occupancy was for 2014, but at the request of client changed to 2015. [The Supplier] paid the first year maintenance fee. Client came in 2015 where she changed free of charge her week from 49 to 15. Client rented in 2016 & 2017 came in 2018. The Client banked her week with [a third-party exchanger] for 2019."

I have also seen email correspondence between Ms J and the Supplier discussing an in-person meeting with the sales agent in 2018 and her request to rent her week the following year.

To me, the evidence from both Ms J and the Supplier leads me to conclude that it's more likely than not that there was an arrangement of sorts between them (even if not a formal rental programme) that enabled Ms J to receive money in the years that she didn't use the apartment herself, even if this only covered her annual maintenance fees. I can't be sure that the Supplier promised Ms J at the Time of Sale that she was guaranteed a profit from the rental income, but I think Ms J has been clear and consistent when she says that she was told she could expect to receive rental income as part of her Fractional Club membership while she owned the fraction of the Allocated Property and that, by at least covering her costs, this enhanced the prospect of her making a profit from her membership overall.

I've then considered the paperwork from the Time of Sale.

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 Ms J, the financial value of her share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

I've been shown a document titled "Declaration of Treating Customers Fairly Sales Practice". This contains the following declarations:

"2. I/We understand that this is a holiday based purchase and I/We believe that meets our future holiday needs that I/We will be able to use and enjoy.

3. My/Our representative [Name] or their Manager [Name] has fully explained how this membership/RCI Weeks product will benefit us in the future.

[…]

5. *I/We [Ms J] agree that I/We have not entered into this purchase purely for a wider investment opportunity or financial gain.*

Following this, there's a section asking how Ms J enjoyed the presentation, and she has written "[Name] was lovely. Thank you."

So, I think it's likely that Ms J read this document and agreed with the declarations on it. Given this, I'm satisfied that Ms J understood that the membership also offered her holiday accommodation rights that she might use, and that she did not purely (or only) enter the agreement for the investment opportunity.

I am also aware that Ms J later changed her contract so that she had the right to stay in the Allocated Property during week 15, instead of week 49. Ms J says she is unsure why she was given week 49 and suggests that the Supplier didn't emphasise the significance of this at the Time of Sale. Later, she says she requested to change the week because she thought she was more likely to use the accommodation that week. The Supplier confirmed that this change was made at Ms J's request. To me, this suggests that the Supplier didn't emphasise the holiday rights at the Time of Sale. If it had done, I would not have expected Ms J to agree to purchase a membership that gave her holiday rights at a time of year that did not suit her.

Regardless, being interested in the holidaying rights does not preclude Ms J from also being motivated by the investment element of the Fractional Club membership. And, when read alongside Ms J's own recollections, I think the fifth disclaimer leaves open the possibility that Fractional Club membership was described as an investment by the Supplier at the Time of Sale. After all, that disclaimer only asks the customer to agree that they have not entered into the agreement purely because they were motivated by the prospect of making a profit. And as I've just explained, I think that Ms J was, at least partly, motivated by other factors, largely the holiday rights.

Overall, I find Ms J's recollections of what happened at the Time of Sale to be plausible and persuasive. She accurately recalls significant details of the sale, and her recollections are not undermined by any significant errors or inconsistencies. And what she says happened is consistent with the other evidence presented to me. As such, I find it likely that the Supplier breached Regulation 14(3) when selling the Fractional Club membership to Ms J. And for the reasons set out above, I don't think the Supplier's disclaimers went sufficiently far to lessen or undo the impression created by the sales agent that the membership was an investment.

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 Ms J 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.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation.

In Carney, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:

*"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Ms J and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) (which, having taken place during its antecedent negotiations with Ms J, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Ms J's testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when she decided to go ahead with her purchase. That doesn't mean she wasn't interested in holidays. Her own testimony demonstrates that she quite clearly was, which is not surprising given the nature of the product at the centre of this complaint. But, as I've said above, Ms J did not appear to be interested in taking holidays during week 49, which is what she was sold by the Supplier. Also, Ms J agreed to push back the start date of the membership by one year from 2014 to 2015, and she chose to put her week up for rental in 2016 and 2017. And I'm aware that Ms J already owned a different timeshare and wanted to terminate that membership, so she already held holiday rights with another provider that she no longer wanted. So, I am not persuaded that the holiday rights were a crucial factor in her decision to enter the agreement with the Supplier. As Ms J says (plausibly in my view) that Fractional Club membership was marketed and sold to her at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think her purchase was motivated by her 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 her existing timeshare, and with other timeshares that were available to her.

Ms J has not said or suggested, for example, that she would have pressed ahead with the purchase in question had the Supplier not led her to believe that Fractional Club membership was an appealing investment opportunity. And as she faced the prospect of borrowing and repaying a substantial sum of money while subjecting herself to long-term financial commitments, had she not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that she would have pressed ahead with her purchase regardless.

And with all of that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision she ultimately made.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Ms J under the Credit Agreement and related Purchase Agreement 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.

I then set out what I thought was a fair way for the Lender to calculate and pay redress to Ms J.

The responses to my provisional decision

Ms J accepted my PD and had nothing further to add.

The Lender said that it did not intend to challenge my decision and provided some of its own observations about the PD. In summary, these are:

- The PD is premised on a material error of law in its approach to the prohibition under Regulation 14(3) of the Timeshare Regulations.
- The PD dismissed disclaimers in the paperwork with no proper basis or explanation.
- I applied the incorrect test to determine whether the relationship between Ms J and the Lender was unfair.
- My reliance on Ms J's witness testimony is unsafe and I haven't challenged the credibility of her testimony.

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.

Because Ms J accepted my PD, and the Lender does not intend to challenge it, I don't think it's necessary for me to address all of the Lender's comments following the PD, though I confirm I have read and considered these carefully.

Putting things right

Having found that Ms J would not have agreed to purchase Fractional Club membership 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 her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement.

I have seen a letter from the Supplier to Ms J that confirms her membership was cancelled in December 2019. As such, I don't think the Lender needs to do anything with regards to the membership.

Here's what I think needs to be done to compensate Ms J with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Ms J'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 annual management charges Ms J paid as a result of taking out her Fractional Club membership.

(3) The Lender can deduct:

i. The value of any promotional giveaways that Ms J used.
ii. The cheque payment of 1,240 Euros.
iii. The market value of the holidays* Ms J took using her fractional rights
iv. Any rental income the Supplier has shown to have paid to Ms J.

(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 Ms J's credit file in connection with the Credit Agreement reported within six years of this decision.

*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 Ms J took using her Fractional Club membership, 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 her usage.

**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, my final decision is that I uphold Ms J's complaint and direct Shawbrook Bank Limited to take the actions outlined as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 30 July 2025.

Andrew Anderson
Ombudsman