DRN-5515830

The complaint

Mr and Mrs L'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 a claim under Section 75 of the CCA.

What happened

Mr and Mrs L were existing members of a points-based timeshare arrangement, the Vacation Club ('VC') from a timeshare provider (the 'Supplier'), having purchased a total of 4,001 VC points. As members, every year they could use their points in exchange for holidays at the Supplier's holiday resorts. Different accommodation had different points values, depending on factors such as location, size, and time of year. So, for example, a larger apartment in peak season would cost more to a member in their points than a smaller apartment outside of school holiday periods.

On 18 June 2012 (the 'Time of Sale') Mr and Mrs L purchased membership of a different type of timeshare (the 'Fractional Club') from the Supplier. They entered into an agreement with the Supplier to trade in their 4,001 VC points and buy 4,140 fractional points at a cost of £52,013 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £10,886 for membership of the Fractional Club. This amount included £1,796 for their first year's management charge.

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

Mr and Mrs L paid for their Fractional Club membership by taking finance of £10,886 from the Lender in their joint names (the 'Credit Agreement').

Mr and Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 20 February 2020 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time 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 Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.

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

Mr and Mrs L say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

- Told them that purchasing Fractional Club membership would improve accommodation availability, when this was not true.
- Told them that the annual management charges would not increase, when this was untrue.
- Told them that Fractional Club membership was an "investment" in bricks and mortar which would increase in value and be easy to sell.

Mr and Mrs L 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 L.

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

The Letter of Complaint set out several reasons why Mr and Mrs L 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:

- The contractual term setting out the obligation on Mr and Mrs L to pay annual management charges for the duration of their membership or they would be liable to have their contract terminated with no refund, was an unfair contract term under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
- There are terms in the Purchase Agreement which are not individually negotiated, thus creating an imbalance in the rights and obligations of the contracted parties, causing detriment to Mr and Mrs L.
- The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations, including placing undue pressure on Mr and Mrs L to make the purchase, and not providing them sufficient time to consider the contractual documentation prior to signing.
- The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.

The Lender did not send a substantive response so the PR, on Mr and Mrs L's behalf, referred their complaint to the Financial Ombudsman Service. They also sent witness testimony signed and dated as 3 January 2024, setting out their recollections of the Time of Sale.

Mr and Mrs L's complaint was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs L 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 L was rendered unfair to them 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.

And having considered everything on file, I agreed with the Investigator in that I thought the complaint ought to be upheld. But I reached that conclusion having expanded somewhat on the reasons for doing so. So, in order to give everyone the opportunity to respond to my initial thoughts, I set them out in a provisional decision (the 'PD') and invited all parties to submit any new evidence or arguments that they wished me to consider before I made my final decision.

The provisional decision

In the PD I started by setting out what I considered to be the legal and regulatory context that is relevant to this complaint:

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 UTCCR.*
- *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').

I then addressed the merits of Mr and Mrs L's complaint and explained why I thought it ought to be upheld. I said:

"*I've considered all the available evidence and arguments to decide what's 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 Mr and Mrs L 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 L complaint, it isn't necessary to make formal findings on all of them. This includes the allegation(s) that the Supplier made actionable misrepresentations to them at the Time of Sale which meant the Lender was unfair in refusing to accept their claim under Section 75 of the CCA, because, even if that aspect of the complaint ought to succeed, the redress I'm currently proposing puts Mr and Mrs L in the same or a better position than they would be if the redress was limited to misrepresentation.

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 the Mr and Mrs L 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 Mr and Mrs L'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

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[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 Mr and Mrs L and the Lender, along with all of the circumstances of the complaint. When coming to my 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;*
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 Mr and Mrs L and the Lender. And having done so, I think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A.

<u>The Supplier's breach of Regulation 14(3) of the Timeshare Regulations</u>

The Lender does not dispute, and I am satisfied, that Mr and Mrs L'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 the PR, on Mr and Mrs L's behalf, said in the Letter of Complaint that the Supplier did exactly that at the Time of Sale. And Mr L said the following in his statement, when referring to how the Fractional Club was positioned to them by the Supplier:

> *"… [the Supplier] started to tell us about Fractional Ownership.*
>
> *This was the first time that during the event that he started talking about Fractional Ownership, we had never heard or known about this before. He told us that this would be a way of getting money back as we would be buying "bricks and mortar", and that after*

19 years we could sell the property back at a profit, as after 19 years the property would have gained value, unless of course the marketplace would fall on its face, but they said that after 19 years that this would be highly unlikely."

Mr and Mrs L allege, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because:

(1) *There were two aspects to their Fractional Club membership: holiday rights and a profit on the sale of the Allocated Property.*

(2) *They were told by the Supplier that it was highly likely they would get their money back or more during the sale of Fractional Club membership.*

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 L's share in the Allocated Property clearly, in my view, 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 <u>as an investment</u>. 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 L 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 L, 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, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs L as an investment.

For example, in the Member's Declaration document given to Mr and Mrs L to read and sign, there are 15 statements. These include:

"5. We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction."

And the Standard Information form, for example, stipulated the following on page 8 under the heading "Primary Purpose":

"The purchase of Fractional Rights is for the primary purpose of holidays and is neither specifically for direct purposes of a trade in nor as an investment in real estate. [The Supplier] makes no representation as to the future price or value of the Allocated Property or any Fractional rights."

When read on their own and together, these disclaimers go some way to making the point that the purchase of Fractional Rights shouldn't be viewed as an investment. But they weren't to be read on their own. They had to be read in conjunction with what else the Standard Information Form had to say, which included the following disclaimer:

*"**11. Investment advice***

The Vendor, any sales or marketing agent and the Manager and their related businesses (a) are not licenced investment advisors authorized by the Financial Services Authority to provide investment or financial advice; (b) all the information has been obtained solely from their own experience as investors and is provided as general information only and as such it is not intended for use as a source of investment advice and (c) all purchasers are advised to obtain competent advice from legal, accounting and investment advisors to determine their own specific investment needs; (d) no warranty is given as to any future values or returns in respect of an Allocated Property."

This disclaimer seems to have been aimed at distancing the Supplier from any investment advice that was given by its sales agents, telling customers to take their own investment advice, and repeating the point that the returns from membership from the Fractional Club weren't guaranteed.

Yet I think it would be fair to say that, while a prospective member who read the disclaimer in question might well have thought that they would be wise to seek professional investment advice in relation to membership of the Fractional Club, rather than rely on anything they might have been told by the Supplier, it wouldn't have done much to dissuade them from regarding membership as an investment. In fact, I think it would have achieved rather the opposite.

It's also difficult to explain why it was necessary to include such a disclaimer in the Standard Information Form if there wasn't a very real risk of the Supplier marketing and selling membership of the Fractional Club as an investment given the difficulty of articulating the benefit of fractional ownership in a way that distinguishes it from other timeshares from the viewpoint of prospective members.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And there are a number of strands to Mr and Mrs L allegation that the Supplier breached Regulation 14(3) at the Time of Sale, including (1) that membership of the Fractional Club was expressly described as an "investment" and (2) that membership of the Fractional Club could make them a financial gain and/or would retain or increase in value.

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 L 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

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material used to prepare its sales representatives – including a document called "2011 Spain PTM FPOC 1 Practice Slides Manual" (the '2011 Fractional Training Manual')

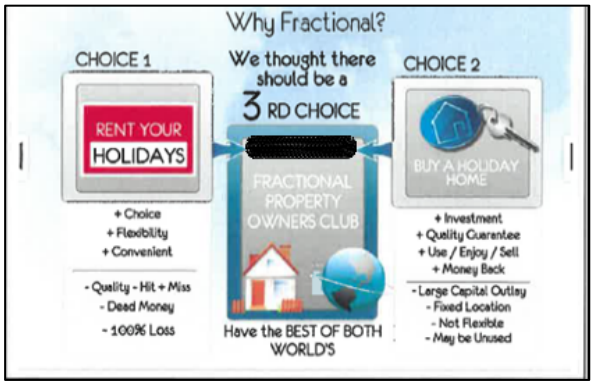
As I understand it, the 2011 Fractional Training Manual was used throughout the sale of the Supplier's first version of the Fractional Club. And given the date of the sale to which this particular complaint relates, and from the wording in parts of the contractual documentation, I'm satisfied that this sale was of this first version of the Fractional Club, so the training material I go on to describe below would have been applicable to this sale.

It isn't entirely clear whether Mr and Mrs L would have been shown the slides included in the Manual. But it seems to me to be reasonably indicative of:

(1) *the training the Supplier's sales representatives would have got before selling Mr and Mrs L's Fractional Club membership; and*

(2) *how the sales representatives would have framed the sale of Fractional Club membership to Mr and Mrs L.*

Having looked through the manual, my attention is drawn to page 6 (of 41) – which includes the following slide on it:



This slide titled "Why Fractional?" indicates that sales representatives would have taken Mr and Mrs L through three holidaying options along with their positives and negatives:

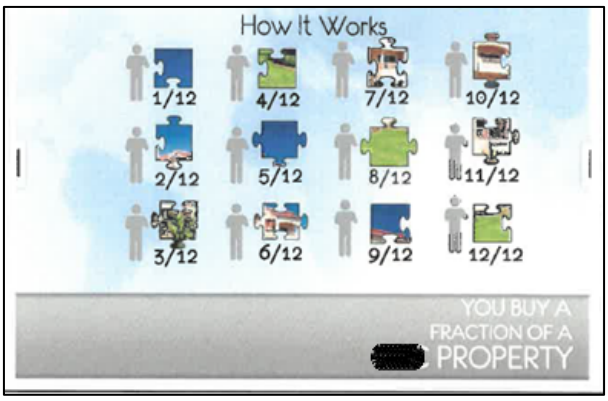
(1) *"Rent Your Holidays"*

(2) *"Buy a Holiday Home"*

(3) *The "Best of Both Worlds"*

It was the first slide in the 2011 Fractional Training Manual to set out any information about Fractional Club membership, and I think it suggests that sales representatives were likely to have made the point to Mr and Mrs L that membership combined the best of (1) and (2) – which included choice, flexibility, convenience and, significantly, an investment they could use, enjoy and sell before getting money back.

The manual then moved on to two slides (on pages 7 and 8) concerned with how Fractional Club membership worked:



I'm aware that the Supplier says that 90-95% of its time during its sales presentations was focused on holidays rather than the sale of an allocated property. Having looked through the 2011 Fractional Training Manual, it seems to me that there were 10 slides on how Fractional Club membership worked before the slides moved on to sections titled "Peace of Mind", "Resort Management" and "Which Fractional". And as 5 of the 10 slides look like they focused on holidays, there seems to me to have been a fairly even split during the Supplier's sales presentations between marketing membership of the Fractional Club as a way of buying an interest in property and as a way of taking holidays.

However, even if more time was spent on marketing membership of the Fractional Club as a way of taking holidays rather than buying an interest in property, as the slides above suggest, in my view, that the Supplier's sales representatives would have probably led prospective members to believe that a share in an allocated property was an investment (after all, that's what the slide titled "Why Fractional" expressly described it as), I can't see why the Supplier wouldn't have been in breach of Regulation 14(3) in those circumstances.

I acknowledge that there was no comparison between the expected level of financial return and the purchase price of Fractional Club membership. However, if I were to only concern myself with express efforts to quantify to Mr and Mrs L the financial value of the proprietary interest they were offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in 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 Shawbrook & BPF v FOS when, 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."

Here Mr L says that they were told they would potentially make a profit from the sale of the Allocated Property, as after 19 years the property was highly likely to have risen in value. So, the Allocated Property was plainly a major part of the product's features and, in this instance, in my view, is a justification for the price of Mr and Mrs L's Fractional Club membership. After all, they exchanged their 4,001 VC points for 4,140 fractional points and paid an additional £9,090 to do so. But I cannot see improving holiday availability, if that was a significant concern for them, could only be achieved by purchasing Fractional Club membership. They could just as easily have purchased more VC points for what would most likely have been significantly less cost than what they paid for only 139 extra points. This only represents an increase of about 3% more points than they already had, which would not have provided them with significantly more holiday rights.

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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

And as the slides clearly indicate that the Supplier's sales representative was likely to have led them to believe that membership of the Fractional Club was an investment that may lead to a financial gain (i.e., a profit) in the future, I don't find Mr L either implausible or hard to believe when he says:

> *"He told us that this would be a way of getting money back as we would be buying "bricks and mortar", and that after 19 years we could sell the property back at a profit, as after 19 years the property would have gained value, unless of course the marketplace would fall on its face, but they said that after 19 years that this would be highly unlikely."*

On the contrary, on the balance of probabilities, I think that's likely to be what Mr and Mrs L were led by the Supplier to believe at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale.

<u>Was the credit relationship between the Lender and the Consumer rendered unfair?</u>

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 L 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 Mr and Mrs L and the Lender that was unfair to them and warranted

relief as a result, whether the Supplier's breach of Regulation 14(3)[3] led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

As has been said, Mr and Mrs L submitted witness testimony, signed and dated as 3 January 2024 setting out their recollections of the Time of Sale. I acknowledge that this was written some 12 years after the events in question, so there is a risk that memories will have faded over time. There is also a risk that their recollections may have been tainted, even subconsciously, by the outcomes in complaints similar to theirs. I have taken all of this into account when deciding how much weight, if any, I can give to this testimony.

I am assisted here by the judgement in the case of Smith v Secretary of State for Transport [2020] EWHC 1954 (QB).

At paragraph 40 of the judgment, Mrs Justice Thornton helpfully summarised the case law on how a court should approach the assessment of oral evidence. Although in this case I have not heard direct oral evidence, I think this does set out a useful way to look at the evidence Mr L has provided. Paragraph 40 reads as follows:

> *"At the start of the hearing, I raised with Counsel the issue of how the Court should assess his oral evidence in light of his communication difficulties. Overnight, Counsel agreed a helpful note setting out relevant case law, in particular the commercial case of Gestmin SPGS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) (Leggatt J as he then was at paragraphs 16-22) placed in context by the Court of Appeal in Kogan v Martin [2019] EWCA Civ 1645 (per Floyd LJ at paragraphs 88-89). In the context of language difficulties, Counsel pointed me to the observations of Stuart- Smith J in Arroyo v Equion Energia Ltd (formerly BP Exploration Co (Colombia) Ltd) [2016] EWHC 1699 (TCC) (paragraphs 250-251). Counsel were agreed that I should approach Mr Smith's evidence with the following in mind:*
>
> a. *In assessing oral evidence based on recollection of events which occurred many years ago, the Court must be alive to the unreliability of human memory. Research has shown that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts (Gestin and Kogan).*
> b. *A proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence (Kogan).*
> c. *The task of the Court is always to go on looking for a kernel of truth even if a witness is in some respects unreliable (Arroyo).*

[3] which, having taken place during its antecedent negotiations with Mr and Mrs L, 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

d. *Exaggeration or even fabrication of parts of a witness' testimony does not exclude the possibility that there is a hard core of acceptable evidence within the body of the testimony (Arroyo).*

e. *The mere fact that there are inconsistencies or unreliability in parts of a witness' evidence is normal in the Court's experience, which must be taken into account when assessing the evidence as a whole and whether some parts can be accepted as reliable (Arroyo).*

f. *Wading through a mass of evidence, much of it usually uncorroborated and often coming from witnesses who, for whatever reasons, may be neither reliable nor even truthful, the difficulty of discerning where the truth actually lies, what findings he can properly make, is often one of almost excruciating difficulty yet it is a task which judges are paid to perform to the best of their ability (Arroyo, citing Re A (a child) [2011] EWCA Civ 12 at para 20)."*

From this, and from my own experience, I find that inconsistencies in evidence are a normal part of someone trying to remember what happened in the past. So, I'm not surprised that there are some things, such as the names of all the salespersons and which of them carried out certain roles, which cannot be remembered. The question to consider, is whether there is a core of acceptable evidence from Mr L such that the gaps in his recollection have little to no bearing on whether his testimony can be relied on, or whether such gaps are fundamental enough to undermine, if not contradict, what he says about what the Supplier said and did to market and sell Fractional Club membership as an investment.

So, for example, I do not find it in any way material that Mr L cannot remember the names of some of the Supplier's staff who were speaking to them. Not remembering someone's name from 12 years ago is not, in my view, material to whether the membership was sold as an investment or not.

And having considered the testimony, I am persuaded that it is likely to be a reliable recollection of events. I say this as it follows, in the main, what was said in the original Letter of Complaint (which was written in 2020) and contains a level of detail that only Mr and Mrs L, as parties to the event, could have known, such as the timings of the meeting, some of the names of the people involved and what they looked like, and the layout of the room for example. And the wording used about how the Fractional Club was said to be framed, does seem personal to Mr and Mrs L. For example, he talks about how the sale of the Allocated Property could be used to form part of his pension. So, whilst being mindful of the fact that the testimony was compiled some 12 years after the event, and after other similar complaints have been considered by this Service, I'm satisfied, in this particular case, that I am able to place weight on what Mr L has said.

And on my reading of his testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when he and Mrs L decided to go ahead with their purchase. That doesn't mean they were not interested in holidays - his own testimony demonstrates that they quite clearly were, which is unsurprising given the nature of the product at the centre of this complaint. But as Mr L says (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 existing membership. After all, when talking about their motivation to make the purchase Mr L says:

> *"… [Mrs L] and I agreed that [purchasing Fractional Club] would be a good way to get our money back and at that time in my life it would be ideal as part of my pension pot."*

Mr and Mrs L have not said or suggested, for example, that they would have pressed ahead with the purchase in question had the Supplier not led them to believe that Fractional Club membership was an appealing investment opportunity. It may be that the Supplier points to the additional points that they received as a result of the purchase as a motivation. But this was only an increase of approximately 3%, for which they paid over £9,000. And again, if it was only improved accommodation availability that they wanted, they could have simply purchased additional VC points. 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 pressed ahead with their purchase regardless.

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

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 L 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."

At the conclusion of the PD, I set out what I considered to be a fair and reasonable way for the Lender to calculate and pay fair compensation to Mr and Mrs L.

The responses to the provisional decision

Mr and Mrs L accepted what I had said in the PD and had nothing further to add. The Lender, however, did not accept the outcome, and sent a comprehensive response explaining why it did not do so, and why it thought the complaint ought not to be upheld.

In summary, it said:

- The Ombudsman had erred in saying that the Letter of Complaint had set out that the Fractional Club had been sold and/or marketed as an investment in breach of Regulation 14(3). There was no such allegation in the Letter of Complaint. The allegation that the product was sold as an investment only appears in the witness testimony.
- Given that there is a misunderstanding about what was contained in the Letter of Complaint, there are concerns about the Ombudsman's conclusion that there was a 'core of acceptable evidence' in the witness testimony. Consistency of the allegation is a key consideration when assessing the veracity of testimony.
- It is disputed that Mr and Mrs L's motivation to purchase the product was due to it allegedly being sold as an investment, as further information provided by the Supplier gives clarity on their motivations:
    a) 5 June 2017: Mrs L contacted the Supplier to discuss potential exit options due to a lack of availability, the management fees were too high, they were about to retire and couldn't afford the payments including booking fees. Mrs L was told she could resell, and partially or fully surrender, and she was sent details via email.
    b) 6 June 2017: Mrs L called back and said she was reluctant to lose the 10,000 points. There was an agreement that the Supplier would waive the booking fees for 2018.
    c) 15 June 2017: Mrs L confirms she does not want to partially surrender as she still uses the points. She again complained about availability.

d) 10 June 2022: The Supplier contacted Mrs L regarding her request to surrender. She confirmed that they wanted to surrender as Mr L was 70, and the management fees along with the booking fee payable on each reservation is too expensive. She also confirmed that she had never wanted to sue the Supplier.

- So, the above points show that they were considering surrendering their membership due to the change in their financial circumstances and the availability of specific accommodation which suits Mrs L's particular requirements. These also show that Mr and Mrs L had no concerns over how the product was sold, and that it wasn't sold to them as an investment as they allege. None of the above points were included in the witness testimony which raises questions about its reliability.
- The fact that Mrs L had no intention to sue the Supplier could suggest that the testimony from Mr L isn't reliable and has been manufactured by the PR since its involvement.
- Why would Mr and Mrs L seek to surrender their membership with approximately eight years remaining without capitalising on their 'investment'.
- No reasonable construction of the disclaimers contained withing the sales documentation would lead the consumer to understand that the product was being sold to them as an investment. And there is no suggestion in the witness testimony that the disclaimers were taken by Mr and Mrs L to suggest the product *was* an investment.
- It is an irrational conclusion to make that the investment advice disclaimer would or did influence Mr and Mrs L's purchasing decision.
- There is no evidence, and it was not stated within the witness testimony, that Mr and Mrs L were shown the extract of slides referenced in the PD.
- The Ombudsman has misunderstood the nature of the fractional product and what came with it, when he calculates that a 3% increase in points was not value for the amount paid. This has disregarded the shorter term the product had, the different management fee structure, reduced booking fees, holiday offers/discounts and the potential for money upon the sale of the Allocated Property.
- The Ombudsman conflates 'money back' and 'profit'. Money back, when expressed in the context of a share in the net sales proceeds of the Allocated Property is a feature of the product. This share could quite reasonably be seen as something ideal for a pension pot, as it is a contribution of funds, like any other one-off payment. To conflate an assumption that because Mr and Mrs L mentioned they would use the money to contribute to their pension therefore means they saw the product as an investment is illogical.

As the deadline for further submissions has now passed, the complaint has come back to me to reconsider.

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.

And having done so, and having reconsidered everything afresh in light of the Lender's response to my PD, I remain satisfied that it would be fair and reasonable to uphold Mr and Mrs L's complaint, for broadly the same reasons as set out above in the extract of my PD. I will however, address the points made by the Lender in response.

The Lender has said that I erred in considering an allegation that there had been a breach of Regulation 14(3) of the Timeshare Regulations, as no such allegation had been made in the Letter of Complaint.

But I would refer the Lender back to the Letter of Complaint here, and in particular the section which sets out what Mr and Mrs L allege that the Supplier told them about Fractional Club membership (see page 4 of the Letter of Complaint):

The Claimants were also given the following misrepresentations

- That availability would be better
- That membership fees would not increase
- That they would be able to sell the timeshare easily
- That the timeshare was an investment in "bricks and mortar"
- That the timeshare would increase in value

Although this was set out as a misrepresentation, and a breach of the Misrepresentation Act 1967, it is clear that the PR is saying that the Supplier sold and/or marketed Fractional Club membership to Mr and Mrs L as an investment. And although it didn't set this out in the exact terms of Regulation 14(3) of the Timeshare Regulations at this point in the Letter of Complaint, I do not consider it necessary for the legislation to be set out in exact terms. It is the essence of what Mr and Mrs L have said here that is important, and it has been set out, clearly in my view, that they said in the Letter of Complaint that the Supplier sold and/or marketed Fractional Club membership to them as an investment at the Time of Sale.

So, I am satisfied that the allegation that Fractional Club was sold and/or marketed to Mr and Mrs L as an investment at the Time of Sale, and so it follows that I do not think there was inconsistency in this regard between the Letter of Complaint and their testimony. So I remain satisfied that there is a core of acceptable evidence within the testimony, and, whilst still being mindful of the fact that the testimony was compiled some 12 years after the event, and after other similar complaints have been considered by this Service, I remain satisfied, in this particular case, that I am able to place weight on what Mr L has said.

The Lender has provided sales and contact notes from the Supplier that it says shows Mr and Mrs L's motivation to make the purchase was not due to it being an investment.

But I am not persuaded by this. I can see that Mrs L contacted the Supplier in June 2017, and discussed *potential* exits options (my emphasis) due to problems they were experiencing with the membership. But from the evidence I've seen, I can't see that Mr and Mrs L ever said they *wanted* to surrender their membership – it seems they were discussing the problems they were experiencing as a way of reducing their overall cost. And after all, on the call records from 6 and 15 June 2017 it seems that Mrs L expressly said she did *not* want to surrender, or even partially surrender the membership, as she didn't want to lose the points and she still wanted to use them. And I fail to see the relevance of the note from 10 June 2022, as this was over two years after they had made a complaint and their claim for all their money back from the Lender. And it wasn't the Supplier that they were taking action against in any event – it was the Lender.

The Lender has said that no reasonable construction of the disclaimers contained within the sales documentation would lead the consumer to understand that the product was being sold to them as an investment. And there is no suggestion in the witness testimony that the disclaimers were taken by Mr and Mrs L to suggest the product *was* an investment.

I agree that the disclaimer's aim seems to be to ensure purchasers didn't rely on what they were told as investment advice, or a warranty as to the future value of the Allocated Property. So, I agree with the Lender, in that the disclaimer, on its own, cannot be construed as a representation that the Fractional Club is an investment. But I still regard its contents as more relevant to the sale of an investment than a holiday product, because it says those making the timeshare sale obtained information "*from their own experience as investors*" and recommends purchasers seek advice from "*investment advisors*" about their "*investment*

needs". But in any event, the disclaimer doesn't seem to have been focussed on by Mr and Mrs L at the Time of Sale, so doesn't advance either side's case anyway.

The Lender has said there is no evidence, and it was not stated within the witness testimony, that Mr and Mrs L were shown the extract of slides referenced in the PD.

As I said in the PD, it isn't entirely clear whether Mr and Mrs L would have been shown the slides included in the Manual. And it has not been said by Mr and Mrs L what the nature of the sales presentation was and what form it took. But the slides I've referenced were from the training manual used to train the Supplier's sales staff in how they should sell Fractional Club membership to customers such as Mr and Mrs L. So even if they weren't shown the actual slides I've referenced, they seem to me to be reasonably indicative of:

(1) the training the Supplier's sales representatives would have got before selling Mr and Mrs L's Fractional Club membership; and

(2) how the sales representatives would have framed the sale of Fractional Club membership to Mr and Mrs L.

So, having considered everything afresh, I remain satisfied that, for the reasons I set out in my PD, the Supplier likely sold and or marketed membership of the Fractional Club to Mr and Mrs L as an investment in breach of Regulation 14(3) of the Timeshare Regulations at the Time of Sale.

But, as I said in my PD, a breach of Regulation 14(3) at the Time of Sale does not automatically 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 must consider whether the Supplier's breach of Regulation 14(3) led Mr and Mrs L to enter into the Purchase Agreement and the Credit Agreement.

And their motivation was set out in their testimony which, as I've said, I find persuasive:

> *"… [Mrs L] and I agreed that [purchasing Fractional Club] would be a good way to get our money back and at that time in my life it would be ideal as part of my pension pot."*

So, I remain satisfied that the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made. And with that being the case, I am satisfied that the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs L under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. So, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Putting things right

Having found that Mr and Mrs L 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 them back in the position they would have been in had they not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs L agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr and Mrs L were existing Vacation Club members, and their membership was traded in against the purchase price of Fractional Club membership. Under their Vacation Club membership, they had 4,001 Vacation Club points, and like Fractional Club membership,

they had to pay annual management charges as a Vacation Club member. So, had Mr and Mrs L not purchased Fractional Club membership, they would have always been responsible to pay annual management charges of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs L from the Time of Sale as part of their Fractional Club membership should amount only to the difference between those charges and the annual management charges they would have paid as ongoing Vacation Club members.

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

(1) The Lender should refund Mr and Mrs L'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 L's Fractional Club annual management charges paid after the Time of Sale and what their Vacation Club annual management charges would have been had they not purchased Fractional Club membership.

(3) The Lender can deduct:

   i. The value of any promotional giveaways that Mr and Mrs L used or took advantage of; and

   ii. It is this Service's usual approach to allow the Lender to make a deduction for the market value of the holidays Mr and Mrs L took using their Fractional Points *if* the Points value of the holiday(s) taken amounted to more than the total number of Vacation Club Points they would have been entitled to use at the time of the holiday(s) as ongoing Vacation Club members. However, we say that this deduction should be proportionate, and relate only to the additional Fractional Points that were required to take the holiday(s) in question. In the PD I said that if the Lender proposes to make such a deduction, it should provide a breakdown of the points used per holiday in its response. It did not provide this breakdown, nor did it give any details of the holidays taken. As such it is a reasonable assumption that the holiday's that Mr and Mrs L may have taken would always have been available to them as ongoing Vacation Club members, and as such no deduction in the compensation should be made for the value of the holidays they took using their Fractional Points.

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

(4) Simple interest[4] 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 L's credit files in connection with the Credit Agreement reported within six years of this decision.

If Mr and Mrs L'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 their Fractional Club membership.

My final decision

I uphold this complaint, and direct Shawbrook Bank Limited to calculate and pay fair

[4] 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.

compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 27 May 2025.

Chris Riggs
Ombudsman