DRN-5792153

The complaint

Mr B'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 him 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

Mr B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 January 2014 (the 'Time of Sale') together with his wife, who has sadly passed away.

Mr and Mrs B had been existing customers of the Supplier since 2003. Prior to their purchase of the Fractional Club membership, they held a membership of the European Collection timeshare club. This was a "points-based" timeshare – so Mr and Mrs B purchased a number of points from the Supplier, that they could then use in various ways to purchase holidays in the resorts offered by the Supplier.

The Fractional Club membership that Mr and Mrs B upgraded to in 2014 was asset backed – which meant that on top of the holiday rights that were available in the same way, it also included a share in the net sale proceeds of a property named on Mr and Mrs B's Purchase Agreement (the 'Allocated Property') once their membership term comes to an end.

Mr and Mrs B entered into an agreement with the Supplier to buy 11,000 fractional points at a cost of £18,480 (the 'Purchase Agreement'). They traded in 11,000 of their European Collection points at a conversion price of £1 per point and so ended up paying £7,480 for membership of the Fractional Club.

Mr and Mrs B paid for their Fractional Club membership by taking finance of £19,835.64 from the Lender (the 'Credit Agreement'), with the remainder of the funds used to repay previous borrowing taken to purchase points through their European Collection membership.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 24 June 2022 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. 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.
4. The decision to lend being irresponsible because (1) the Lender did not carry out the right creditworthiness assessment and (2) the money lent to them under the Credit Agreement was unaffordable for them.

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

Mr B says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told him and Mrs B that Fractional Club membership had a guaranteed end date when that was not true.
2. told him and Mrs B that they were buying a share in property when that was not true.
3. told him and Mrs B that the Supplier's holiday resorts were exclusive to its members when that was not true.

Mr B says that he has 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, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to him.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mr B says that the Supplier breached the Purchase Agreement because there is no guarantee that he will receive their share of the net sale proceeds of the Allocated Property.

Mr B also says that he and Mrs B found it difficult to book the holidays they wanted, when they wanted.

As a result of the above, Mr B says that he has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to him.

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

The Letter of Complaint set out several reasons why Mr B says that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to him and Mrs B as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The contractual terms setting out (i) the duration of their Fractional Club membership and/or (ii) the obligation to pay annual management charges for the duration of their membership were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
3. Mr and Mrs B were pressured into purchasing Fractional Club membership by the Supplier.
4. 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.
5. The money lent to Mr and Mrs B under the Credit Agreement was unaffordable for them.
6. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness and affordability assessments.
7. The Lender paid an undisclosed commission to the Supplier.

As the Lender did not issue a final response to Mr B's complaint within the applicable time limit, he referred it to the Financial Ombudsman Service and it was assessed by one of our Investigators.

Our Investigator thought the complaint should be upheld. In summary, they thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and

Mrs B 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 B was rendered unfair to him for the purposes of section 140A of the CCA.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision, so it was passed to me.

I sent both parties my provisional decision, setting out why I thought the complaint should be upheld and inviting them to send me anything else they wanted me to take into account before making a final decision. 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 B as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and the Lender unfair to him 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 B's complaint, it isn't necessary to make formal findings on all of them. This includes the allegations of misrepresentations and breaches of contract on the part of the Supplier that gave Mr B a claim under Section 75 of the CCA, and that the decision to lend was irresponsible. That's because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Mr B in the same or a better position than he would be if the redress was limited to any of these other complaint points.
>
> **Section 140A of the CCA: did the Lender participate in an unfair credit relationship?**
>
> Having considered the entirety of the credit relationship between Mr B and the Lender along with all of the circumstances of the complaint, I think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:
>
> 1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;
> 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 B and the Lender.
>
> The Supplier's breach of Regulation 14(3) of the Timeshare Regulations
>
> The Lender does not dispute, and I am satisfied, that Mr B's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract"

for the purposes of the Timeshare Regulations.

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

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

But Mr B says that the Supplier did exactly that at the Time of Sale. During the course of this complaint, he and Mrs B said:

> "*The representatives advised us that buying fractional points was an investment in property. The property would be sold in 15 years time and we would at least make our money back*."

It is alleged therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because Mr and Mrs B were told by the Supplier that they would get their money back, or possibly more, during the sale of the 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 B's share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs B 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 B, the financial value of his 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 B as an investment.

For example, the terms and conditions attached to the Purchase Agreement that Mr and Mrs B signed said, at point 1:

> "*You should not purchase Your … Fractional Points as an investment in real estate. The Purchase Price paid by You relates primarily to the provision of memorable holidays for the duration of Your ownership …*"

A similar point is made within a document titled "Customer Compliance Statement/Declaration to Treating Customers Fairly" that Mr and Mrs B signed:

> "*5. We understand that the purchase of our … Fractional Points is an investment in our future holidays, and that it should not be regarded as a property or financial investment …*"

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And there are a number of strands to Mr B's 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*" in several different contexts and (2) that membership of the Fractional Club could make him 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 B or led them to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered them the prospect of a financial gain (i.e., a profit); and, in turn
(2) whether the Supplier's actions constitute a breach of Regulation 14(3).

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

How the Supplier marketed and sold the Fractional Club membership

I have considered what both parties have told us about the sale of the Fractional Club membership. The Lender has provided a response from the Supplier to the concerns raised within the Letter of Complaint. The Supplier has said, in summary, that:

- It is acutely aware of its obligations under Regulation 14(3) of the Timeshare Regulations and to that end made it extremely clear in its contractual paperwork that its Fractional Club points should not be bought as an investment.

- It categorically denies that its sales representative sold the Fractional Club membership as an investment. In any event it was impossible that Mr and Mrs B could have overlooked the disclaimers in the contractual paperwork and made their decision to purchase the membership based on any such representation.

- It considered it extremely difficult to believe that Mr and Mrs B would have been advised they would receive their money back (or more) from the sale of the Allocated Property. This was because it would be impossible to guarantee what the sale price of that property would be, some 15 years in advance.

- There was nothing within its records to suggest that Mr and Mrs B purchased

> the Fractional Club membership on the understanding that they would receive a return in excess of the amount they paid to buy it. Had they intimated such an intention, a representative would have "*clarified the position*" with them.

I have carefully considered the Supplier's comments. I explained above that I do not think I should rely solely on the contemporaneous paperwork. I understand that Mr and Mrs B attended a sales meeting prior to receiving (and signing) the paperwork, which they recalled as a "*high pressure sales pitch*". The paperwork would only have been provided to Mr and Mrs B after they had decided to purchase the membership, with that decision having been informed by the way the Supplier presented the membership to them during the meeting.

I do not consider it impossible that Mr and Mrs B could have overlooked the disclaimers in the contractual paperwork. In any event, I do not think those disclaimers would have served to disabuse Mr and Mrs B of any notion of a potential profit they may have had. If the Supplier had presented the possibility of a financial gain during the sales meeting, I do not think disclaimers to the effect that the Fractional Club membership should not *primarily* be considered an investment would necessarily have caused Mr and Mrs B to think any differently. Moreover, they were not acquiring any additional holiday rights – so the principal benefit of the Fractional Club membership was the investment element, rendering disclaimers to the effect that the purchase was of holiday rights and not an investment in real estate somewhat meaningless.

There is evidence from the Time of Sale in the form of a note made by the Supplier, provided by the Lender in response to our Investigator's assessment, that further suggests the investment element was both discussed at the Time of Sale and a factor in Mr and Mrs B's decision to purchase the membership in question. This note says that "[Mr and Mrs B] *are buying the FP because they want to get sth at the back end*".

I take this to mean that Mr and Mrs B purchased the Fractional Points because they wanted to get "*something*" back – i.e. some sort of financial return – at the end of the term. And I do that because, in combination with all of the other evidence I've seen, this contemporaneous note, made by the Supplier, indicates to me that the membership was marketed to Mr and Mrs B as an investment. It is hard to see why the Supplier itself would make such a record if that had not been discussed explicitly.

The Lender says that this note does not indicate that the membership was sold as an investment, as the "*something back*" could refer to the holidays. I do not find that likely. It would be a very unusual way to record such a sentiment, rather than simply referring to holidays explicitly. And the reference to the "*back end*" suggests the end of the term, a point at which it would be illogical to receive the benefit of the yearly holidays that Mr and Mrs B would have wanted to take *during* the term.

I acknowledge that there is some ambiguity as to whether "*something back*" would equate to a return in excess of what Mr and Mrs B were paying to purchase the membership rather than simply any amount, i.e. more or less. I would note firstly that these words were used by the Supplier in recording Mr and Mrs B's sentiment and would not have been recorded verbatim. As I've noted above, Mrs B recalled being told by the Supplier that the Fractional Club membership was an investment on which she and Mr B would "***at least** make our money back*" (my emphasis). So to my mind, Mr and Mrs B had understood that there was the possibility of a return greater than the cost of the membership – as they could expect to recover that amount at a minimum.

I also think the circumstances of the sale and, in particular, the terms of the Fractional Club membership compared to those of the European Collection membership that Mr

and Mrs B already owned are instructive. As the Supplier has confirmed, the availability and standard of holidays on offer through each membership was the same. So Mr and Mrs B weren't increasing the holidays options to which they had access by purchasing the Fractional Club membership. While the Fractional Club membership did offer the potentially attractive benefit of a shorter term, I understand from the Supplier's sales notes of the time that Mr and Mrs B retained some of their European Collection points and so did not avail themselves of this anyway. I note there was also a programme through which Mr and Mrs B may have been able to earn an income by renting out their points if they did not wish to use them in any given year.

It is hard, therefore, to see how the Supplier could have differentiated the Fractional Club membership without reference to the investment element and the prospect of a financial gain for Mr and Mrs B, such that they were willing to pay an additional £7,480 for it. The share in the Allocated Property is a key feature of the Fractional Club membership – and a key difference from the European Collection. I cannot see why Mr and Mrs B would have purchased the Fractional Club membership at such a cost when they were getting no other holiday-related benefits unless they were led by the Supplier to expect to receive a financial gain from the sale of their share in that property when the time came. Put simply, it made no financial sense for Mr and Mrs B to purchase the Fractional Club membership unless they thought they may get back more than they were paying out having been led to that conclusion by the Supplier.

Taking all of this into account, I think it is more likely than not that the Supplier positioned the Fractional Club membership to Mr and Mrs B as an investment that may lead to a financial gain.

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

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

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

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

For largely the reasons I've set out above, I think the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs B decided to go ahead with their purchase.

As I've already outlined, Mr and Mrs B were not obtaining any better holiday-related benefits by trading in their European Collection points for Fractional Club points (while also paying a significant additional sum). There is no doubt that they were interested in the holidays that the membership offered and I can see that they made use of the membership for that purpose, just as they had their European Collection membership. But given their existing European Collection membership, I think there had to be

another reason for their decision to upgrade to the Fractional Club.

While the Fractional Club membership offered potential benefits in the form of a shorter term and the rental programme, the former was not applicable to Mr and Mrs B as they retained some of their European Collection points and there is nothing to suggest that they were interested in the latter (most notably, it seems they did not go on to utilise it at any point).

The sales notes made at the time reflect that the investment element of the Fractional Club membership was a key factor in Mr and Mrs B's decision. They recalled that it was, citing the prospect of a return of at least the money they paid out as their motivation for the purchase. Given their circumstances as I've outlined above, I cannot see any other good reason for Mr and Mrs B to have paid such an amount for the holiday-related benefits offered by Fractional Club membership compared to those of their existing membership.

With that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision Mr and Mrs B ultimately made. 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.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr B 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.

Fair Compensation

Having found that Mr and Mrs B 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 Mr B was unfair under section 140A of the CCA, I think it would be fair and reasonable to put him back in the position he would have been in had he and Mrs B not purchased the Fractional Club membership (i.e. not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr B agrees to assign to the Lender his Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr and Mrs B were existing European Collection members and some of their points were traded in against the purchase price of Fractional Club membership. And, as with Fractional Club membership, they had to pay annual management charges as European Collection members. So, had Mr and Mrs B not purchased Fractional Club membership, they would always have been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs B 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 European Collection members. I understand this may not result in any amount falling due to Mr and Mrs B, given their retention of some of their European Collection points.

What's more, Mr and Mrs B paid for their existing European Collection points using finance (with two loans taking out over preceding years, which I'll refer to as 'the EC finance'), £12,355.64 of which I understand they refinanced using the Credit Agreement. So, part of what they borrowed at the Time of Sale was used to repay the earlier borrowing under the EC finance that always had to be repaid. As a result, I don't think it would be fair or reasonable to direct the Lender to refund everything that was paid and, if relevant, due to be repaid under the Credit Agreement, otherwise Mr B would be in a better position than he would have been if he and Mrs B hadn't purchased Fractional Club membership. In light of that, I think this ought to be reflected in my redress when remedying the unfairness I have found.

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

(1) The Lender should refund the difference between Mr and Mrs B's repayments to it under the Credit Agreement and what they would have paid under the EC finance, including the difference between any sums paid to settle the debt owing under the Credit Agreement and what would have needed to have been paid to settle the EC finance. The Lender should also reduce any outstanding balance under the Credit Agreement, if there is one, so that Mr B would only owe now what he would have owed under the EC finance and change any future repayments so that he is making the same repayments he was towards the EC finance.

(2) In addition to (1), the Lender should also refund the difference between Mr and Mrs B's Fractional Club annual management charges paid after the Time of Sale and what their European Collection 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 B used or took advantage of; and
ii. The market value of the holidays* Mr and Mrs B took using their Fractional Points *if* the Points value of the holidays taken amounted to more than the total number of European Collection Points they would have been entitled to use at the time of the holidays as ongoing European Collection members. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.

For example, if Mr and Mrs B took a holiday worth 2,550 Fractional Points and they would have been entitled to use a total of 2,500 European Collection Points at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if they would have been entitled to use 2,600 European Collection Points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

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

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

(5) The Lender should remove any adverse information recorded on Mr B's credit

file in connection with the Credit Agreement reported within six years of this decision.

(6) If Mr B's Fractional Club membership is still in place at the time of this decision, as long as he agrees to hold the benefit of his interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify him against all ongoing liabilities as a result of his Fractional Club membership.

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

**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.

The PR responded to confirm that Mr B accepted my provisional decision.

The Lender also responded. It did not accept my provisional decision and provided some further comments it wanted me to take into account.

Having received the relevant responses from both parties, I'm now finalising my decision.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this

complaint and explaining the reasons for reaching my final decision.

The Lender set out the reasons for its disagreement with my provisional findings within three broad themes:

- The reliability of the testimony provided and the weight I placed upon it,
- Matters relating to Regulation 14(3) of the Timeshare Regulations, and
- The test I had applied in determining whether any unfairness had arisen in its credit relationship with Mr B.

I'll deal with each in turn.

The testimony

The Lender finds it concerning that I have placed such weight upon the statement given by Mrs B for a number of reasons. It set out general concerns about the provision of such evidence by the PR and questions its reliability, noting that it was unsigned and undated. I do not think it uncommon or inherently unreliable that such a typed statement be provided without a signature. And it plainly isn't undated. There are in fact two dates upon it – one being the typed date (which I take to be the date of creation, 26 October 2018) and another then stamped upon it (suggesting the document to be a copy of a letter sent and received by an unknown entity). That date is unclear by either way it predates the Letter of Complaint.

Moreover, the statement was made by Mrs B who sadly passed away in late 2019. So I do not share the concerns of the Lender about evidence being produced "much later date than it was purportedly first prepared" in this case.

The Lender also said it wasn't clear why I had relied on Mrs B's testimony in favour of the contemporaneous notes and/or documents from the Time of Sale. The Lender may not agree with the view I took but I explained my reasons for it in my provisional decision and there is little I can helpfully add to my comments without repeating them. I would underline that not only did I consider the contemporaneous notes made by the Supplier, but set out why these *supported* Mr B's allegation that the membership was sold as an investment and was something that was material to his and Mrs B's decision to purchase it. In short, this was because one of those notes recorded their desire to "get something" at the end of the term. The Lender has not commented on that aspect of my provisional findings, with its reply phrased in more general terms.

The Lender alleges "factual inaccuracies" within the testimony without specifying what they are. Accepting that no-one's recollections are flawlessly accurate, I do not think there is anything in what Mrs B said that undermines those parts of her testimony on which I have relied. Nor do I agree with the Lender's view that the absence of greater detail on the potential investment returns or mechanisms – or evidence that Mr and Mrs B enquired about these at the Time of Sale – is reason to discount the investment element of the membership as a material factor in Mr and Mrs B's decision to purchase it.

Regulation 14(3) of the Timeshare Regulations

The Lender alleges that my provisional decision "falls into error" by conflating two different meanings of the word 'return': (i) a 'return on investment', which is normally understood to mean the measure of profit (the return) on the original investment; and (ii) a customer being told that some money will be 'returned' upon sale, which carries no connotation of investment or profit. I do not agree that I have conflated the two and I note that the Lender's reply does not outline the reasons for such a view.

I found both that the Supplier had, most likely, marketed the membership as an investment through which there was the prospect of a financial gain and that this was a materially motivating factor in Mr and Mrs B's decision to purchase it. In reaching that conclusion, I did not "merely dismiss" the disclaimers signed by Mr and Mrs B as the Lender suggests. I carefully considered them as part of the broader evidence available in determining a fair and reasonable outcome to this complaint. I gave my reasons for these conclusions in my provisional decision but again the Lender has not engaged with the specifics of those reasons so there is little I can helpfully add here, other than to underline that it has not said anything that leads me to a different view of things.

Assessing the fairness of the credit relationship

The Lender considers that I have "reversed the burden of proof" when assessing whether any unfairness arose in its credit relationship with Mr B. I do not agree. I set out in my provisional decision that if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr B and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration. In other words, the question I considered was whether the Supplier's positioning of the membership as an investment opportunity had a material impact on Mr and Mrs B's decision to purchase it. And I specifically stated that I thought it had.

Putting things right

With no comments from either party on the compensation I'd proposed to award, I see no reason to depart from my suggested way of putting things right – as follows:

(1) The Lender should refund the difference between Mr and Mrs B's repayments to it under the Credit Agreement and what they would have paid under the EC finance, including the difference between any sums paid to settle the debt owing under the Credit Agreement and what would have needed to have been paid to settle the EC finance. The Lender should also reduce any outstanding balance under the Credit Agreement, if there is one, so that Mr B would only owe now what he would have owed under the EC finance and change any future repayments so that he is making the same repayments he was towards the EC finance.

(2) In addition to (1), the Lender should also refund the difference between Mr and Mrs B's Fractional Club annual management charges paid after the Time of Sale and what their European Collection annual management charges would have been had they not purchased Fractional Club membership.

(3) The Lender can deduct:

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

For example, if Mr and Mrs B took a holiday worth 2,550 Fractional Points and they would have been entitled to use a total of 2,500 European Collection

Points at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if they would have been entitled to use 2,600 European Collection Points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

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

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

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

(6) If Mr B's Fractional Club membership is still in place at the time of this decision, as long as he agrees to hold the benefit of his interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify him against all ongoing liabilities as a result of his Fractional Club membership.

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

**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

I uphold this complaint and require Shawbrook Bank Limited to compensate Mr B in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 March 2026.

Ben Jennings
Ombudsman