DRN-5892191

The complaint

Mrs and Mr H's complaint relates to a loan they took out in 2014. They say, in essence, that Shawbrook Bank Limited 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.

Background to the complaint

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought Shawbrook Bank should resolve it. I've reproduced my provisional findings below, which form part of this final decision:

What happened

Mrs and Mr H were long-standing customers of a timeshare provider I'll call "D". Over time they acquired points in D's 'European Collection', which entitled them to take holidays at various locations.

In August 2014 Mrs and Mr H were at one of the holiday locations when they attended a sales meeting with D (the "Time of Sale"). At the meeting they purchased membership of a different timeshare arrangement (the "Fractional Club"), entering into two agreements (I'll refer to these collectively as the "Purchase Agreement") with D to exchange the points they held under their existing European Collection timeshare membership, receiving 15,000 'fractional points' as trade-in value. In addition to the trade-in, Mrs and Mr H bought 5,000 more fractional points. This gave them 20,000 fractional points in total – equivalent to five weeks of fractional rights of use – which they could use to reserve holidays.

To fund their purchase, Mrs and Mr H took out a £15,300 fixed sum loan with Shawbrook Bank (the "Credit Agreement"). The Credit Agreement was drawn up over a 10-year term, though I understand Mrs and Mr H settled the loan in December 2014.

Fractional Club membership was asset backed, giving Mrs and Mr H more than just holiday rights. It included a share in the net sale proceeds of a property named on their Purchase Agreement (the "Allocated Property") after their membership term ended. The Purchase Agreement gave a proposed sale date of 31 December 2029.

As I understand it, between 2014 and 2019 Mrs and Mr H frequently used their membership to take holidays. Their final booking was in March 2020, but had to be cancelled due to the Covid-19 pandemic.

On 5 June 2020, Mrs and Mr H used a professional representative "S" to write to Shawbrook Bank (the "Letter of Complaint"), citing concerns over what they were told by D at the Time of Sale: The Letter of Complaint went into some detail in over the specific assertions made and included a statement from Mrs and Mr H ("the "Witness Statement") setting out their recollections. Both parties are familiar with the points raised, so I'll simply summarise those concerns here as:

- Poor sales practices, omissions, and misrepresentations by D at the Time of Sale, giving Mrs and Mr H a claim against Shawbrook Bank under the connected lender liability provisions in section 75 of the CCA; and
- Shawbrook Bank having responsibility for antecedent negotiations between D and Mrs and Mr H under the deemed agent provisions of section 56 of the CCA, making Shawbrook Bank party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of section 140A of the CCA.

Shawbrook Bank rejected all the complaint points and Mrs and Mr H referred matters to us. Our investigator thought that D had marketed and sold Fractional Club membership as an investment to Mrs and Mr H at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the "Timeshare Regulations"). Given the impact of that breach on Mrs and Mr H's purchasing decision, the investigator concluded that the credit relationship between Shawbrook Bank and Mrs and Mr H was rendered unfair to them for the purposes of s.140A CCA.

The investigator set out what she thought Shawbrook needed to do to put things right. In summary, this involved putting Mrs and Mr H into a position as close as could reasonably be achieved to the position they would have been in had they not purchased Fractional Club membership or borrowed the money to do so. This included 'unwinding' the trade-in of their European Collection points at the Time of Sale.

S, responding on Mrs and Mr H's behalf, indicated they were willing to accept the investigator's assessment and resolution proposal. But Shawbrook Bank didn't agree with the investigator's conclusions. It said, again in summary:

- Mrs and Mr H had signed sales documents that made clear that Fractional Club membership was not an investment.
- The notes D compiled at the Time of Sale say that Mrs and Mr H liked the shorter term of Fractional Club membership, which also meant lower overall management charges. This was supported by comments in their Witness Statement, as well as the appeal of the luxury holidays that Fractional Club membership brought.
- Mrs and Mr H's Witness Statement was contradictory, because it gave several explanations for the Fractional Club membership purchase.

Our investigator wasn't persuaded to reach a different conclusion and so the case has been passed to me for review and determination.

The legal and regulatory context

In considering what's 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'll refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I'm satisfied that of particular relevance to this complaint is:

- the CCA (including Section 75 and Sections 140A-140C)
- the law on misrepresentation
- the Timeshare Regulations
- the Unfair Terms in Consumer Contracts Regulations 1999 ("UTCCR")

- the Consumer Protection from Unfair Trading Regulations 2008 ("CPUT")
- 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 and Reast 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 I've already noted, I'm also required to take into account, where appropriate, what I consider to have been good industry practice at the relevant time. In this complaint, that includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the "RDO Code").

What I've provisionally 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.

Where necessary, I've reached conclusions on the balance of probabilities – which means I have based them on what I consider more likely than not to have happened given the available evidence and the wider circumstances.

After careful consideration, I intend to uphold Mrs and Mr H's complaint. Before I explain why, I want to make it clear that my role as an ombudsman doesn't mean I need to address every single point that has been made to date. If I haven't commented on or referred to something that either party has said, that doesn't mean I haven't considered it.

I'm conscious there are various aspects to Mrs and Mr H's complaint. These include the allegations of misrepresentation (and some suggestions of breach of contract) in respect of the Fractional Club membership, and the suggestion that Shawbrook Bank ought to have accepted and met their claims under section 75 of the CCA.

While these are undoubtedly relevant arguments, I'm minded to conclude that the available evidence indicates acts or omissions on D's part (for which Shawbrook Bank holds responsibility) rendered unfair the credit relationship between Mrs and Mr H and Shawbrook Bank for the purposes of section 140A of the CCA.

So even if those other aspects of the complaint ought to succeed, the outcome I've reached puts Mrs and Mr H in the same (or better) position as they would have been in if redress were limited to the remedies for misrepresentation or breach of contract.

Section 140A of the CCA

Under section 140A, 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)[1].

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 (D) on the creditor's behalf[2] before the making of the Credit and Purchase Agreements. It's my understanding of relevant law[3] that antecedent negotiations under section 56 cover both the acts and omissions of D.

It follows that I see no great difficulty with Mrs and Mr H's position that D is deemed agent of Shawbrook Bank for the purpose of the pre-contractual negotiations. Indeed, this is not a point Shawbrook Bank has sought to contest.

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 approved by the Supreme Court in the 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.

Bearing all of this in mind I've considered the submissions from the respective parties, with particular regard to evidence both have provided on what was likely to have been said and/or done at the Time of Sale.

Mrs and Mr H have said from the outset that their decision to purchase Fractional Club membership was based on the following:

- that previous meetings with D had left them concerned over the length of their European Collection non-fractional membership, which was set to run until 2054.
- that responsibility for costs and other obligations under the membership agreement would pass to their children.
- that D led them to believe that converting to Fractional Club membership over a 15-year term was the only way to bring their European Collection membership to an end and avoid this scenario.

Mrs and Mr H's witness statement is undated, but appears to me consistent with the content of the Letter of Complaint submitted to Shawbrook Bank. I'm satisfied the witness statement reflects Mrs and Mr H's recollection of what happened at the Time of Sale. They say:

> *"…in 2012 we attended a briefing meeting…There, the soon to be introduced Fractional Membership Club was briefly outlined. At this point we had been advised that our original membership would last until 31st December 2054 when it will be dissolved. We were further advised that in the event of us both becoming deceased the liability for Management Fees would be the responsibility of our children until this date (2054). We had sought confirmation of this point several times and were always advised that was the case.*

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[1] Section 140A(1) of the CCA.
[2] *Scotland and Reast*, paragraphs 56 and 74.
[3] See, for example *Plevin*, at paragraph 31, and *Shawbrook & BPF v FOS* at paragraph 135.

In 2013 [D] *invited us to a meeting during our stay at* [one of D's resorts] *to discuss important updates to the Club Membership, including Fractional Membership. The representative told us that we could not walk away from the Club. We were advised that we could purchase Fractional which would at least give us a far shorter membership.*

[D] *then told us that if we did not consider moving to Fractional, we would be locked into a Points contract, with no way out, which would ultimately be inherited by our children whether we liked it or not.*

On or about the 26th August 2014 we were on holiday at [another of D's resorts]*. We were invited to attend a meeting by* [D] *which we accepted. We were very worried about leaving the burden of maintenance under our Points contract to our children based on what we were told in previous updates.*

We initially sat through a digital presentation and were then taken to an office with no windows where we were introduced to [D's representatives]*. During the meeting we informed* [D] *that we were concerned that our children would be left with the liability of Membership fees until 2054 in the event of our deaths.*

[D] *told us that the only way out of the European Collection Membership was to convert to Fractional. We were told that Fractional contracts had a maximum period of 15 years, meaning that we would reduce our Club membership to the year 2029.*

[D] *then told us that Fractional ownership is a property investment which would provide a financial return and a profit once the property was sold in 2029.* [He] *said that in order to join, we would need to have a minimum of 20,000 points, meaning that we needed to convert all points to Fractions and purchase an additional 5,000 Fractions.*

[He] *showed us a document entitled 'New Level Summary' in which he wrote down that we would have a dividend in 15 years. We would have 5 shares and would receive approximately 10% of the sale proceeds.* [He] *said that we should just purchase because it's a 'no brainer'. Either we stay in a lengthy contract which would pass to our children or we convert, shorten the term and make a profit for us and our family.*

We were then taken on a tour to [the resort] *so that we could be shown the accommodation that we would be purchasing shares in.* [He] *told us that* [the resort] *would be where our Fractional investment would be and that purchasing should be a 'no brainer' because we would be making money…we would be investing in property which always increases in value.*

We told [D] *about* [Mr H's] *health problems, and we were told that this was yet another reason why we needed to purchase Fractional. He said it was the only beneficial option available to us.*

We were in the meeting for approximately 6 hours when we agreed to purchase. In truth, we felt we had no choice as we wanted to protect our children from this additional financial burden…

…The terms "investment", "no brainer" and "financial return in terms of making money, making a profit" were used many times throughout the meetings (as described above). Both [of D's representatives] *advised that looking at any property prices over any 15 year period always showed a huge profit."*

Shawbrook Bank has denied that D made such representations. Its response to the complaint mentions the efforts D made to address the possibility that prospective purchasers such as Mrs and Mr H might view membership of the Fractional Club as a property or financial investment. But in any event, Mrs and Mr H haven't suggested that their purchase was motivated by the possibility of making a profit. They merely say that

this formed part (albeit a memorable part) of the representations D made at the Time of Sale.

While Shawbrook Bank has expressed some concern over what it says are contradictions in Mrs and Mr H's evidence, I'm not persuaded what it has identified amounts to anything more than the suggestion that there might have been more than one factor that informed Mrs and Mr H's purchase decision. Shawbrook Bank's review of the complaint doesn't lead me to doubt Mrs and Mr H have provided an accurate account of their motivation for purchasing Fractional Club membership:

> *"We note from [S's] letter that Mr H appears to have been 62 and Mrs H 50, at the time of purchase. The ability to relinquish* [European Collection] *points under the exceptional circumstances criteria (namely on the death of one of the members, medical issues reducing the member's ability to travel, financial difficulties or upon one of the members reaching the age of 75) have been available to* [European Collection] *members since June 1999. Barring illness or financial difficulties however at the time of entering into this purchase, it appears that Mr and Mrs H would not have been eligible to relinquish their* [European Collection] *membership (bearing in mind that the Non-Qualified Relinquishment option were* [sic] *not introduced until 2015) until they reached 75 years of age.*
>
> *In addition to the above, the only point at which a member will receive a financial return upon their membership ending (unless of course they elect to sell their points in the interim) is upon the timeshare club itself ending. Had the customers retained their points in* [European Collection]*, whilst they would have been at liberty to dispose of their points at any time in accordance with our standard relinquishment provisions, they would not have received a monetary return in respect of their membership until the winding up of the club in 2054.*
>
> *In addition to the above, there is nothing on our records to suggest that such a representation was made to your clients. It seems clear to us from the comment placed on their account by the Quality Assurance representative[4] that their motivation for entering into this purchase was* ***'for the option to get out and get something back'****.*
>
> *Indeed, had the customer purchased their Fractional points on the understanding that this their only means of securing an exit from their membership prior to 2054 then the Quality Assurance representative would have clarified this with them."*

As Shawbrook Bank has said, there were various factors that might have influenced Mrs and Mr H's decision. I don't doubt the attraction of the holiday benefits conferred by Fractional Club membership over and above their existing European Collection membership. Over the preceding years Mrs and Mr H made good use of their membership, and continued to do so after becoming Fractional Club members. But the reasons Mrs and Mr H gave in their witness statement are consistent with D's notes from the Time of Sale. The notes indicate that the shorter term of Fractional Club membership was what appealed to Mrs and Mr H. On the face of it, Fractional Club membership would end following the sale of the Allocated Property, which would be due to take place in or after 2029. Mrs and Mr H's existing European Collection membership was scheduled to run until 2054.

Presented in this way (as Mrs and Mr H have persuaded me that it was), I can see how that had a material bearing on their purchase decision. I've not seen anything to suggest

[4] The Quality Assurance representative contact is part of D's sale process

that in the course of the sale, D drew their attention to the early relinquishment terms – particularly the age-related circumstances – that would have meant they were able to relinquish their existing membership in 2027, when Mr H reached 75. I see no reason why Mrs and Mr H would have raised this with the Quality Assurance representative; the fact they did not merely lends support to the notion that the possibility of early relinquishment was not discussed at the Time of Sale.

I think it's more likely than not that in this case that D placed emphasis on the 15-year term being of benefit to Mrs and Mr H over their existing European Collection membership, when in fact they would have been able to achieve their stated aim of ending their membership earlier and without incurring the additional cost of Fractional Club membership simply by keeping their existing arrangements in place. The available evidence points towards the membership term being a key driver for Mrs and Mr H's decision.

I'm satisfied that the way in which D presented the respective terms wrongly led Mrs and Mr H to think that Fractional Club membership was the appropriate way to achieve their aim, and that but for this they would not have entered into the purchase. It strikes me as most unlikely that Mrs and Mr H would have spent over £15,000 effectively to shorten their membership term by only two years.

I've thought about the impact of this on the fairness of the credit relationship between Mrs and Mr H and Shawbrook Bank. To my mind, the factors I've set out here lead me to the conclusion that the credit relationship was rendered unfair to Mrs and Mr H. It follows that I intend to uphold their complaint.

Putting things right

I consider it fair and reasonable that Shawbrook Bank puts Mrs and Mr H back in the position (as far as can practically be achieved) they would have been in had they not purchased the Fractional Club membership (that is, had they not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement. This is provided both Mrs and Mr H agree to assign to Shawbrook Bank their Fractional Points or hold them on trust for Shawbrook Bank if that can be achieved.

In light of the reason for my findings, I'm not persuaded that had Mrs and Mr H not purchased Fractional Club membership, they would have cancelled their European Collection membership prior to the point at which they met the qualifying criteria to do so. At the Time of Sale Mrs and Mr H were taking holidays and continued to do so afterwards.

Like Fractional Club membership, Mrs and Mr H would always have been responsible for paying annual management charges under their European Collection membership. Any loss in this respect only arises if the European Collection fees were less than Mrs and Mr H had to pay under Fractional Club membership. It follows that any refund of annual management charges or membership fees that Mrs and Mr H paid from the Time of Sale as part of Fractional Club membership should be calculated based on the difference between those charges and those they would otherwise have paid as European Collection members.

So, here's what I think Shawbrook Bank needs to do to compensate Mrs and Mr H – whether or not a court would award such compensation:

1. Refund Mrs and Mr H's payments to it under the Credit Agreement, including any sums paid to settle the debt.

2. Refund any loss to Mrs and Mr H arising from the difference between the Fractional Club annual management charges paid after the Time of Sale and what the European Collection annual management charges would have been had they not purchased Fractional Club membership.
3. Shawbrook Bank can deduct:
    i. The value of any promotional giveaways that Mrs and Mr H used or took advantage of;
    ii. The market value of the holidays Mrs and Mr H took using their Fractional Points if the points value of the holidays taken amounted to more than the total number of 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 holidays in question.

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

4. Add simple yearly interest at 8% to each of the Net Repayments from the date each one was made until the date Shawbrook Bank settles this complaint.

If their Fractional Club membership is still in place at the time of this decision, as long as Mrs and Mr H agree to hold the benefit of their interest in the Allocated Property for Shawbrook Bank (or assign it to Shawbrook Bank if that can be achieved), Shawbrook Bank must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

Responses to my provisional decision

S told us Mrs and Mr H accepted my intended conclusions and had nothing further to add.

Shawbrook Bank didn't accept my provisional decision. It provided comments, along with documentation on D's policy and procedure signed by the representative who met with Mrs and Mr H, inviting me to reconsider my proposed outcome. Shawbrook Bank's submissions were, in summary:

- The provisional decision did not address the allegation that Fractional Club membership was sold to Mrs and Mr H as an investment (other than in relation to noting Shawbrook Bank's response to our investigator's initial assessment).
- The provisional decision concludes that shorter term membership had a material bearing on Mrs and Mr H's decision to purchase Fractional Club, and that in the absence of anything to show D had referred Mrs and Mr H to the early relinquishment terms, they were misled leading to the creation of an unfair credit relationship. This conclusion was either an error based on the interpretation of the evidence, or because I had not seen all of the relevant evidence.

  In support of the latter, Shawbrook Bank provided a copy of D's policy and procedure document, along with a longer version of the comment from D's Quality Assurance representative. Shawbrook Bank says this clearly evidences that the relinquishment options were explained to Mrs and Mr H at the Time of Sale, and so they would have known they could have relinquished European Collection membership when Mr H reached 75.
- The contemporaneous comment also says that Mrs and Mr H would receive some return at the end of the 15-year period. Accordingly, it appears clear that Mrs and Mr H purchased Fractional Club membership for the option to exit at that time and receive their share of any net sale proceeds. The purchase decision they made was perfectly

rational to meet their primary wish for a shorter term, without any promise or reference by D that they would make a profit.

- Mrs and Mr H's respective ages meant their European Collection membership would run for a further 13 years before they would be able to relinquish it, and the terms of that membership didn't entitle them to any monetary return until 2054.
- The conclusions reached in my provisional decision appeared to have lost sight of the other benefits Mrs and Mr H obtained by purchasing Fractional Club membership. They acquired an additional 5,000 points, which enabled them to take higher value holidays between 2015 and 2019. They would also receive their share of the net sale proceeds after 15 years.
- In any event, the suggested redress must take account that the Fractional Club purchase significantly increased (by 33%) Mrs and Mr H's points holding, and that as they have not yet attained age 75, there could not yet be any possible unfairness regarding them being unable to relinquish membership when they reach that age.

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.

Having carefully reviewed what Shawbrook Bank has said, I don't find its submissions sufficiently persuasive that I should reach materially different conclusions from those I set out in my provisional decision. I'll explain why.

In my provisional decision I explained that while Mrs and Mr H had mentioned the representations D made at the Time of Sale that suggested the possibility Fractional Club membership was sold as an investment, their evidence provided an accurate account of the reasons for their purchase. I was satisfied that this was based on what they were (and were not) told about Fractional Club membership being the only way they would be able to exit their European Collection membership sooner. This being the case, I did not find it necessary to reach a definitive conclusion on the question of whether Fractional Club membership was also marketed or sold to them as an investment. Given that Mrs and Mr H have not sought to argue that investment was a motivation for their purchase, there seems little purpose in now setting out my thoughts on that point.

Shawbrook Bank has provided the extract from D's Quality Assurance comments to which it referred in its review of the complaint. The full note reads:

> *"B.U staying SBG home 30.08.14 lovely couple buying for the option to get out and get something back coverd reliqueshmint* [sic] *salary cover monthly payments."*

I don't accept Shawbrook Bank's contention that the use of the phrase 'covered relinquishment' amounts to clear evidence that D gave Mrs and Mr H accurate information about their ability to relinquish their European Collection membership when Mr H reached 75. The comment doesn't set out in any way what was actually said about the options for early relinquishment. Nor do I consider that the policy and procedure document offers persuasive argument in this respect. Noting the detailed submissions Mrs and Mr H have made about their discussions with D's sales representative, on balance I don't find that what Shawbrook Bank has submitted changes my provisional conclusion on this aspect of the complaint.

In respect of Shawbrook Bank's other submissions about the membership term, what it has said amounts to little other than speculation about Mrs and Mr H's reasons for purchase that

tends to disregard what Mrs and Mr H have actually said. They have, for example, said that D told them converting to Fractional membership was the only way out of European Collection membership, that doing so would reduce their membership term, and that in order to convert they needed to buy more points. None of this is addressed by Shawbrook Bank in its response. Rather, it appears to have decided that the additional holiday benefit Mrs and Mr H derived from the extra points in some way overcomes what they say they were told by the sales representative.

That Mrs and Mr H got something on top of their existing membership rights in return for their additional expense has never been in question. But I can't reasonably conclude that their motivation for purchasing was to acquire additional holiday benefits absent any supporting evidence that this was the case. I remain unpersuaded that Mrs and Mr H would have purchased Fractional Club membership but for what their testimony satisfies me were misleading statements on D's part.

I turn now to Shawbrook Bank's concerns over the proposed redress. I take on board what it has said about the increased holding Mrs and Mr H acquired as a result of their purchase. But I addressed this in point 3 of the redress. And while I'm conscious of what Shawbrook Bank has said about when unfairness might arise in relation to Mrs and Mr H's entitlement to relinquish their membership, that rather misses the point about the unfairness that arose when D misled them into purchasing Fractional Club membership and the credit relationship that began at that time.

So as I've said, while I've had regard for all that's been said and provided, I'm not persuaded that the points Shawbrook Bank has made give me cause to depart from the conclusions – or the proposed redress – that I set out in my provisional decision. I adopt them in full in this final decision.

Putting things right

In order to put matters right Shawbrook Bank Limited must, within 28 days of Mrs and Mr H's acceptance of this decision, take the following steps:

1. Refund Mrs and Mr H's payments to it under the Credit Agreement, including any sums paid to settle the debt.
2. Refund any loss to Mrs and Mr H arising from the difference between the Fractional Club annual management charges paid after the Time of Sale and what the European Collection annual management charges would have been had they not purchased Fractional Club membership.
3. Shawbrook Bank can deduct:
    iii. The value of any promotional giveaways that Mrs and Mr H used or took advantage of;
    iv. The market value of the holidays[5] Mrs and Mr H took using their Fractional Points if the points value of the holidays taken amounted to more than the total number of points they would have been entitled to use at the time of the holidays as ongoing European Collection members. However, this deduction

[5] It can be difficult to reasonably and reliably determine the market value of holidays taken a long time ago and/or that might not have been available on the open market. If it isn't practical or possible to determine the market value of the holidays Mrs and Mr H 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.

should be proportionate and relate only to the additional Fractional Points that were required to take the holidays in question.[6]

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

4. Add simple yearly interest at 8% to each of the Net Repayments from the date each one was made until the date Shawbrook Bank settles this complaint.[7]

If their Fractional Club membership is still in place at the time of this decision, as long as Mrs and Mr H agree to hold the benefit of their interest in the Allocated Property for Shawbrook Bank (or assign it to Shawbrook Bank if that can be achieved), Shawbrook Bank must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

My final decision

My final decision is that I uphold this complaint. To resolve it I require Shawbrook Bank Limited to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 10 December 2025.

Niall Taylor
Ombudsman

[6] For example, if Mrs and Mr H took a holiday worth 5,500 Fractional Points and they would have been entitled to use a total of 5,000 European Collection Points at the relevant time, any deduction for the market value of that holiday should relate only to the 500 additional Fractional Points that were required to take it.

[7] HM Revenue & Customs may require Shawbrook Bank to deduct tax from this interest. If that's the case, Shawbrook Bank must give Mrs and Mr H a certificate showing how much tax it's deducted if they ask for one.