DRN-5903856

The complaint

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

What happened

Mr S and Mrs S were members of a timeshare club – the European Collection membership - offered by a timeshare provider (the 'Supplier') from 2002. They purchased an initial 4000 points in the club and then a further 8000 points by December 2012. The following year they exchanged their existing points for points in a new timeshare product that I'll call the 'Fractional Club' – which they bought on 23 December 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 12000 fractional points at a cost of £8,160 (the 'Purchase Agreement'). It is the sale of the Fractional Club membership to them that is at the heart of this complaint.

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

Mr S and Mrs S paid for their Fractional Club membership by taking finance of £8,160 from the Lender (the 'Credit Agreement').

Mr S and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 19 June 2018 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr S's and Mrs S's concerns as a complaint. But, as it couldn't respond fully within the usual timescales, it informed them that they could refer their complaint to the Financial Ombudsman Service, which they did. Following that referral the Lender issued its final response letter on 3 January 2019, rejecting the complaint on every ground.

The complaint was then assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. Mr S and Mrs S disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it was passed to me. I issued a provisional decision explaining why I thought the complaint should be upheld, the findings from which are set out below.

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations') by marketing and/or selling Fractional Club membership to Mr S and Mrs S 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 this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mr S and Mrs S in the same or a better position than they would otherwise be in.

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

Having considered the entirety of the credit relationship between Mr S and Mrs S 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 S and Mrs S and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr S and Mrs S'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 S and Mrs S says that the Supplier did exactly that at the Time of Sale. The PR said in the Letter of Complaint that Mr S and Mrs S were told that the Fractional Club would be a 'fantastic investment' and that they would 'as a minimum get their investment back'. The PR provided an undated but signed statement from Mr S and Mrs S in which they said that they were told that if the transferred their existing 12000 points to Fractional Club membership they would be entitled to a share in an identified apartment which would be sold at the end of their membership and they would get a 'percentage of the sale'. They go on to say; "This was all explained as an investment in the apartment to which we would benefit from the sale with estimated figures of £15,000 return on investment."

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and 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.

A share in the Allocated Property clearly constituted an investment as it offered Mr S and Mrs S the prospect of a financial return – whether, or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that 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 S and Mrs S 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 S and Mrs S, 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 S and Mrs S as an investment.

For example, the Terms and Conditions attached to the Purchase Agreement include the following:

"You should not purchase Your Diamond 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."

And Mr S and Mrs S also signed a Customer Compliance Statement which included several statements with 'yes' and 'no' tick boxes with one of the statements ticked yes stating:

" We understand that the purchase of our Diamond Fractional points is an investment in our future holidays and that it should not be regarded as a property or financial investment. We recognize that the sale price achieved on the sale of the property in the owners club (and to which our Diamond Fractional Points have been attributed)

will depend on market conditions at that time, that property prices can go down as well as up and there is no guarantee as to the eventual sale price of the Property."

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. It is significant in my view that the contractual paperwork that Mr S and Mrs S were provided with, including the Terms and Conditions and Customer Compliance statement, would only have been provided after any sale presentation and their agreement to go ahead with purchasing Fractional Club membership.

Moreover, the examples I have referred to above, where the Supplier makes reference to the purpose of membership being for 'future and memorable' holidays didn't really apply in the case of Mr S and Mrs S. That is because they already had existing holiday rights at the time and the purchase of Fractional Club membership involved the transfer of those rights, not new holiday rights. So, the above disclaimers didn't address the reality of the purchase that Mr S and Mrs S made at the time.

With the above in mind I have considered whether it is more likely than not that the Supplier sold or marketed membership of the Fractional Club as an investment in breach of Regulation 14(3) of the Timeshare Regulations as Mr S and Mrs S say it did. And, having done so, I have concluded that the Supplier the answer to this question is yes. I explain below why I have come to that conclusion.

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 materials and internal documentation that it said was relevant to how it trained its sales staff. Some of that material emphasised the benefits of owning an asset linked to an interest in real estate, but other parts of the material reiterated the need for its sales staff not to sell membership as an investment. More recently the Supplier has explained that much of the material was not actually used when selling memberships and that it had provided this in error to our service.

However, if I accept this at face value then I have no way of knowing how the Supplier trained its salespeople. I have also not been provided with the marketing material that prospective members such as Mr S and Mrs S would have been shown at the Time of Sale. So, in making my findings I have taken into account all the available evidence, including Mr S's and Mrs S's recollection of the sale, the sales documentation, the arguments put by the Supplier and Lender, as well as the wider circumstances of the purchase.

I have already noted what Mr S and Mrs S have said about what they were told at the Time of Sale. I am mindful that their statement has been provided after the judgment in Shawbrook & BPF v FOS which confirmed that the marketing of a fractional points club membership as an investment was a key issue when deciding whether a credit agreement was unfair or not. And I have taken into account that because of this that there is a possibility that what Mr S and Mrs S have said about the sale of Fractional Club membership as an investment has been influenced by what they have read since first making their complaint rather than their recollection of what happened at the Time of Sale.

Having said that, Mr S's and Mrs S's circumstances at the Time of Sale, lends support to their recollection they were told Fractional Club membership was an investment that could provide a return of around £15,000, as I explain below.

Mr S and Mrs S were already timeshare owners with 12000 points at the Time of Sale. The purchase of Fractional Club membership involved the transfer of those points with no additional points being purchased at the time. So, purchasing Fractional Club membership didn't give Mr S and Mrs S any holiday entitlement beyond what they already had.

Given this the Supplier must have promoted something other than taking holidays that led Mr S and Mrs S into thinking that purchasing Fractional Club membership was worthwhile. The Letter of Complaint did refer to Mr S and Mrs S being concerned that their current timeshare membership was 'written into perpetuity' and that as Fractional Club membership was only for 15 years this issue would be resolved and this being a key factor in their decision to purchase.

Their existing European Collection membership wasn't for perpetuity but putting that on one side, Fractional Club membership was still shorter. I have considered whether this was put forward as a reason for purchase to Mr S and Mrs S and whether they might have decided to purchase Fractional Club membership because of the shorter term. Having done so I am not of the view this was a significant motivation for their purchase, despite the Letter of Complaint indicating it was.

At the Time of Sale , the Supplier had a policy in place that gave it the discretion to allow members to surrender their European Collection memberships when they reached 75 years of age. From what I know about how the Supplier operated at the Time of Sale, I think it likely it would have been anticipated that this policy would have been followed. Therefore, Mrs S could have got out of European Collection membership when she turned 75 anyway, so Fractional Club membership was only shorter by around five years. Moreover, Mr S and Mrs S subsequently purchased a further 3000 European Collection membership points in May 2014, less than six months after the purchase of their Fractional Club membership. This isn't consistent with them being concerned with the length of time that their European Collection membership would continue for at the Time of Sale.

So, although I accept that the Supplier likely highlighted the shorter membership term at the Time of Sale, given I don't think Mr S and Mrs S went ahead with the purchase for that reason, the Supplier must have put forward another reason they should purchase Fractional Club membership when selling this to them.

There were only two other things that Fractional Club membership could have provided that were not available to Mr S and Mrs S with their existing European Collection membership. The first is the potential return on sale of the Allocated Property The second is the right to rent out their Fractional Club points to offset the fees payable if they decided not to use the points themselves for holidaying.

Mr S and Mrs S have said they were told about the opportunity to rent out their points to generate an income, so I accept this is that it is likely this is something the Supplier told them. In fact, given the nature of membership, I would find it surprising if this had not been mentioned. However, in my view, there was no great benefit to Mr S and Mrs S purchasing Fractional Club membership if they believed the only benefit was that they could offset the maintenance fees for that same membership by renting out their points.

It is apparent they were very interested in using their points for holidays, as shown by their reservation history both before and after purchasing Fractional Club membership. So, it is unlikely they had in mind they would rent out their points to any great extent anyway or that they would have thought that paying £8,160 for that right was worthwhile, especially as there is no evidence that they were told they were likely to get enough rental income to match their annual maintenance fee bills or generate a profit after the fees were paid. So, the purchase of Fractional Club membership only makes sense if the right to rent out points was in addition to another benefit of membership. And the only other possible benefit to Fractional Club membership was the return on the sale of the Allocated Property. So, I find it more likely than not that this was put forward to them as a reason to purchase membership. And, given that there must have been some tangible benefit put forward to suggest why Mr S and Mrs S purchase membership, I think it also more likely than not that the Supplier either explicitly said or suggested that they might make some financial gain or profit when membership ended.

So, whilst Mr S and Mrs S's limited evidence about being told they would make a return on the money paid for Fractional Club membership has been provided late in the day what they have said is supported by the overall circumstances of the sale that I have explained above. And, given this, I think it is more likely than not that at the Time of Sale Mr S and Mrs S were

told that they would make a return on their investment when the membership ended, in breach of Regulation 14(3) of the Timeshare Regulations, as they have said is the case.

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 S and Mrs S and the Lender under the Credit Agreement and related Purchase Agreement – as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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

In their witness evidence Mr S and Mrs S say that they were told they would benefit from the sale with an estimated £15,000 return, as I have said above. They also refer to another benefit being the ability to rent out their points. This is consistent with my finding that these were the only realistic benefits to Mr S and Mrs S and as such this lends some weight to their recollection of what happened, despite their evidence being provided late in the day.

I have also found that it isn't credible that Mr S and Mrs S purchased Fractional Club membership just because this allowed them to offset the annual maintenance costs by renting out their points. Given the only other real benefit to Mr S and Mrs S of Fractional Club membership was that it offered them the potential to make a gain or profit on the money paid for membership it is more likely than not this is why they decided to go ahead with the purchase. So, I accept their evidence on this point and I accept that their decision to purchase membership was motivated in the main by the prospect of a financial gain at the end of the membership period.

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

In summary my findings are that Supplier marketed and sold Fractional Club membership to Mr S and Mrs S as an investment and they entered into the Purchase Agreement and Credit Agreement because of this. That being the case, I think the Supplier's breach of Regulation 14(3) of the Timeshare Regulations was material to their decision to purchase membership of the Fractional Club.

Conclusion

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

I gave both parties the opportunity of responding and providing any further information they

wanted me to consider before making my final decision. The PR responded on behalf of Mr S and Mrs S confirming acceptance of my provisional decision. The Lender didn't agree with my provisional decision. In summary it made the following points:

- Mr S and Mrs S were 20 years away from being able to exit their European Collection membership and as such Fractional Club membership could have delivered an earlier exit point.

- Their decision to subsequently purchase further European Collection points is not evidence that Fractional Club membership must have been marketed to them as an investment as there are many reasons for a customer making subsequent purchases.

- Diamond's contemporaneous system note from the Time of Sale records "happy with all, buying for 2028" which is clear contemporaneous evidence they were purchasing because the membership would end in 2028 and at that time they would receive their share of the net sale proceeds.

- Given that Mr S and Mrs S stated that a key reason for their purchase of Fractional Club membership was the shorter term and there is contemporaneous evidence form the Time of Sale supporting this it is not rational or reasonable to dismiss this evidence on the basis that Diamond had a policy that allowed members to exit European Collection membership at age 75 – for these customers a shorter term could achieve a tangible benefit.

- The ombudsman has given too much weight to Mr S's and Mrs S's witness testimony and the allegation Fractional Club membership was sold as an investment is wholly unreliable and a common feature of similar complaints where testimony is submitted years after the complaint was made.

- The ombudsman doesn't appear to have properly factored in the fact the testimony was provided after the judgment in *Shawbrook & BPF v FOS.*

- It is reasonable to conclude that the allegation Mr S and Mrs S made in their testimony that they were told they would make £15,000 is unreliable given this wasn't alleged at the time of the complaint and isn't supported by any contemporaneous evidence.

- Mr S and Mrs S referred to not being unable to successfully rent out their points and that this rang alarm bells, which demonstrates that this was another important motivation for their purchase of Fractional Club membership which the ombudsman has ignored.

- In 2016 Mr S and Mrs S requested information on exiting their Fractional Club membership and Mrs S called in December 2016 saying they wanted to surrender their membership. There is no indication she enquired about the status of the investment and how the supposed £15,000 profit could be realised and this doesn't align with their testimony or the ombudsman's conclusion.

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 ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out 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.

I have considered everything that the Lender has said in response to my provisional decision but am not persuaded by what it has said that I should change my findings which, for the avoidance of doubt, form part of the findings in this final decision, unless I state to the contrary.

I will comment briefly on the points raised by the Lender to explain why these haven't persuaded me to change my conclusions in this complaint.

The Lender says that Fractional Club membership could deliver an earlier exit point to their European Collection membership. It argues that it isn't rational for me to dismiss what Mr S and Mrs S said about this being a key reason for the purchase and the contemporaneous note from the Time of Sale that supports this.

However, I have not suggested Fractional membership didn't provide a shorter term. To the contrary, I acknowledged in my provisional decision that it was around five years shorter than their European Collection membership. But, as I said, I wasn't persuaded - and am still not - that this was a motivating factor in their decision to purchase Fractional Club membership.

I explained that Mr S's and Mrs S's purchase of further European Collection points only six months after the Time of Sale didn't suggest they were interested in the shorter term provided by Fractional Club membership. The Lender says that the fact they purchased further European collection points isn't evidence Fractional Club membership was marketed as an investment – and I agree. But, as I explained, the relevance of the purchase of more European Collection points so quickly after the Time of Sale is that it doesn't support a conclusion that they were concerned about the length of their European Collection membership when the purchased Fractional Club membership.

The Lender has pointed to notes from the Supplier made at the Time of Sale that read "*Bu lovely couple , happy with all buying for 2028."* It has argued that this shows Mr S and Mrs S purchased because the membership would end in 2028. But whilst that is possibly what it means it could equally point to them buying with that date in mind as the time they would get a return on their investment – or simply be noting that they had no issue with the shorter term of their membership. So, I don't think the notes provide any persuasive evidence that they purchased because they wanted shorter term.

I have also taken the Lender's point that the Letter of Complaint from the PR did reference a shorter term as a key reason behind the purchase. But, as the Lender has said elsewhere, the Letter of Complaint is templated and has suggested that I place little weight on the part in which the PR alleged membership was sold as an investment. I agree that the Letter of Complaint is templated in large parts and not necessarily reflective of Mr S's and Mrs S's own experiences. So, I have preferred their own evidence of the sale. They have not mentioned the shorter term being a reason behind their purchase and for the reasons I have already explained I don't think that the circumstantial evidence is suggestive of that either. Given that, the shorter term of Fractional Club membership on the face of it wasn't a

motivating reason for them purchasing membership.

The Lender has suggested that I have given too much weight to Mr S's and Mrs S's testimony and not properly factored in that this was provided after the judgment in *Shawbrook & BPF v FOS.* However, I haven't just relied on their testimony in my findings, I have taken into account the surrounding circumstances as well with which their testimony is, in my view consistent. It is this that makes me think their testimony reflects what happened and in the circumstances the fact that the testimony was provided after the judgment in *Shawbrook & BPF v FOS* is not a reason for me to disregard what they have said. I have properly factored this in, contrary to what the Lender has suggested.

The Lender has referred to Mr S and Mrs S saying that not being able to rent out their points rang alarm bells, arguing this shows that this was another important and motivating factor in their decision to purchase Fractional Club membership. I acknowledged in my provisional decision that it is likely this benefit was explained to Mr S and Mrs S but I have seen nothing that makes me think that my finding that renting their points out wasn't an important factor for them is wrong as they were more interested in holidaying. It seems to me that the reference to alarm bells is to them thinking that what they had been told by the Supplier at the Time of Sale may not have been entirely accurate. In the circumstances I am still of the view they wouldn't have borrowed £8,160 simply so they could rent out their points. That is not reflected in the evidence I have seen form Mr S and Mrs S nor have I seen that they did in fact try to rent out their points before their circumstances changed and they no longer wished to pay the ongoing maintenance costs.

The last main point made by the Lender is that Mr S and Mrs S contacted the Supplier at the end of 2016 about exiting their membership without making any enquiry about their investment. It has been unable to provide the telephone call that it relies on but has provided some limited records of earlier discussions in 2016 between Mrs S and Mrs S and the Supplier about surrender of membership which I have considered.

These limited records don't go far enough to persuade me that Mr S and Mrs S weren't motivated to purchase Fractional Club membership because it was marketed to them as an investment. I note, for example, that in the initial enquiry in June 2016 Mr S referred to a contract signed in January 2016 not the Purchase Agreement of December 2013 and in an email dated 2 December 2016 Mr S asked about the *"costs of relinquishing 10000 points leaving us with 12000 points to buy fractions"* which appears to me to be referring to them relinquishing their European Collection points rather than Fractional Club membership. In other words, it seems that Mr S and Mrs S were more interested in keeping their fractional points (that could generate a later return) over their other points.

In all the circumstances my conclusion remains as follows:

- It is more likely than not Fractional Club membership was sold to Mr S and Mrs S as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

- It is more likely than not Mr S and Mrs S entered into the Purchase Agreement and Credit Agreement because it was marketed in that way.

- The Lender participated in and perpetuated an unfair credit relationship with Mr S and Mrs S because of this.

Putting things right

Fair Compensation

Having found that Mr S and Mrs S 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 S and Mrs S agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr S and Mrs S were existing European Collection members and their membership was traded in against the purchase price of Fractional Club membership. Under their European Collection membership, they had 12000 European Club Points. And, like Fractional Club membership, they had to pay annual management charges as a European Collection member. So, had Mr S and Mrs S not purchased Fractional Club membership, they would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr S and Mrs S 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.

Also, as set out above, Mr S and Mrs S did not increase their holiday entitlement on the purchase of Fractional Club membership. It follows that any holidays they took could have been taken irrespective of the purchase that I have considered in this decision. So, I do not think it is fair for the Lender to make any deduction for the holidays Mr S and Mrs S have taken using their Fractional Club membership.

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

(1) The Lender should refund Mr S's and Mrs S'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 S's and Mrs S'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.

(I'll refer to the output of steps 1 and 2 as the 'Net Repayments' hereafter)

(3) 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. HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mr S and/or Mrs S a certificate showing how much tax it's taken off if they ask for one.

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

(5) If Mr S's and Mrs S'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.

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

My final decision

I uphold this complaint for the reasons set out above. Shawbrook Bank Limited must calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 21 November 2025.

Philip Gibbons
Ombudsman