

## The complaint

Mr S's complaint is, in essence, that Tandem Personal Loans Ltd<sup>1</sup> (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.

## What happened

Mr S purchased membership of a timeshare (the 'Signature membership') from a timeshare provider (the 'Supplier') on 29 July 2019 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 2,250 Signature points at a cost of £30,286 (the 'Purchase Agreement'). But, after trading in a previous membership, he ended up paying £12,216 for the Signature membership

Signature membership was asset backed – which meant it gave Mr S more than just holiday rights. It also included a share in the net sale proceeds of a property named on his Purchase Agreement (the 'Allocated Property') after his membership term ends. It also offered guaranteed availability of their Allocated Property in a set week each year, or they could use their points to stay at another property from the Supplier's portfolio of resorts.

Mr S paid for his Signature membership by taking finance of £12,216 from the Lender in his name only (the 'Credit Agreement').

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 17 August 2022 (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 concerns as a complaint and issued its final response letter on 13 October 2022, rejecting it on every ground.

Mr S then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Signature membership as an investment to Mr S at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on his purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr S was rendered unfair to him for the purposes of section 140A of the CCA.

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<sup>1</sup> The loan in question was originally provided by Honeycomb Finance Ltd, but on 20 August 2022, the loan was assigned to Oplo which is a trading name of Tandem Personal Loans Ltd, who therefore have responsibility for the complaint. I'll refer to Tandem Personal Loans Ltd throughout as 'the Lender' for clarity.

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

In the meantime, a second Investigator reviewed the complaint again and they also upheld it, for the same reasons as the previous Investigator. In this assessment, they also expanded further on their reasoning for doing so, as well as addressing Mr S's testimony and the Lender's further comments.

Neither party responded to this further assessment and so the matter was passed to me to consider.

Having done so, I issued a provisional decision (the 'PD') dated 5 November 2025. In that decision, I said:

***“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. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional decision.*

***My provisional findings***

*I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.*

*And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Signature membership to Mr S 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 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 in the same or a better position than he 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 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 the Lender.*

### **Mr S's testimony**

*As part of Mr S's submissions to this Service the PR has provided a witness statement. In relation to this Time of Sale, he has said:*

*"They advised us that the level of holidays and service we were used to taking in the past would only match up with their signature collection, which also offered a wider range of holidays and better availability and this was a very exclusive club not many members had access to. Of course for this there would be yet more costs involved and as a 'sweetener' they agreed to waive the management fees for the following 4 years I believe. The sales tactics were the same as the initial meeting in Malaga, when we were looking like we were not so keen on the idea, one of their colleagues joined us and told how [sic] wonderful the signature fractions are and that there was by chance one left.*

*After a very long and uncomfortable day we decided to go ahead with this to make the most of what was promised and our so called 'investment'. We were told that the signature suites held their value and could even increase in value once the time came to sell the fraction. This was a key point in the decision as we felt a return on this in the future was a must.*

*[...]*

*However having called their member services and advising them that we felt the whole membership and sale of the fraction had been mis-sold for all the reasons listed above and that we wanted out of this, we were told that no monies could be recuperated.*

*[...]*

*Had all of the above been made explicitly clear from the beginning, then we would have never agreed to sign up for nay [sic] membership of any kind."*

*I have considered how much weight I can place on this statement when assessing the merits of Mr S's complaint.*

*The statement was provided to our Service in August 2023 but the PR explained in their covering email that it was drafted on 9 April 2020. However, the PR then explained this was a typing error and it was actually drafted on 9 April 2022 by another representative who was dealing with Mr S's complaint at that time. The PR said the statement was then sent to them in August 2023, which is when they then sent it to our Service.*

*The PR has provided a screenshot from the other representative's system which evidences this and I can see the entry for the statement is 9 April 2022. I note that this is also prior to the Letter of Complaint being sent to the Lender, and given that this letter reflects the content of the statement, I think it's likely the statement was used to inform it.*

*But the statement appears to have been prepared and written by the other representative,*

and was probably taken during a telephone call with Mr S. So, I am mindful of the risk that Mr S may have been guided through the process, and the associated risk that what has been written may not be his own specific recollections.

But I think that risk is low, as I can see it contains personal information about what happened that only Mr S would have known, so I have no doubt that Mr S had a significant input into its contents. It is also not unusual for statements to be prepared on complainants' behalf by professional representatives. Taking everything into account I am satisfied that it is a record of Mr S's recollections of the Time of Sale.

So overall, I am satisfied that I can place weight on Mr S's testimony when considering what most likely happened at the Time of Sale.

### **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's Signature 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 Signature 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 said that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that Signature membership was the type of investment that would retain or even increase in value.

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.

Mr S's share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it is important to note at this stage that the fact that Signature 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 Signature membership. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature membership was marketed or sold to Mr 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 him as an investment, i.e. told him or led him to believe that Signature membership offered him 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 Signature membership as an 'investment' or quantifying to prospective purchasers, such as Mr S, 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 Signature membership was not sold to Mr S as an investment.*

*However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.*

### ***How the Supplier marketed and sold the Signature membership***

*Over the course of the Financial Ombudsman Service's work on complaints involving fractional timeshare sales, the Supplier has provided a training material document called "2015 SPAIN FRACTIONALS AT SIGNATURE SUITE COLLECTION SALES TRAINING MANUAL FOR FPOC AND VACATION CLUB OWNERS" ('the Manual') used to train its sales agents in the selling of the product purchased by Mr S.*

*As I understand it, the Manual was in use at the time Mr S made his purchase. It's not entirely clear whether he would have been shown the slides included in the Manual, but it seems to me to be reasonably indicative of:*

- (1) the training the Supplier's sales agents would have got before selling Mr S's Signature membership; and*
- (2) how the sales agents would have framed the sale of the Signature membership to him.*

*Having looked through the Manual, I am first drawn to the slide on page 11, which is the first slide that brings in the Signature membership and its purpose. It says:*

*"When our members asked if they could buy a [Supplier] property in its entirety, we developed [Supplier] Estates which has been tremendously successful and has now sold over 2000 properties all around the world.*

*In recent years our members requested shorter term products so to fulfil that demand we created our Fractional Property Owners Club which is a shorter term product with a fixed asset attached providing an exit in 19 years and money back"*

*This slide strongly suggests the sales agent is likely to have made the point to the customer that purchasing the membership would allow them to own a physical asset, that being the fraction of a real property, and that this ownership would lead to "money back" at the end of the term.*

*From the off, therefore, it seems likely that the sales agent would have demonstrated that there was a significant financial advantage to gaining the membership that set it apart from membership of a 'standard' timeshare that only provided customers with holiday rights.*

*I've then considered the slides copied below, which are found on page 106:*



*These slides appear in a part of the presentation titled “In House Game Plan for Vacation Club Owners”. Mr S was not a Vacation Club Owner but was an existing fractional member. However, I’ve thought about what these slides show as being indicative of the sales practices by the Supplier at that time. And this includes the Supplier’s use of the word “investment” to describe Signature membership. So, although I accept this part of the slide deck was probably not shown to Mr S at the sale of the Signature membership, I also think it was likely that the Supplier’s sales staff would have been trained to talk about Signature memberships like Mr S’s as investments. That means there was a real possibility that was done when the membership was sold to Mr S at the Time of Sale.*

*I acknowledge that there may not have been a comparison between the expected level of financial return and the purchase price of Signature membership. However, if I were to only concern myself with express efforts to quantify to Mr S the financial value of the proprietary interest they were offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in Regulation 14(3).*

*When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that ‘[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3)).’<sup>2</sup> And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.*

*So, if a supplier implied to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.*

*Indeed, if I’m wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 99 and 100 of Shawbrook & BPF v FOS when, Mrs Justice Collins Rice said the following:*

***“[...] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3). [...] Getting the governance principles and paperwork right may not be quite enough.***

***The problem comes back to the difficulty in articulating the intrinsic benefit of***

<sup>2</sup> The Department for Business Innovation & Skills “Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)”. <https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf>

**fractional ownership over any other timeshare from an individual consumer perspective. [...] If it is not a prospect of getting more back from the ultimate proceeds of sale than the fractional ownership cost in the first place, what exactly is the benefit? [...] What the interim use or value to a consumer is of a prospective share in the proceeds of a postponed sale of a property owned by a timeshare company – one they have no right to stay in meanwhile – is persistently elusive.”**

*“[...] although the point is more latent in the first decision than in the second, it is clear that both ombudsmen viewed fractional ownership timeshares – simply by virtue of the interest they confer in the sale proceeds of real property unattached to any right to stay in it, and the prospect they undoubtedly hold out of at least 'something back' – as products which are inherently dangerous for consumers. **It is a concern that, however scrupulously a fractional ownership timeshare is marketed otherwise, its offer of a 'bonus' property right and a 'return' of (if not on) cash at the end of a moderate term of years may well taste and feel like an investment to consumers who are putting money, loyalty, hope and desire into their purchase anyway.** Any timeshare contract is a promise, or at the very least a prospect, of long-term delight. [...] A timeshare-plus contract suggests a prospect of happiness-plus. And a timeshare plus 'property rights' and 'money back' suggests adding the gold of solidity and lasting value to the silver of transient holiday joy.” (Emphasis is my own.)*

*And the investment element of the Signature membership was plainly a major part of its rationale and justification for its cost. And as it was designed to offer its members a way of making a financial return from the money they invested – whether or not, like every investment, the return was more, less or the same as the sum invested - it would not have made much sense if the Supplier included the feature in the product without relying on it to promote sales, especially when the reality was that the principal benefit of the Signature membership was its investment element i.e., the share in the net sale proceeds of the allocated property named in the Purchase Agreement.*

*Having considered the training materials I've seen from the Supplier in the round, I note that there does not appear to be any attempt to minimise or explicitly reject the notion that the Signature membership contained an investment element. Nor have I seen anything that contradicts or clashes with what Mr S has said about the way the membership was sold to him. Given this, I think it's more likely than not that the Supplier did, at the very least, imply that future financial returns (in the sense of possible profits) from the membership was a good reason to purchase it. I recognise that the Manual is mainly taken up with explaining and selling the additional benefits of the Signature membership, namely the luxurious nature of the accommodation and the services on offer to members, and Mr S acknowledges that when he says regarding Time of Sale:*

*“They advised us that the level of holidays and service we were used to taking in the past would only match up with their signature collection, which also offered a wider range of holidays and better availability and this was a very exclusive club not many members had access to.”*

*But then he goes on to say:*

*“After a very long and uncomfortable day we decided to go ahead with this to make the most of what was promised and our so called 'investment'. We were told that the signature suites held their value and could even increase in value once the time came to sell the fraction. This was a key point in the decision as we felt a return on this in the future was a must.”*

*So, overall, on the balance of probabilities, I think the Supplier's sales representative was likely to have led Mr S to believe that Signature membership was an investment that may*

lead to a financial gain (i.e., a profit) in the future. And with that being the case, I do not find him either implausible or hard to believe when he says that he was told that he was buying an investment which may well lead to a financial gain as it would hold and could even increase in value. On the contrary, given everything I have seen so far, I think that is likely to be what Mr S was led to believe by the Supplier at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

**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 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 that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr S 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.

On my reading of Mr S's testimony, the prospect of a financial gain from Signature membership was an important and motivating factor when he decided to go ahead with his purchase. For example, he's described this as a 'key point' in making his purchasing decision and said that when later trying to relinquish his membership, he was disappointed that 'no monies could be recuperated' from it. That doesn't mean he wasn't interested in holidays. His own testimony demonstrates that he quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr S says (plausibly in my view) that Signature membership was marketed and sold to him at the Time of Sale as something that offered him more than just holiday rights, on the balance of probabilities, I think his purchase was motivated by his share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from the more 'standard' type of timeshare available to him. I recognise that Mr S was upgrading from an existing fractional membership to the Signature membership. But from his testimony, it appears it was sold to him on the basis that the Signature suites in particular held or could increase in value i.e. due to them being more luxurious and of better quality. And with all of that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision he ultimately made.

Mr S hasn't said or suggested, for example, that he would have pressed ahead with the purchase in question had the Supplier not led him to believe that Signature membership was an appealing investment opportunity. Indeed, from what he's had to say, he wasn't 'keen on the idea' after the holiday element of the membership was demonstrated and then only became so once the investment element was introduced. And as he faced the prospect of borrowing and repaying a substantial sum of money while subjecting himself to long-term financial commitments, had he not been encouraged by the prospect of a financial gain from the Signature membership, I'm not persuaded that he would have pressed ahead with his purchase regardless."

So, overall, given the facts and circumstances of this complaint, I thought the Lender participated in and perpetuated an unfair credit relationship with Mr S 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 explained I intended to uphold the complaint.

I then set out how I thought the Lender should calculate and pay fair compensation.

The PR responded on behalf of Mr S and confirmed he accepted the PD. The Lender did not accept and provided some further comments they wanted me to consider.

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

### **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 considered everything afresh, I still uphold Mr S's complaint for broadly the same reasons I gave in my PD as set out above. I will also address the matters the Lender raised in response.

Again, my role as an Ombudsman is not to address every single point that has been made in response. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I've read the Lender's further submissions in full, I will confine my findings to what I find are the key points.

The Lender has provided some comments from the Supplier, which I'll address here.

In my PD I explained that as part of Mr S's submissions to this Service the PR has provided a witness statement. In relation to this Time of Sale, he has said:

*"They advised us that the level of holidays and service we were used to taking in the past would only match up with their signature collection, which also offered a wider range of holidays and better availability and this was a very exclusive club not many members had access to. Of course for this there would be yet more costs involved and as a 'sweetener' they agreed to waive the management fees for the following 4 years I believe. The sales tactics were the same as the initial meeting in Malaga, when we were looking like we were not so keen on the idea, one of their colleagues joined us and told how [sic] wonderful the signature fractions are and that there was by chance one left.*

*After a very long and uncomfortable day we decided to go ahead with this to make the most of what was promised and our so called 'investment'. We were told that the signature suites held their value and could even increase in value once the time came to sell the fraction. This was a key point in the decision as we felt a return on this in the future was a must.*

[...]

*However having called their member services and advising them that we felt the whole membership and sale of the fraction had been mis-sold for all the reasons listed above and that we wanted out of this, we were told that no monies could be recuperated.*

[...]

*Had all of the above been made explicitly clear from the beginning, then we would have never agreed to sign up for nay [sic] membership of any kind."*

I also explained in my PD that the statement was provided to our Service in August 2023 but the PR explained in their covering email that it was drafted on 9 April 2020. However, the PR then explained this was a typing error and it was actually drafted on 9 April 2022 by another representative who was dealing with Mr S's complaint at that time. The PR said the statement was then sent to them in August 2023, which is when they then sent it to our Service.

Firstly, the Supplier has queried the so-called 'meta data' of the witness statement document provided and said that while it does have a 'created' date of April 2022 because it has a 'modified' date of August 2023, they think this was amended at this later date by the PR in order to try and make the testimony more 'favourable'.

But the metadata of a document can change for any number of reasons, including saving, re-naming or printing it. And while it's not now possible to know for certain, this seems more likely to be the case rather than it having been amended in the way the Supplier has suggested.

I also explained in my PD that the PR has provided a screenshot from the other representative's system and I can see the entry date for the statement is 9 April 2022.

But in any event, I already acknowledged this point in my PD. I acknowledged (and do so again here) that the statement appears to have been prepared and written by the other representative/entity, and was probably taken during a telephone call with Mr S. So, I am mindful of the risk that Mr S may have been guided through the process, and the associated risk that what has been written may not be his own specific recollections.

But I still think that risk is low, because as I said before, I can see it contains personal information about what happened that only Mr S would have known, so I have no doubt that Mr S had a significant input into its contents. It is also not unusual for statements to be prepared on complainants' behalf by professional representatives. Taking everything into account I am therefore satisfied that it is a record of Mr S's recollections of the Time of Sale and that I can place weight on what he's had to say.

The Supplier also said that while I had referred to the Supplier's training and sales materials in my PD, Mr S hadn't mentioned seeing anything that positioned the membership as an investment they would make money from. But I explained in my PD that these materials seem to be indicative of not only how the sales agents would have framed the sale of Signature membership to Mr S, but also the training the Supplier's sales agents would have got before doing so. I acknowledge that Mr S does not appear to have explicitly referred to the materials in his testimony. But the materials I've referred to don't, in my view, contradict his testimony. Rather, I think they lend credence to it.

The Supplier also said that in their view, Mr S made the purchase for the quality of the Signature membership accommodation. And, they referred to some of their own notes in support of this. In particular, they've provided a copy of the sales note made at the time and said I should place more weight on this. This says:

TSW Contact Note	cvt	29/07/2019	17:40	Client Liaison
<p>Note: Mr alone in the office as Mrs pregnant and tired and wanted to go and take care of their children been on the whole presentation and love the Signature collection units and actually staying in one. Finance on Honeycomb, I have given the clients a printed copy of the PCCI and explained the features of the loan. Clients have accepted the loan and e-signed the documentation in my presence. Another loan outstanding with Shawbrook and Mr confirmed that both monthlies are comfortable. No q's and no pressure felt and happy to sign today, RHD 2/8</p>				

But I don't agree that this gives any particular insight into Mr S's motivations at the Time of Sale. Ultimately, this only shows they made a comment that they liked the Signature membership accommodation. I already acknowledged in my PD that he was likely interested in holidays and explained that isn't surprising given the nature of the product at the centre of this complaint. But, for the reasons already explained in my PD, I still think the Supplier's breach of Regulation 14(3) was material to the decision he ultimately made.

The Supplier has also said that they feel there are inconsistencies in Mr S's testimony which means I ought not to rely on it. For example, they've said Mr S never made any enquiries for holidays either through their reservations department or members' area, casting doubt on their comments about availability and exclusivity and therefore their testimony as a whole.

When considering how much weight I can place on Mr S's statement, I am assisted by the judgement in the case of *Smith v Secretary of State for Transport* [2020] EWHC 1954 (QB).

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

- a. *"In assessing oral evidence based on recollection of events which occurred many years ago, the Court must be alive to the unreliability of human memory. Research has shown that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts (Gestin and Kogan).*
- b. *A proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence (Kogan).*
- c. *The task of the Court is always to go on looking for a kernel of truth even if a witness is in some respects unreliable (Arroyo).*
- d. *Exaggeration or even fabrication of parts of a witness' testimony does not exclude the possibility that there is a hard core of acceptable evidence within the body of the testimony (Arroyo).*
- e. *The mere fact that there are inconsistencies or unreliability in parts of a witness' evidence is normal in the Court's experience, which must be taken into account when assessing the evidence as a whole and whether some parts can be accepted as reliable (Arroyo).*
- f. *Wading through a mass of evidence, much of it usually uncorroborated and often coming from witnesses who, for whatever reasons, may be neither reliable nor even truthful, the difficulty of discerning where the truth actually lies, what findings he can properly make, is often one of almost excruciating difficulty yet it is a task which judges are paid to perform to the best of their ability (Arroyo, citing Re A (a child) [2011] EWCA Civ 12 at para 20)."*

And having considered the statement, as I said in my PD, I feel able to place weight on its contents when considering the merits of Mr S's complaint. I do so whilst being cognisant of the fact that memories can fade over time, and that inconsistencies in evidence are a normal part of someone trying to remember what happened in the past. So, I am not surprised if there are some inconsistencies between what he says has happened, and what other evidence shows.

The question to consider, therefore, is whether there is a core of acceptable evidence from Mr S, such that any such inconsistencies have little to no bearing on whether his testimony can be relied on, or whether such inconsistencies are fundamental enough to undermine, if not contradict, what he says about what the Supplier said and did to market and sell the Signature membership to him as an investment.

So, for example, I do not find it surprising that Mr S doesn't remember what holidays they had or hadn't searched for. Indeed, in the paragraph of the witness statement the Supplier has highlighted, while there appears to be some confusion about what searches or checks they had done for holidays, Mr S also makes comments about a lack of exclusivity which he says they became aware of after seeing the relevant resorts available on other websites. This seems entirely plausible and isn't contradicted by what the Supplier has highlighted regarding their holiday searches via the Supplier's own search functions. So, while there may be some inconsistencies, forgetting what searches they had or hadn't made for holidays approximately two to three years before the statement was written, does not, in my view, significantly impact the core of acceptable evidence.

Lastly, the Supplier has highlighted that Mr S contacted them to ask for resale information in November 2021. But, I think this simply reflects his unhappiness which ultimately led to the complaint here a few months later, and I don't think it detracts from the other evidence available upon which basis I'm upholding this complaint.

So, overall, given the facts and circumstances of this complaint, I still think the Lender participated in and perpetuated an unfair credit relationship with Mr S 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 still think it is fair and reasonable for me to uphold this complaint.

Neither party provided any further comments on my proposed method of compensation. So, it follows that I still think that is a fair way to resolve the matter. For the avoidance of doubt, I've set this out again below.

### **Fair Compensation**

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Having found that Mr S would not have agreed to purchase Signature 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 S 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 not purchased the Signature membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr S agrees to assign to the Lender his Signature points or hold them on trust for the Lender if that can be achieved.

Mr S was an existing member of the Supplier's 'Fractional Club' membership ('FC Membership 1') and his membership was traded in against the purchase price of the Signature membership in question ('Signature Membership'). Under FC Membership 1, he had 1,390 Fractional points. And, like Signature Membership, he had to pay annual

management charges as part of FC Membership 1. So, had Mr S not purchased the Signature Membership, he would have always been responsible for paying an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr S from the Time of Sale as part of Signature Membership should amount only to the difference between those charges and the annual management charges he would have paid as part of FC Membership 1.

So, here's what the Lender needs to do to compensate Mr S with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr 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 the annual management charges paid after the Time of Sale under the Signature Membership and what Mr S's annual management charges would have been under FC Membership 1 had he not purchased Signature Membership.
- (3) The Lender can deduct:
  - i. The value of any promotional giveaways that Mr S used or took advantage of; and
  - ii. The market value of the holidays\* Mr S took using Signature membership *if* the points value of the holiday(s) taken amounted to more than the total number of Fractional points he would have been entitled to use at the time of the holiday(s) as an ongoing FC Membership 1 member. However, this deduction should be proportionate and relate only to the additional points that were required to take the holiday(s) in question.

For example, if Mr S took a holiday worth 2,550 Signature points after the Time of Sale and he would have been entitled to use a total of 2,500 Fractional points under FC Membership 1 at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional points that were required to take it. But if he would have been entitled to use 2,600 Fractional points under FC Membership 1, 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 S's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr S's Signature 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 Signature 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 S took using his 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 his 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 direct Tandem Personal Loans Ltd to calculate and pay fair compensation to Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 December 2025.

Fiona Mallinson  
**Ombudsman**