

## **The complaint**

Mrs W's complaint is, in essence, that Tandem Bank Limited acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her 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**

Mrs W and her husband, Mr W, were members of a timeshare provider (the 'Supplier'), having purchased a trial membership from it previously. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 23 December 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £18,269 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs W 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.

To pay for their Fractional Club membership, Mrs W took out a loan of £18,235 (the 'Credit Agreement'). The loan was provided by a different lender, before being assigned to Tandem in August 2022. Tandem was acquired by Tandem in 2022, with the latter taking responsibility for this complaint.

As only Mrs W was named on the Credit Agreement, only she is able to refer a complaint about it to our Service. For ease I will refer to Mrs W only from here on, even where she and Mr W may have been acting jointly or the matter is otherwise applicable to either or both of them.

Mrs W – using a professional representative (the 'PR') – wrote to the original lender on 21 November 2023 (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 Letter of Complaint was referred on to Tandem, who investigated Mrs W's concerns and issued its final response letter on 17 January 2024, rejecting the complaint on every ground.

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

Mrs W disagreed with the Investigator's assessment and asked for an Ombudsman's decision, so her complaint was passed to me.

I considered the matter and issued a provisional decision (the 'PD'). In that decision, I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done that, I do not think

this complaint should be upheld.

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, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

### **Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

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The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Tandem doesn't dispute that the relevant conditions are met. That said, I note there is a potential barrier to a claim being made against Tandem, given that it only acquired the loan sometime after the events giving rise to Mrs W's claim. But it isn't necessary to make any formal findings on such matters here – as I do not think the claim would succeed on its merits in any event. I'll explain why.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs W was:

1. Told that she had purchased an investment that would "considerably appreciate in value" when that was not true.
2. Told that she would own a share in a property that would increase in value during the membership term when that was not true.
3. Made to believe that she would have access to "the holiday apartment" at any time all year round when that was not true.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for point 3, while it's *possible* that Fractional Club membership was misrepresented at the Time of Sale for that reason, I don't think it's *probable*. It's given little to none of the colour or context necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for that reason, I don't think it was.

So, while I recognise that Mrs W and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material

misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that Tandem acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

### **Section 75 of the CCA: the Supplier's Breach of Contract**

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The PR says that Mrs W could not access the holidays that the Supplier led her to believe the membership would entitle her to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mrs W stated that the availability of holidays was subject to demand. It also looks like she made use of her fractional points to holiday and has not given details of any particular locations that she found herself illegitimately unable to book. So I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think Tandem is liable to pay Mrs W any compensation for a breach of contract by the Supplier. And with that being the case, I do not think Tandem acted unfairly or unreasonably in relation to this aspect of the complaint either.

### **Section 140A of the CCA: did Tandem participate in an unfair credit relationship?**

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I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mrs W and Tandem along with all of the circumstances of the complaint, I don't 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 standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
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;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs W and Tandem.

#### The Supplier's sales & marketing practices at the Time of Sale

Mrs W's complaint about Tandem being party to an unfair credit relationship was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the original lender lent to Mrs W. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the original lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs W was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs W.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that Tandem isn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs W knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs W suffering a financial loss such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell Tandem to compensate her, even if the loan wasn't arranged properly.

The PR also says that Mrs W was rushed into signing the contractual paperwork at the end of a long sales meeting, without having sufficient time to properly consider the implications of the agreement into which she was entering. I acknowledge and appreciate that Mrs W may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during her sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. She was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel the membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs W made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs W's credit relationship with Tandem was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with Tandem was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

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

Tandem does not dispute, and I am satisfied, that Mrs W's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

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

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

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mrs W was told by the Supplier that Fractional Club membership was the type of investment that would only 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.

A share in the Allocated Property clearly constituted an investment as it offered Mrs W the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Mrs W 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mrs W, 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.

On the other hand, I acknowledge that the Supplier’s sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it’s equally possible that Fractional Club membership was marketed and sold to Mrs W as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it’s not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between Tandem and Mrs W rendered unfair?

Having found that it was possible 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 Mrs W and Tandem 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 Mrs W and Tandem that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

To help me decide this point, I've carefully considered what Mrs W has said in the course of her complaint about how the membership was sold to her and her motivation for purchasing it alongside the broader circumstances at the Time of Sale.

As noted above, it is said within the Letter of Complaint that Mrs W was told that she had purchased an investment that would increase in value. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature. In fact, such assertions are made in an identical fashion by the PR in a number of other complaints.

When referring the complaint to us, the PR included a statement in Mrs W's own words. And they highlight that within that statement, Mrs W said:

*"[The Supplier's representative's] supervisor or manager then presented us with other options, apparently this new property was just made available and it was very rare that this type of offer and property becomes available, and (they) convinced us to transfer our trial membership to a full membership that would last 14 years, after the 14 years the property would be sold and we would get a percentage of the profit and not only that we were also entitled to free upgrades, we fell for the hard sell and became full members."*

So taken at face value, Mrs W recalls the Supplier promoting Fractional Club membership as an investment – and that this, at least as part of the "hard sell" by the Supplier – led her to purchase the membership.

However, looking at the statement as a whole, I do not get the sense that the investment element was a dealbreaker for Mrs W. In addition to being a rather brief reference to the investment element, lacking any meaningful detail, there were evidently a number of other factors that motivated Mrs W to purchase the membership. Mrs W already held a trial membership with the Supplier, evidencing her interest in the type of holidays it offered. This, to my mind, was a major motivation in her decision to purchase Fractional Club membership – noting that she says in her statement, prefacing the excerpt above:

*"We were informed by [the Supplier] that this was an exclusive club and in order to visit any of their resort[s] you had to be a member. One of the benefits of becoming a member is that I could share the accommodation with friends and family. We were told that being a member entitled us to visit all the exclusive member only resorts, which are maintained and updated on a regular basis."*

...

*... we informed the [Supplier's] representative that we only wanted to keep our trial membership because we had not had the opportunity to use it yet, he told us the trial membership did not have the same flexibility or options as a full membership."*

It seems to me, then, that the Fractional Club membership presented to Mrs W satisfied this desire to obtain access to resorts available through the Supplier and being able to share this with friends and family, with added flexibility and greater options than her existing trial membership – as she goes on to say:

*"We left thinking we had a good deal to exclusive high quality members accommodation that we could share with friends and family."*

As I set out above, I accept the possibility that the membership was positioned by the Supplier in such a way. What I am considering here, though, is whether any such positioning of the Fractional Club membership as an investment was *material* to Mrs W's decision to purchase it. And on my reading of the evidence before me, I do not think it was. That doesn't mean she wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mrs W herself doesn't persuade me that her purchase was motivated by her share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision she ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs W's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests she would have pressed ahead with her purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mrs W and Tandem was unfair to her even if the Supplier breached Regulation 14(3).

#### The provision of information by the Supplier at the Time of Sale

The PR says that Mrs W was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mrs W sufficient information, in good time, on the various charges she could have been subject to as a Fractional Club member in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mrs W nor the PR have persuaded me that

she would not have pressed ahead with her purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mrs W in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

At the time of my provisional decision, I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint. I said:

Mrs W's professional representative (PR) says that a payment of commission from Tandem to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar

- as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mrs W in arguing that her credit relationship with Tandem was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that Tandem and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mrs W, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mrs W into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that Tandem and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if Tandem and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mrs W.

Based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mrs W but as the supplier of contractual rights she obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreement and thus a fiduciary duty.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, Tandem didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commission arrangements between the Supplier and Tandem were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mrs W.

In conclusion, given the facts and circumstances of this complaint, I did not think that Tandem acted unfairly or unreasonably when it dealt with Mrs W's Section 75 claim, and I was not persuaded that Tandem was party to a credit relationship with her under the Credit

Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct Tandem to compensate her.

Tandem responded to the PD and accepted it.

The PR also responded. It did not accept the PD and provided some further comments it wanted me to take into account.

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

### **The legal and regulatory context**

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

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

#### The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

#### The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

### **What I've decided – and why**

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

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

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I

haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD only relate to the issue of whether the credit relationship between Mrs W and Tandem was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mrs W as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in their response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

### **Section 140A of the CCA: did Tandem participate in an unfair credit relationship?**

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on Tandem to disprove the allegation that its relationship with Mrs W was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that Tandem – or I – should take a claim at face value. There remains an onus on Mrs W to provide some evidence for the claim she is making, despite the overall burden of proof resting with Tandem, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

### **The Supplier's alleged breach of Regulation 14(3) of the Timeshare regulations**

In its response to my PD, the PR has reasserted its view that the Supplier marketed the Fractional Club membership to Mrs W as an investment and that this was a motivating factor in her decision.

I accepted in my PD that the membership may well have been marketed as an investment to Mrs W in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it wasn't necessary for me to make a finding on this as it is not determinative of the outcome of the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. The PR's response to my PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mrs W to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Mrs W to proceed with her purchase. In short, I was not persuaded that her decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Mrs W in the course of her complaint. I recognise the PR has interpreted Mrs W's testimony differently to how I have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

The PR says that the trial membership Mrs W already held offered her access to the same style of holidays and experiences as the Fractional Club membership – with the key distinction being the investment element, which must therefore have been the “*major motivating factor*” in Mrs W’s decision to purchase it. I do not agree with that view in either respect. Upgrading to a full membership increased the options available to Mrs W and naturally guaranteed her access to those options for longer – swapping the *trial* membership for a full one. And it enabled Mrs W to share those options with friends and family. As noted in my PD, Mrs W herself specifically cited these points as factors in her thinking within the statement she provided:

*“... we informed the [Supplier’s] representative that we only wanted to keep our trial membership because we had not had the opportunity to use it yet, he told us **the trial membership did not have the same flexibility or options as a full membership.***

...

*“We left thinking we had **a good deal to exclusive high quality members accommodation that we could share with friends and family.**”* (my emphasis)

The PR objects to the approach I’ve taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*<sup>1</sup> and the case law that contributed to it, by requiring Mrs W to have been “primarily or mainly motivated” by the investment element in order to uphold the complaint. But I did not make such a finding. I said that, in my view, Mrs W was highly motivated by the holiday options offered by the Supplier – which was a factor in my overall conclusion in light of all the available evidence that she would, on balance, have pressed ahead with her purchase of the Fractional Club membership even if there had been a breach of Regulation 14(3).

So for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Mrs W’s decision to purchase the Fractional Club membership.

#### The provision of information by the Supplier at the Time of Sale

I will also address the PR’s point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. The PR suggests that a delayed sale date could lead to an unfairness to Mrs W in the future, as any delay could mean a delay in the realisation of her share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners’ certificate, is 31 December 2032. This same date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mrs W. This date indicates that the membership has a term of 14 years. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

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<sup>1</sup> 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’).

“The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate.” (my emphasis)

It seems clear to me that the contractual commencement date for the start of the sales process is 31 December 2032. This actual date is repeated in the sales documentation as I’ve set out above. The Information Statement is, in my view, reflective of the fact that most fractional memberships were set up to run for nineteen years. But not all memberships attached to a given Allocated Property were sold at exactly the same time, so often the time left before the sale date was less than nineteen years at the actual time of sale. I accept that this could be confusing, however I do not think Mrs W was misled by this at the Time of Sale. So, I can’t see that this is a reason to find the credit relationship unfair and uphold this complaint.

#### Section 140A: conclusion

Given all of the factors I’ve looked at in this part of my decision, and having taken all of them into account, I’m not persuaded that the credit relationship between Mrs W and Tandem under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don’t think it is fair or reasonable that I uphold this complaint on that basis.

#### **Conclusion**

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In conclusion, given the facts and circumstances of this complaint, I do not think that Tandem acted unfairly or unreasonably when it dealt with Mrs W’s Section 75 claim, and I am not persuaded that Tandem was party to a credit relationship with her under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct Tandem to compensate her.

#### **My final decision**

Your text here

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W to accept or reject my decision before 26 February 2026.

Ben Jennings  
**Ombudsman**