DRN-5990381

The complaint

Mr A and Mr G'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 A and Mr G were long-time customers of a timeshare provider (the 'Supplier'). While this complaint relates only to their purchase from the Supplier in January 2014, I've set out briefly the history of their purchases. Mr A and Mr G made their first purchase in October 2004, in a points-based holiday club operated by the Supplier. Between this sale and that complained about Mr A and Mr G made a further five purchases from the Supplier, of holiday club points. By the time of sale in January 2014 they had a total of 40,000 points in the holiday club.

The purchase about which Mr A and Mr G complain, was a purchase of a different type of product from the Supplier. This was membership to a timeshare I'll call the 'Fractional Club,' in January 2014. On this date, Mr A and Mr G purchased 40,000 points in the Fractional Club, for a total price of £27,200. As part of the purchase, they traded in all 40,000 of their holiday club points.

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

Mr A and Mr G paid for their Fractional Club membership by taking finance of £27,200 from the Lender in joint names (the 'Credit Agreement').

Mr A and Mr G – using a professional representative (the 'PR') – wrote to the Lender on 26 June 2019 (the 'Letter of Complaint') where they raised 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 A and Mr G's concerns as a complaint and issued its final response letter on 20 September 2019, rejecting it on every ground.

Mr A and Mr G 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 Fractional Club membership as an investment to Mr A and Mr G at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr A and Mr G was rendered unfair to them for the purposes of section 140A of the CCA.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's

decision – which is why it was passed to me.

I issued a provisional decision dated 21 October 2025 upholding Mr A and Mr G's complaint. The parties have both responded.

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.
I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:
• The CCA (including Section 75 and Sections 140A-140C).
• The law on misrepresentation.
• The Timeshare Regulations.
• The UTCCR.
• The CPUT Regulations.
• Case law on Section 140A of the CCA – including, in particular:
• The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).
• Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')
• Patel v Patel [2009] EWHC 3264 (QB) ('Patel').
• The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').
• Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').
• Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').
• R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

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.

The Lender has responded to say it isn't challenging my decision to uphold this case and has committed to redressing the matter. It has provided some comments which I've considered. I note it hasn't made any comments with regard to redress methodology so I take that to indicate that it accepts the methodology I've set out as it hasn't commented on it.

Accordingly this complaint is upheld and I direct the Lender to settle the matter as set out in my provisional decision which is repeated below save for amendments reflecting the final nature of this decision.

It is my decision that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr A and Mr G 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 Mr A and Mr G complaint, it isn't necessary to make formal findings on all of them.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between the Mr A and Mr G and the Lender was unfair. Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator." As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "*a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]"*. And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "*finance a transaction between the debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly*."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr A and Mr G's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "*any other thing done (or not done) by, or on behalf of, the creditor*" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier,

as Lord Sumption made clear in Plevin, at paragraph 31:
"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:
"*By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer*".

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "*negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law*" before going on to say the following in paragraph 74:
"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."

So, the Supplier is deemed to be Lender's statutory agent for the purpose of the pre-contractual negotiations. However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made "*having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination*" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended. The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

"*Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."* Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Mr A and Mr G and the Lender along with all of the circumstances of the complaint and I have decided that 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; and
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.

I have then considered the impact of these on the fairness of the credit relationship between Mr A and Mr G and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr A and Mr G'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 A and Mr G say that the Supplier did exactly that at the Time of Sale. In their statement which is dated July 2019 and we received in November 2019 they've said in relation to this purchase that "*this was an investment in property*" and "*if we wanted to be part of this profit-making investment, we would need to be quick*". They also said they were told "*The properties would be sold in 14 years we would then have our money back plus a profit from the sale*."

Mr A and Mr G allege, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because:
(1) They were told by the Supplier that they would get their money back or more during the sale of Fractional Club membership.
(2) They were told by the Supplier that Fractional Club membership was a good investment because it was buying property.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, by reference to the decided authorities, "*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*" at [56]. I will use the same definition.

Mr A and Mr G's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3).

That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se. In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. To conclude, therefore, that Fractional Club membership was marketed or sold to Mr A and Mr G 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 A and Mr G, 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 would have been, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr A and Mr G as an investment. However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And there are a number of strands to Mr A and Mr G allegation that the Supplier breached Regulation 14(3) at the Time of Sale, including (1) that membership of the Fractional Club was expressly described as an "investment", and not only in the sense of an investment in holidays, and (2) that membership of the Fractional Club would at least retain its value.

So, I have considered:
(1) whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Fractional Club as an investment, i.e. told Mr A and Mr G or led them to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered them the prospect of a financial gain (i.e., a profit); and, in turn
(2) whether the Supplier's actions constitute a breach of Regulation 14(3).
And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

How the Supplier marketed and sold the Fractional Club membership

I've seen a variety of internal materials produced by the Supplier and dating to around the time it began selling Fractional Club membership. I think, in general, these materials indicate that the Supplier was concerned at a senior leadership level to avoid breaching Regulation 14(3). I've seen copies of Sales Policies, for example, which warned staff that promoting the Fractional Club product as an investment, or discussing resale values with potential purchasers, was considered unacceptable. I've also seen evidence that the Supplier did not consider promoting the residual value of the Allocated Property to be a part of its sales strategy. The documents I've seen indicate that the Supplier's management considered the strategy should be to market the product as something that could be used to go on holiday, but with a shorter term than other types of membership it offered. On the other hand, it's apparent from the materials I've considered that the Supplier was aware that the sale of the fractional asset at the end of the term was a benefit to a potential purchaser. For instance, I've seen presentation slides dating to September 2012 which, in my view, implied that the Supplier's brand and other positive attributes would contribute to enhancing the value of the fractional asset at the end of the membership term. I am aware the Supplier now denies that these slides were ever used to promote the Fractional Club to potential customers[1]

[1]The Supplier has not, to my knowledge, denied the slides were ever used to train staff, only that they were shown to potential customers.

but based on the communications the Financial Ombudsman Service received from the Supplier at the time these slides first came to light, it's apparent that there were members of staff at the Supplier who had different recollections of how the slides were used.

Of course, I can't be certain of what was shown to Mr A and Mr G, or what specifically any

sales representatives may have said to them, any more than the Supplier or the Lender can. But I think the analysis above highlights that there was the potential for the Fractional Club product to be sold in a way which did not accord with the Supplier's official policy. And I don't think the Supplier would have needed to have deviated very far from a simple description of how the Fractional Club product worked in terms of the sale of the fractional asset at the end of the term, to have fallen foul of 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)).*"[2] 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, 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 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."

Looking at the relevant circumstances at the Time of Sale, I think it's difficult to see how the Supplier could have marketed the membership to Mr A and Mr G on the basis of its holiday-

[2] 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

[3] I acknowledge there was a "Wish to Rent" scheme which appears to have been an additional feature of Fractional Club membership, and which Mr A and Mr G used. This involved depositing points in a rental scheme – and £199 would be paid if the points were rented to other customers, plus a commission based on the number of points sold to those other customers.

related benefits. Mr A and Mr G already had 40,000 points in the Supplier's existing holiday club, which they could exchange for holiday accommodation. Fractional Club membership offered them nothing more, in terms of holidays, than they already had access to.[3] They were simply making a "like-for-like" exchange of their points and paying £27,200 for that exchange. It seems likely to me, given this set of facts, that the Supplier would have focused on other benefits of Mr A and Mr G converting their points to Fractional Club membership. And indeed, that is what comes across in the Suppliers own sales notes of the meeting where it says:

"reason: shorter term + hoping getting something back"

So the sales notes make very clear the two motivating reasons the supplier felt that Mr A and Mr G made this purchase. And in their statement Mr A and Mr G make clear that they were sold it as an investment for making profit. And its worth bearing in mind that they didn't receive any enhancement to what they had prior to purchase in terms of enhanced holiday benefits. So they couldn't have been motivated by enhanced holiday benefits because there were none.

Taking everything I've said above into account, I think it's more likely than not that the Supplier strayed from describing how the sale of the Allocated Property worked, and either stated or implied that Mr A and Mr G would at least get their money back when the Allocated Property was sold. In doing so, it 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 A and Mr G and the Lender under the Credit Agreement and related Purchase Agreement.

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

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation. In Carney, HHJ Waksman QC said the following in paragraph 51:
"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:
"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court may make an order if it determines that the relationship is unfair to the debtor. […]
[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that

unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr A and Mr G 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.

I've already outlined above how Mr A and Mr G were not receiving any holiday-related benefit to converting their points to the Fractional Club, given they were not getting any additional holiday rights in exchange for the £27,200 they'd agreed to pay, compared to what they already had in the Supplier's holiday club.

This leaves the two selling points for Mr A and Mr G which have been established by the supplier themselves in their sales note: the shorter term compared to their existing holiday club membership, and the prospect of getting "something" back when the Allocated Property was sold. While not something Mr A and Mr G have specifically referred to as being a reason for their purchase, the "Wish to Rent" scheme was a potential motivating factor which I'll also cover below.

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, Mr G could have got out of European Collection membership when he turned seventy-five anyway (he was sixty at the time of sale), so the Fractional Club membership didn't shorten the term of his membership in any way. So clearly for Mr G he'd paid a substantial amount of money for no reduction in term. And Mr A was only a few years younger.

Moreover the Lender has said in its complaint response letter that:
"In December 2015, Mr A and Mr G attended a presentation following which they purchased 10,000 points in (European Collection membership), at a purchase price of £6,301.00."
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 if Mr A and Mr G had simply wanted a shorter membership, there would have been little sense in their paying £27,200 to convert some of their points to the Fractional Club which would have ended at the same time at no cost.

Given such a decision would not have made financial sense in light of Mr A and Mr G's situation, I think the circumstantial evidence indicates strongly that there must have been another material reason why Mr A and Mr G went ahead. I think the most plausible reason, given the circumstances, the fact that the share in the Allocated Property was a key feature of the fractional product, and what Mr A and Mr G have said, is that they were motivated to convert their points to the Fractional Club because they hoped or expected they would make a financial return, due to the Supplier having marketed the product in a way which stated or implied this was a good reason to buy it.

While I think Mr A and Mr G had some interest in the Wish to Rent scheme, as evidenced by them using it, I don't think such an interest was incompatible with them making their purchase with investment in mind. Indeed, given the fact a member had to choose not to use their points for holidays in any given year they wanted to use the scheme, in exchange for a speculative return, I would say interest in the scheme is consistent with someone having made the purchase for investment-related reasons.

And with that being the case, I have decided that the Supplier's breach of Regulation 14(3) was material to the decision Mr A and Mr G ultimately made, and their credit relationship with the Lender was rendered unfair as a result.

Conclusion

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

Putting things right

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

As already noted, Mr A and Mr G were existing holiday club members and a proportion of their holiday club points were traded in against the purchase price of Fractional Club membership. Under their holiday club membership, they previously had 40,000 points (of which all were then converted to Fractional Club points). And, like Fractional Club membership, they had to pay annual management charges as a holiday club member. So, had Mr A and Mr G not purchased Fractional Club membership, they would have always been responsible to pay an annual management charge of some sort on the 40,000 points they'd have left in the holiday club. With that being the case, any refund of the annual management charges paid by Mr A and Mr G 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 had they left their 40,000 points in the European collection holiday club.

So, here's what I think needs to be done to compensate Mr A and Mr G with that being the case – whether or not a court would award such compensation:
(1) The Lender should refund Mr A and Mr G'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 A and Mr G's Fractional Club annual management charges paid after the Time of Sale and what their holiday club annual management charges would have been had they not purchased Fractional Club membership.
(3) The Lender can deduct:
iii. The value of any promotional giveaways and Wish to Rent pay-outs that Mr A and Mr G used or took advantage of; and the market value of the holidays* Mr A and Mr G took using their Fractional Points if the Points value of the holiday(s) taken amounted to more than the total number of holiday club points they would have been entitled to use at the time of the holiday(s) as ongoing holiday club members. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.

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

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)
(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
(5) The Lender should remove any adverse information recorded on Mr A and Mr G's credit files in connection with the Credit Agreement reported within six years of this decision.
(6) If Mr A and Mr G'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.
*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 A and Mr G took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.
**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

I uphold this complaint. And direct Shawbrook Bank Limited to redress the matter as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mr G to accept or reject my decision before 30 December 2025.

Rod Glyn-Thomas
Ombudsman