

The complaint

Mrs B'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 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 B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 9 October 2015 (the 'Time of Sale'). Prior to that, she was an existing member of the Supplier's, holding 15,000 points in its European Collection, which enabled her and Mr B to exchange the points for holiday accommodation. She and her husband Mr B entered into an agreement with the Supplier to trade 8,000 of their existing points into fractional points at a cost of £10,160 (the 'Purchase Agreement').

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

Mrs B paid for her Fractional Club membership by taking finance of £10,160 from the Lender (the 'Credit Agreement'). This was taken out in her and Mr B's name.

Sadly, Mr B passed away in March 2017. As the Credit Agreement was still active at the time of his passing, Mrs B is the sole eligible complainant, so I will refer to her throughout the complaint.

Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 2 July 2018 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving her a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mrs B says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told her that Fractional Club membership had a guaranteed end date when that was not true.
2. told her that they were buying an interest in owning a specific apartment when that was not true.
3. told her that Fractional Club membership was an "investment" that would lead to them making a profit, when that was not true because it was "worthless".
4. told her that she would only receive a "return" upon the ending of the membership, when the Supplier operated a "Wish to Rent" scheme, which the PR says was "flawed".

5. told her that the Supplier's holiday resorts were exclusive to its members when that was not true.

Mrs B says that she has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs B.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mrs B says that the credit relationship between her and the Lender was unfair to her under Section 140A of the CCA. In summary, they include the following:

1. The contractual terms setting out (i) the duration of her Fractional Club membership and/or (ii) the obligation to pay annual management charges for the duration of her membership were unfair.
2. She was pressured into purchasing Fractional Club membership by the Supplier.
3. The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
4. The Supplier failed to provide sufficient information in relation to the Fractional Club's ongoing costs.

The Lender dealt with Mrs B's concerns as a complaint and issued its final response letter on 22 February 2019, rejecting it on every ground.

Mrs B 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 Mrs B at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on her purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mrs B was rendered unfair to her 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.

Having considered everything, I issued a provisional decision ("PD") setting out my thoughts on Mrs B's complaint. In short, I agreed with the Investigator but wanted to give both parties to consider what I said, and provide any further evidence and arguments, before I set out my final decision. An extract of my PD follows:

"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 Consumer Rights Act 2015 (CRA)*
- *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’).

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 Fractional Club membership to Mrs B as an investment, which, in the circumstances of this complaint, rendered the credit relationship between her and the Lender unfair to her 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 Mrs B’s complaint, it isn’t necessary to make formal findings on all of them. This includes the allegation that the Supplier misrepresented the Fractional Club membership, and the Lender therefore ought to have accepted and paid the claim under Section 75 of the CCA. Because, even if that aspect of the complaint ought to succeed, the redress I’m currently proposing puts Mrs B in the same or a better position than she would be if the redress was limited to misrepresentation.

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 Mrs B 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 Mrs B'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.”¹

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 Mrs B and the Lender along with all of the circumstances of the complaint and 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; 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.*

¹ The Court of Appeal’s decision in *Scotland* was recently followed in *Smith*.

I have then considered the impact of these on the fairness of the credit relationship between Mrs B 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 Mrs B'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 Mrs B says that the Supplier did exactly that at the Time of Sale – saying the following in her written recollections, which are signed and dated 30 March 2018:

"We were told that we were making a prudent financial investment because we would be buying an interest in an actual property, it was NOT timeshare and we would be receiving a return on our investment when the property [was sold]"

And:

"Once more, we made this purchase on the strength of numerous representations made by [the Supplier]. Namely we would be making an investment in an actual piece of land with a view to seeing a return on our investment after 15 years when the property is sold"

Mrs B alleges, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because she was told by the Supplier that she would get her money back or more during the sale of Fractional Club membership.

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.

Mrs B's share in the Allocated Property clearly, in my view, constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Mrs B 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.

I have been given copies of the paperwork Mrs B received at the Time of Sale. 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 Mrs B, the financial value of her share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

For instance, as the Supplier has pointed out in its response to the Letter of Claim, the first term listed in the terms and conditions document explains that the product should not be bought as an investment in real estate and that the purchase price relates primarily to the provision of memorable holidays.

Further, there was a Customer Compliance Statement, which included the following:

"We understand that the purchase of our [Supplier] Fractional Points is an investment in our future holidays, and that it should not be regarded as a property or financial investment. We recognize that the sale price achieved on the sale of the Property In the Owners Club (and to which our [Supplier] Fractional Points have been attributed) will depend on market conditions at that time, that property prices can go down as well as up and that there is no guarantee as to the eventual sale price of the Property".

Mrs B and Mr B had ticked a box next to this text, suggesting they read it at the Time of Sale.

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 Mrs B's 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" in several different contexts and (2) that membership of the Fractional Club could make her a financial gain and/or would retain or increase in 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 Mrs B or led her to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered her 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 have considered what both parties have told us about the sale of the Fractional Club membership. The Supplier says it did not sell it in breach of Regulation 14(3). But it has not provided any supporting documents for me to review. I have thought about this and have also considered what Mrs B says in her written recollections, which the PR has provided to me, as well as the overall terms of the bargain Mrs B entered, in order to determine fairly and reasonably what I think was more likely to have happened at the Time of Sale.

In considering the weight to place on Mrs B's recollections and evidence I have considered the judgment in Smith v. Secretary of State for Transport [2020] EWHC 1954 (QB), where it was held at para 40:

"At the start of the hearing, I raised with Counsel the issue of how the Court should assess his oral evidence in light of his communication difficulties. Overnight, Counsel agreed a helpful note setting out relevant case law, in particular the commercial case of Gestmin SPGS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) (Leggatt J as he then was at paragraphs 16-22) placed in context by the Court of Appeal in Kogan v Martin [2019] EWCA Civ 1645 (per Floyd LJ at paragraphs 88-89). In the context of language difficulties, Counsel pointed me to the observations of Stuart-Smith J in Arroyo v Equion Energia Ltd (formerly BP Exploration Co (Colombia) Ltd) [2016] EWHC 1699 (TCC) (paragraphs 250-251). Counsel were agreed that I should approach Mr Smith's evidence with the following in mind:

- 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 (Gestmin 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)."*

So, although this judgment relates to assessing oral evidence, I think it's also important guidance to consider when undertaking an assessment of written evidence, as I need to do in Mrs B's complaint.

Both the Lender and the Supplier have noted that Mrs B's recollections differ from the available paperwork and the Supplier says that this undermines her recollections to the extent that they cannot be relied upon.

I have thought about the events as recalled by Mrs B, paying attention to her circumstances and the Smith judgment. Mrs B and Mr B made a series of purchases with the Supplier, beginning with the purchase of a trial membership with a company that appears to have later come under the control of the Supplier, each year from 2012 to 2016 inclusive. When compared with the paperwork I've seen, I note there are a number of apparent inconsistencies in what Mrs B says happened when she and Mr B attended different sales presentations with the Supplier. For example, Mrs B describes being sold fractional points for the first time in 2013 when she and Mr B attended a meeting in Greece. However, looking at the documents provided to me, I can see that she and Mr B actually purchased another product at that time. Mrs B says she purchased more points in 2015, when this was not the case – she traded the same number of European Collection points for Fractional points. And she says she purchased more Fractional points in 2016, which the PR has since corrected as she only purchased more European Collection points.

But my role here is to make findings based on what I think is more likely than not to have happened, on the balance of probabilities. And in reading the testimony, Mrs B has been clear and consistent in her written recollections that she and Mr B were told the Fractional Club membership was an investment. For instance, as well as the statements I've referred to above, she says:

"The representative presented the Fractional Ownership as if it was a product that was designed totally in favour of the consumer and that it was our means investing in real estate and making a profit after 15 years."

Mrs B recalls this interaction as having taken place during a sale in 2013, prior to the Time of Sale. However, as I have established, her only Fractional Club purchase is the one funded by the Lender in October 2015. To me, it is quite understandable that Mrs B may have potentially confused the sequence of events she's described in her recollections, because, as the above judgment says, "memories are fluid and malleable". And, I've also thought about what Mrs B says about her personal circumstances at the time she shared her recollections:

"The overall effect has left me battling with overwhelming levels of stress and anxiety. This combined with the recent death of my husband has led to me being prescribed with [medication] to deal with my psoriasis. I do not have the option of returning to work as my stress and anxiety levels have reached a debilitatingly high level, despite being treated [medication]."

To me, it is understandable that Mrs B was not able to recall the precise order of events and purchases she and Mr B made with complete accuracy, given her circumstances at the time this was taken, and considering she was no longer able to corroborate her memories with Mr B. So, as in Smith, I have approached Mrs B's evidence with the intention of seeking a "kernel of truth" within her evidence. And I think her testimony about how she and Mr B were sold Fractional Club membership by the Supplier is consistently underpinned by the desirability of its investment potential. Indeed, she lists the reasons she and Mr B went ahead with the purchase and says they did so because they were led to believe they were obtaining an interest in a piece of property that would lead to them receiving a return when this property was sold at the end of the term.

I've also thought about the terms of the bargain Mrs and Mr B entered into, and their circumstances at the Time of Sale. Then, they were already existing members of the Supplier's European Collection, which provided them with a total of 15,000 points to use to access holiday accommodation. So, if they had primarily wanted to gain additional holiday rights, they could have simply purchased additional points, as they had done previously and as they would do later. But they did not – in reality, they have ended up trading 8,000 of their existing European Collection points for 8,000 Fractional Club points, therefore not gaining any more points. I acknowledge that Mrs B would have also been aware that the points could be used to access holiday accommodation, as they had done before, but I don't think it's likely she and Mr B would have decided to go ahead with the transfer of points from one type of membership to another, and pay an additional £10,160, unless the Supplier had relied on other aspects of the Fractional Club membership to promote the sale.

I understand that Fractional Membership offered Mrs B a shorter contract term than her existing European Collection membership. But she kept nearly half of her points in the existing scheme and later purchased more of these points, meaning she was still going to be liable to pay the management fees to the Supplier as a European Collection member, regardless of her decision to become a Fractional Club member. So, I think I can rule out a shorter contract term as a motivating factor for Mrs B entering into the Fractional Club. The investment elements of Fractional Membership were plainly major parts 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 features in the product without relying on them to promote sales – especially when the reality was that, as existing European Collection members with significant holiday rights, the principal benefits of the move to Fractional Membership were its investment elements i.e., the share in the net sale proceeds of the Allocated Property.

Mrs B says from the outset of the complaint that she was led to believe by the Supplier she would make a profit when the Allocated Property was sold. And I think that belief fits with what she did at the Time of Sale – which, as an existing European Collection member with significant holiday rights, was make a significant purchase for an interest in the sale proceeds of the Allocated Property and no additional points to be used for holiday rights.

So, overall, when I consider the evidence as a whole, and in combination with the particular circumstances of Mrs B's sale, I don't find her either implausible or hard to believe when she says she was told that by buying fractional points, she would have some form of ownership of a real property and that she was "investing in real estate and making a profit after 15 years". On the contrary, given what I've seen so far, I think that's likely to be what Mrs B and Mr B were led by the Supplier to believe at the Time of Sale. And for these reasons, 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 Mrs B 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 Mrs B and the Lender that was unfair to her and warranted relief as a result, whether the Supplier’s breach of Regulation 14(3) (which, having taken place during its antecedent negotiations with Mrs B, is covered by Section 56 of the CCA, falls within the notion of “any other thing done (or not done) by, or on behalf of, the creditor” for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) lead her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Mrs B’s testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when she decided to go ahead with her purchase. That doesn’t mean she was not interested in holidays. Her own testimony demonstrates that she quite clearly was. And as I have already covered above, I am mindful that she and Mr B increased their allocation of European Collection points in 2016 and the reservation records provided by the Supplier show that they made several holiday bookings. And that is not surprising given the nature of the product at the centre of this complaint. But as Mrs B says (plausibly in my view) that Fractional Club membership was marketed and sold to her at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think her purchase was motivated by her 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 her existing membership. And with that being the case, I think the Supplier’s breach of Regulation 14(3) was material to the decision she ultimately made.

Mrs B has not said or suggested, for example, that she would have pressed ahead with the purchase in question had the Supplier not led her to believe that Fractional Club membership was an appealing investment opportunity. And as she faced the prospect of borrowing and repaying a substantial sum of money while subjecting herself to long-term financial commitments, had she not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I have not seen enough to persuade me that she would have pressed ahead with her purchase regardless.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mrs B 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."

I then set out what I thought was fair compensation for Mrs B in the circumstances of her complaint.

Comments following my provisional decision

On behalf of Mrs B, the PR accepted the decision and had no further comments.

The Lender disagreed with my provisional decision. It says:

"a) The [provisional decision] is premised on a material error of law in its approach to the prohibition under Regulation 14(3) of the Timeshare Regulations, and (further or alternatively) it errs in its application of that prohibition in its reliance on the underlying documentation in support of the Fractional Sale".

- The wording of my provisional decision is inconsistent with the premise that there is no prohibition on the sale of fractional timeshares, only that they are prohibited from being marketed and sold as such. It argues that the position I took that the mere existence of the "*prospect of financial return*" constituted an investment, which is inconsistent with the definition of "*investment*" I have used ("*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*").
- The provisional decision conflates two different meanings of the word "return":
 - "*(i) a 'return on investment', which is normally understood to mean the measure of profit (the return) on the original investment; and (ii) a customer being told that some money will be 'returned' upon sale, which carries no connotation of investment or profit*".
- I did not place sufficient weight on the contemporaneous paperwork from Mrs B's sale and her evidence on the issue of the sale was generic in nature.
- The Supplier did not breach Regulation 14(3) by informing Mrs B that there is a specific Allocated Property and there will be an amount returned at the end of the term.
- I said the Supplier has not provided supporting documents in relation to its training and sales materials, but it and the Lender have provided these, and I should consider them.
- There is no evidence the Fractional Club membership was sold to Mrs B as an investment, in breach of Regulation 14(3) and I should consider the findings of the County Court in *v Diamond Resorts (Europe) Limited (County Court, 24 September 2021)* which it says found that the training received by the sales representative, in

that case, would have included a prohibition on selling Fractional Club as an investment.

“b) The above errors, in turn, undermine the Ombudsman’s approach to the witness testimony supporting [Mrs B’s] complaint.”

- I did not adequately consider the veracity of Mrs B’s testimony and whether this was “clear, consistent and contemporaneous”. And my conclusion that her testimony was more reliable than the witness testimonies provided by the Supplier is irrational.
- Mrs B’s testimony contains inconsistencies and there are reasons to doubt its veracity, in particular, two other purchases she made with the Supplier were not Fractional Club purchases, when her testimony recalls that they were.
- The alleged representations are generic and resemble those found in other complaints using a representative, and therefore may have been shaped by the representative.

“c) The PD is also premised on a material error of law in its approach to the legal test to determine the existence of an unfair relationship.”

- I made an error in law by not applying the test I highlighted in the case of *Carney* and this reverses the burden of proof. Specifically, I ought to have assessed whether there was sufficient evidence of a material impact of the breach on the decision to enter the Credit Agreement.

The Supplier also commented on my PD. Its response extends to 16 pages, and many of its points overlap with those raised by the Lender. It has summarised its points as follows:

“First, there are obvious inaccuracies and inconsistencies in the evidence of Mrs B which raise serious issues as to its reliability, which the Ombudsman does not appear to have properly considered or to have reached a reasonable conclusion as to the impact of those errors.

Secondly, [the Supplier’s] purchase documentation, which the Ombudsman has quoted from in his PD, makes clear that the Fractional product should not be purchased as a real estate or financial investment.

Thirdly, the Ombudsman has evidence from [the Supplier] as to how the Fractional product was sold and the training given to sales team members which directly contradicts the allegation it was sold as an investment, which does not appear to have been considered.”

The Supplier also says that the allegations made by the PR in a letter to the Supplier dated 2 November 2016 are not consistent with those made in the letter of complaint.

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 again, I still uphold Mrs B’s complaint, for the reasons set out in my provisional decision. I will also deal with the matters raised by the Lender and Supplier in response. In doing so, I remind both parties that my role as an Ombudsman is not to respond to every point that has been made in response. Instead, it is to decide what is fair and reasonable in the circumstances of this specific complaint. So, while I have read the Lender’s response and reviewed the supporting documents in full, I will only provide my findings on what I think are the most salient points.

The Lender has asked me to consider the County Court ruling in *Gallagher* when it comes to my consideration of how the Fractional Club was sold to Mr and Mrs B, and I have done so. However, that case was decided by the judge on its own facts and circumstances, and it does not change my own findings that, on balance, Mr and Mrs B's Fractional Club membership was sold to them in breach of Regulation 14(3).

The Lender says my PD was inconsistent with the notion that there was no prohibition on the sale of fractional timeshares *per se*, only a prohibition on the way they were sold. But this, in my view, takes a too narrow view of my PD and overlooks the part of my decision that reads:

"Mrs B's share in the Allocated Property clearly, in my view, constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she 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."

The Lender says that *"the Ombudsman states that the Supplier has not provided any supporting documentation for him to review in relation to its training and sales material."*

I understand that the Supplier says that its previous submissions to our Service, of which I was aware, and which include detailed witness statements and materials, contain information about the way the Fractional Club membership was sold. So, with this in mind, I have thought about the sales and marketing materials more generally, alongside the statements provided by the Supplier.

I recognise the amount of witness evidence that's been provided in support of the disclaimers in the paperwork I've referred to above. Indeed, I acknowledge what the witness statements say about the Supplier's sales representatives being trained to not refer to Fractional Membership as an 'investment', to not make any reference to the value of the Allocated Property and to not give customers, such as Mrs B, the impression that they were investing in something that would make a profit. And I have no reason to doubt the honesty of these statements. But, while I find the statements useful to understand how the Supplier generally trained its staff, they don't assist me greatly when thinking about what happened in Mrs B's case.

For the avoidance of doubt, I recognise that it was possible to market and sell Fractional Club membership without breaching the relevant prohibition in Regulation 14(3). For instance, depending on the circumstances, there is every chance that simply telling a prospective customer very factually that Fractional Club membership included a share in an Allocated Property and that they could expect to receive some money back, upon the sale of the property, would not breach Regulation 14(3).

I acknowledged in my PD that the Supplier did try, in the sales documents, to avoid describing Fractional Club membership as an 'investment' and giving any indication, or quantification, of any likely financial return. For example, in the Consumer Compliance Statement, which was provided at the Time of Sale, it was said:

"We understand that the purchase of our [Supplier] Fractional Points is an investment in our future holidays, and that it should not be regarded as a property or financial investment We

recognize that the sale price achieved on the sale of the Property In the Owners Club (and to which our [Supplier] Fractional Points have been attributed) will depend on market conditions at that time, that property prices can go down as well as up and that there is no guarantee as to the eventual sale price of the Property”.

And within the Purchase Agreement, it was said:

“You should not purchase Your [Supplier] Fractional Points as an investment in real estate. The Purchase Price paid by You relates primarily to the provision of memorable holidays for the duration of Your ownership”.

Lastly, there was a “Customer Compliance Statement/Declaration to Treating Customers Fairly” document, which states:

“5. We understand that the purchase of our [...] Fractional Points is an investment in our future holidays, and that it should not be regarded as a property or financial investment. We recognize that the sale price achieved on the sale of the Property in the Owners Club (and to which our [...] Fractional Points have been attributed) will depend on market conditions at that time, that property prices can go down as well as up and that there is no guarantee as to the eventual sale price of the Property.

6. We understand that the Property referenced on our Purchase Agreement will be sold as soon as possible on or after the Proposed Sale Date. However, we realise that it may not be possible to source a buyer immediately, and that in the event that the sale is affected on or after the Proposed Sale Date, we will be required to pay our Dues each year until the Property is sold.”

Mr and Mrs B ticked a box and signed the document to show they understood these points.

In response to my PD, the Lender says:

“The statements in those disclaimers were respected: there was at no stage during the sale any representation as to the future price or value of the fractional share”.

However, as I said in my PD, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork, which was only signed after a lengthy sales presentation. And there are a number of strands to Mrs B’s allegation that the Supplier breached Regulation 14(3) at the Time of Sale. Namely, that the Supplier described the Fractional Club membership to her and Mr B as an “*investment*” during the course of the sale, and that this membership could make them a financial gain and/or would retain or increase in value.

As I said in my PD, Mrs B says:

“Once again, we were told that we were making a prudent financial investment because we would be buying an interest in an actual property, it was NOT timeshare and we would be receiving a return on our investment when the property [was sold].”

Mrs B says she was told the Fractional Club membership was a “*prudent financial investment*”. She has described how she was told she could expect to receive a return on her investment. To me, this goes much further than simply describing a potential return of some monies upon the sale of the Allocated Property. Instead, I think what she says happened at the Time of Sale closely follows the definition of an investment that I used, and which was not challenged by the Lender (“*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*”). And I think

that both the Lender's response, and the witness statements provided by the Supplier's former employees, take a too narrow view on the prohibition on selling timeshares as investments in Regulation 14(3). I don't think a breach of this Regulation needs to involve quantifying the future price or value of the fractional share in the Allocated Property. Rather, I think that the suggestion, or inference, that the Allocated Property could increase in value and lead to a profit, is enough to breach the Regulation. And having considered the relevant information, including the submissions from the Supplier on its general sales and training practices, and Mrs B's testimony, I maintain that the Supplier breached Regulation 14(3) when it sold the Fractional Club membership to Mr and Mrs B.

I've considered the Lender's second point, that I did not adequately weigh up Mrs B's testimony, which contains inconsistencies about the sales that took place both before and after the Time of Sale, and which Mrs B erroneously described as involving Fractional Club memberships. The Supplier also says I applied the judgment in *Smith v Secretary of State for Transport* to Mrs B's testimony, but I have misinterpreted what the judge said and should have based my findings on the documentary evidence before me instead.

In my PD, I set out why I don't think the errors in Mrs B's recollections make her testimony wholly unreliable. In assessing her testimony, I did consider her recollections alongside the contemporaneous paperwork from each sale. For example, I ultimately found the paperwork to be more helpful than her recollections in determining the type of membership she bought at those times. So, I found the purchases in 2013 and 2016 were for points memberships, not Fractional Club memberships, and I used this to form the basis of my understanding of her circumstances. While I think the information about the other sales is useful in building a picture of Mrs B's overall relationship with the Supplier, I don't think these errors make her testimony unreliable as a whole.

And when I considered what I think was most likely to have happened at the Time of Sale, I said this included:

1. *The Supplier's sales and marketing practices at the Time of 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.*

As I said in my PD, I think Mrs B has been clear and consistent in saying that the Fractional Club membership was sold to her and Mr B as an investment. I considered her testimony alongside everything else that I was provided to date. So, I don't agree I have misapplied the judgment in *Smith* when assessing the available testimony and evidence to come to a fair and reasonable outcome.

I am also not persuaded by the Lender's suggestion that Mrs B's testimony may have been influenced by the PR. I don't find her recollections to be generic, and I don't agree that it is unusual for her testimony to have been provided to me by the third-party representing her.

The Supplier says I ought to have considered the testimony alongside the letter from the PR dated 2 November 2016. I had seen and considered this letter prior to issuing my PD. But I will comment on what the Supplier has pointed out as being the representations the PR says were made to Mr B and Mrs B at the Time of Sale:

"1. That membership in the fractional owner's club would be a vehicle, whereby our Clients would ultimately bring to an end their timeshare ownership and avoid liability for maintenance fees that would otherwise potentially continue in legal perpetuity;

2. The advantage of fractional ownership is that it is not timeshare, so that the value is intrinsically linked to underlying real Property, and that therefore our Clients were acquiring an asset; and

3. As with any asset, it had an intrinsic value which would be realised on sale of the underlying Properties which would enable our clients to recover money that they had paid to acquire previously held membership in timeshare clubs, owned and or operated by [the Supplier]."

The Supplier says that point (1) would appear to be the main reason Mr and Mrs B entered into the Fractional Club membership. But, if that were the case, I would question why the Supplier would tell them that the purchase of Fractional Club membership would bring their timeshare ownership to an end, when that is plainly not the case as they did not convert all of their points from the European Collection. And Mr and Mrs B later purchased more points, which as I've already explained, shows that the shorter term offered by the Fractional Club membership was unlikely to have been a motivating factor in their decision to enter the same. I am also aware that Mr B was 65 years old at the Time of Sale and both he and Mrs B could have relinquished their existing European Collection membership under the Supplier's exceptional circumstances policy when Mr B would have turned 75 years old. Indeed, the letter was sent by the PR to the Supplier precisely in order to exit the membership through the exceptional circumstances policy, so I think Mr and Mrs B would have chosen to do this even if they did not exchange the European Collection points for Fractional points. As such, I think it's unlikely that they were sufficiently motivated to purchase the Fractional Club membership as a way to shorten the membership term as they were able to bring their ownership to an end sooner simply by relinquishing it.

On this point, the Supplier also says:

"Further, the Ombudsman has reached his conclusion based on his own speculation of Mrs B's motivation for her purchase, rather than on any assessment of the facts. By way of example, the Ombudsman considered the possibility that Mr and Mrs B purchased the product for the shorter membership term but dismisses this. The Ombudsman's conclusion that he can rule out a shorter membership term as a motivating factor for Mrs B simply because she retained European Collection membership is not based on any evidence. Whilst there is no evidence to explain why Mrs B did not choose to convert all of her European Collection points to Fractional, it is of course possible that at the time she considered the benefit of the 15-year term reducing her level of annual points holding in the future. As explained above, the 2016 Letter of Complaint indicates that Mrs B made the purchase as a means to reduce the term of her existing timeshare."

As I said in the PD, while I accept it is *possible* that Mr and Mrs B would have chosen to spend £10,160 to transfer the points from the European Collection to the Fractional Club for a shorter membership term, even if the Supplier had not led them to believe that there was the prospect of making a financial gain from the membership, I do not think it was *probable* that they would have done, based on everything I have seen. And as the Supplier points out, there is no evidence to explain why Mrs B did not convert all her points, and as I have illustrated above, Mr and Mrs B were able to relinquish their membership for free when Mr B reached 75 years of age, so I do not think it would be fair or reasonable to conclude that they were particularly motivated by the prospect of a shorter membership term.

Regarding points (2) and (3), the Supplier says:

"There is no reference to Mr and Mrs B having been told (or it being inferred) they should expect or hope to make a financial gain or profit."

But I don't agree. After all, the PR says that Mr and Mrs B were told they could recover money they had paid to acquire their previously held membership in timeshare clubs. Given they had spent in excess of the cost of the Fractional Club membership on the products they had purchased prior to the Time of Sale, I think it's at least inferred that they were expecting to make more money back than the cost of the Fractional Club. I am not persuaded that the arguments raised by the PR in its letter to the Supplier undermine the testimony of Mrs B when it comes to what motivated her and Mr B to agree to the purchase.

The Lender also says I applied the incorrect test set out in the relevant case law which is whether there was a "*material impact on the debtor when deciding whether or not to enter the agreement*". In particular, it says my statement that: "*had [Mr and Mrs B] not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I have not seen enough to persuade me that they would have pressed ahead with their purchase regardless*" reverses the burden of proof. It says the "*the lack of evidence of sale as an investment (as opposed to the prospect of financial return) means that there is no breach to impact upon the fairness of the creditor relationship.*"

I do not agree with the Lender's position that there is a lack of evidence that the Supplier sold Fractional Club membership as an investment. As I've said, Mrs B says she was sold the membership in this way, and I have also looked at the bargain she entered into, which meant that she did not gain any additional points to use for holidays. So, while it is possible that Mr and Mrs B might have proceeded to purchase the Fractional Club membership even if they were not sold this in breach of Regulation 14(3), I don't think it is probable, based on everything I have seen. And as Mrs B says (plausibly in my view) that Fractional Membership was marketed and sold to her and Mr B at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think her purchase was motivated by what she was told about her 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 her existing European Collection membership.

Conclusion

Given the facts and circumstances of this complaint, I still think the Lender participated in and perpetuated an unfair credit relationship with Mrs B 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 am satisfied it is fair and reasonable that I uphold this complaint.

Fair Compensation

Having found that Mrs B 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 her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mrs B agrees to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Mrs B was an existing European Collection member and part of her membership – 8,000 points – was traded in against the purchase price of her Fractional Club membership. Under her European Collection membership, she had 15,000 points in total. And, like Fractional Club membership, she had to pay annual management charges as a European Collection

member. So, had Mrs B not traded in some of her points, she would have still needed to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mrs B from the Time of Sale as part of her Fractional Club membership should only amount to the difference between her combined annual management charges as a member of both clubs, and the annual management charges she would have paid as an ongoing European Collection member.

I also think Mrs B would've taken the same holidays had she remained solely a member of the European Collection, as those she took in exchange for her Fractional Club points. So, I provisionally think it would be unfair to make a deduction taking account of any use Mrs B made of her Fractional Club membership.

I have made some basic enquiries and have not found that another person should benefit from the redress I think Mrs B should receive. If she has any questions or concerns about her redress, I suggest that she directs these to her PR before accepting this decision.

Here's what I direct the Lender to do to compensate Mrs B with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mrs B'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 Mrs B's combined Fractional Club and Vacation Club annual management charges ('Combined Charges') paid after the Time of Sale, and what her Vacation Club annual management charges would have been had she not purchased Fractional Club membership.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mrs B used or took advantage of; and
 - ii. The payments (if any) that were made to Mrs B or Mr B by the Supplier through its "Wish to Rent Scheme".

(the 'Net Repayments')
- (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 Mrs B's credit file in connection with the Credit Agreement.
- (6) If Mrs B's Fractional Club membership is still in place at the time of this decision, as long as she agrees to hold the benefit of her interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify her against all ongoing liabilities as a result of her Fractional Club membership.

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

My final decision

I uphold Mrs B's complaint against Shawbrook Bank Limited and direct it to compensate her as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 6 January 2026.

Andrew Anderson
Ombudsman