DRN-6041029

The complaint

Mr and Mrs G 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 and Mrs G members of a timeshare provider (the 'Supplier') – having purchased products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 30 August 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,360 fractional points at a cost of £5,649 (the 'Purchase Agreement') after trading in their existing Fractional Club membership.

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

Mr and Mrs G paid for their Fractional Club membership by taking finance of £24,384 from the Lender (the 'Credit Agreement') – the additional amount being used to pay off a loan from another credit provider that was used to purchase their existing Fractional Club membership and consolidate a previous loan relating to a trial timeshare membership.

Mr and Mrs G – using a professional representative (the 'PR') – wrote to the Lender on 13 June 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender didn't respond to the complaint, so the complaint was referred to the Financial Ombudsman Service. I issued a provisional decision explaining why I was planning to uphold this complaint.

The PR responded on behalf of Mr and Mrs G to say it had no additional comments.

The Lender responded to say it did not intend to challenge my provisional decision but set out some observations and concerns about the approach I took in reaching my decision.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional decision.

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.

For the same reasons set out in my provisional decision, which I repeat below, I have decided this complaint should be upheld. That is because I think the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr and Mrs 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.

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material.

2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier.

3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

5. The inherent probabilities of the sale given its circumstances.

6. Where relevant, any existing unfairness from a related credit agreement.

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

<u>The Supplier's breach of Regulation 14(3) of the Timeshare Regulations</u>

The Lender does not dispute, and I am satisfied, that Mr and Mrs G 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 and Mrs G say that the Supplier did exactly that at the Time of Sale – saying the following:

1. When contacting a timeshare advice company via a webform on 6 October 2021:

a. *"Please could you contact me as soon as possible to help me recover an investment I have made with [the Supplier]."*

2. Noted on a questionnaire completed by the timeshare advice company during a phone call on 4 February 2022:

    a. About the previous purchase of Fractional Club membership in 2017, *"Purchased originally for holidays + to invest and get return at the end… Was definitely supposed to be an investment – bricks & mortar go up in value."*

    b. About the Time of Sale, *"Persuaded to upgrade the following year – would get them a better profit at the end. Takes holidays anyway so this seemed like a great idea to invest at same time."*

3. Noted by the PR during a phone call on 8 February 2022:

    a. About the previous purchase of Fractional Club membership in 2017, *"rep convinced them that property will be later sold and get their money back and possible more."*

    b. About the Time of Sale, *"August 2018 returned to Spain, similar experience… Rep convinced them to upgrade to another resort as was worth more in value."*

4. In a statement provided to the Financial Ombudsman Service on 15 January 2024, which the PR says was written in February 2022 following the above phone call:

    a. About the previous purchase of Fractional Club membership in 2017, *"We ended up buying a Fractional in Monteray. We owned part of the property and at some stage it would be sold and we would get our money back and maybe more."*

    b. About the Time of Sale, *"The next year we went back… They convinced us to upgrade to [resort location]. They said that it would be better for us and was worth more."*

Mr and Mrs G allege, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because they were told that Fractional Club membership was an investment that would provide a return at the end – potentially more than they paid for it – and that by upgrading their membership at the Time of Sale they would get a better profit because the Allocated Property was worth more.

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 and Mrs G's share in the Allocated Property could constitute 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 <u>as an investment</u>. 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 and Mrs 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 and Mrs 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 were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs G as an investment.

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

How the Supplier marketed and sold the Fractional Club membership

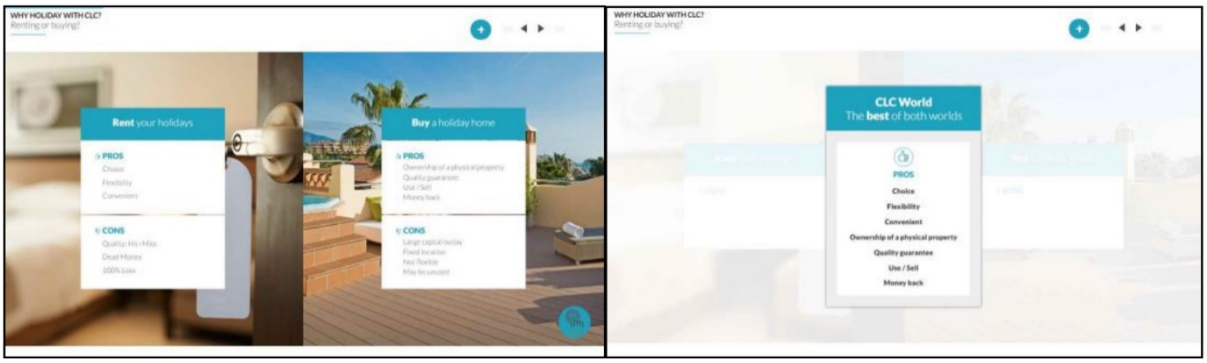
During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier provided information on how it sold membership of timeshares like Mr and Mrs G – which includes a document called the "Fractional Property Owners Club Fly Buy Manual 2017" (the '2017 Fractional Training Manual').

As I understand it, a slightly earlier version of the 2017 Fractional Training Manual was actually used from November 2016 during the sale of the Supplier's second version of the Fractional Property Owners Club (which I will continue to refer to as simply the Fractional Club) – which was the version Mr and Mrs G appear to have purchased. It is not entirely clear whether they would have been shown the slides included in the Manual. But it seems to me to be reasonably indicative of:

1. The training the Supplier's sales representatives would have got before selling Mr and Mrs G Fractional Club membership.

2. How the sales representatives would have framed the sale of Fractional Club membership to them.

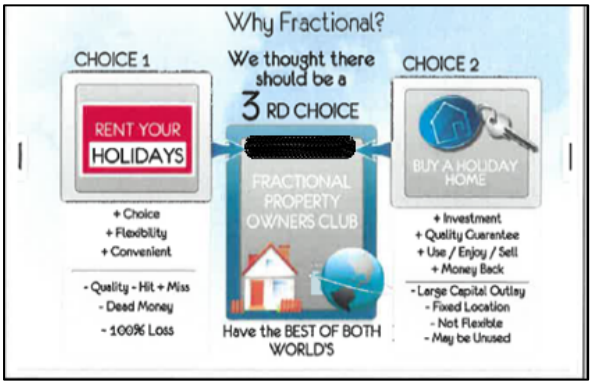
Having looked through the Manual, my attention is drawn first to page 19 (of 74) – which includes two slides called *"Why holiday with [the Supplier]? Renting or buying?"*.



They were the first slides in the Manual that seems to me to set out any information about Fractional Club membership, albeit without expressly referring to the Fractional Club, because they suggest that sales representatives were likely to have made the point to Mr and Mrs G that holidaying with the Supplier combined the best of *"renting your holidays"* and *"buying a holiday home"*, including, amongst other things, ownership of a physical property and money back – which were benefits that were only front and centre of Fractional Club membership.

From the off, therefore, it seems likely that sales representatives would have demonstrated that there were financial advantages to Fractional Club membership rather than being a member of a 'standard' timeshare.

Indeed, the slides above presented a very similar prospect to that presented in a slide used in one of the Supplier's earlier training manuals that was used to help it sell the first version of Fractional Property Owners Club:



All three indicate that sales representatives would have taken prospective members through three holidaying options along with their positives and negatives:

1. "Rent Your Holidays"
2. "Buy a Holiday Home"
3. The "Best of Both Worlds"

I acknowledge that the slides incorporated into the 2017 Fractional Training Manual don't include express reference to the 'investment' benefit of Fractional Club membership. But they allude to much the same concept.

One of those advantages referred to in the slides on page 19 of the 2017 Fractional Training Manual is the *"ownership of a physical property"*. As an owner's equity in their property is built over time as the value of the asset increases relative to the size of any mortgage secured against it, this advantage of Fractional Club membership was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth in a similar way.

Mr and Mrs G's recollections of what they were told during the previous sale in 2017 was that they would own part of a property and they would get their money back and maybe more (a profit) when it was sold. I have provisionally upheld a complaint about that sale for similar reasons that I am provisionally upholding this complaint. So, given Mr and Mrs G understood from the 2017 sale that their existing Fractional Club membership was an investment, it seems plausible that they would have viewed the purchase at the Time of Sale in the same way – especially as they remember being told that upgrading was better for them because the Allocated Property was worth more.

When the Manual moved on to describe how membership of the Fractional Club worked between pages 26 and 36, one of the major benefits of Fractional Club membership was described on page 35 as:

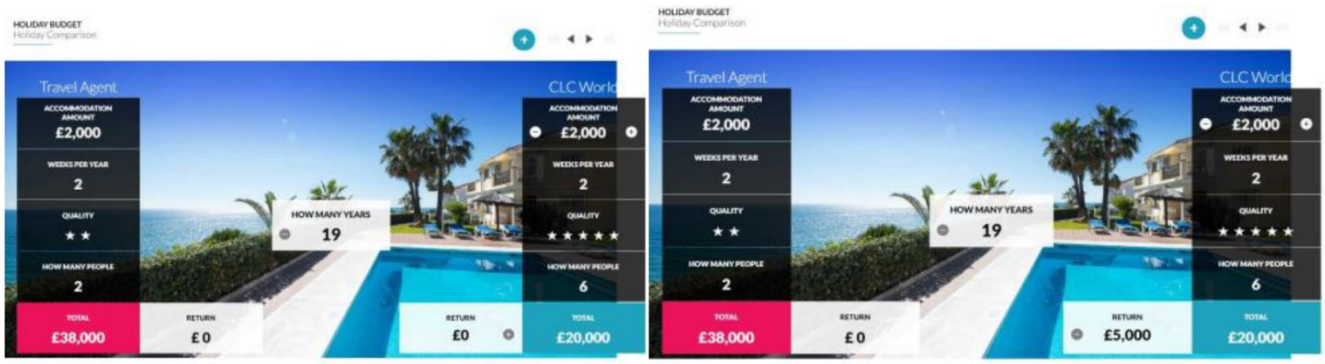
> *"A major benefit is that after 19 years of fantastic holidays, the property in which you own a fraction is sold and you will receive your share of the sale proceeds according to the number of fractions owned."*

And on page 36 there were notes that encouraged sales representatives to summarise this benefit in the following way:

> "*So really FPOC equals a passport to fantastic holidays for 19 years with a return at the end of that period. When was the last time you went on holiday and got some money back?*".

After discussing some of the other aspects of membership, such as the different resorts available to members, page 53 of the Manual indicates that sales representatives would have moved onto a cost comparison between "renting" holidays and "owning" them. Sales representatives were encouraged to tell prospective members how much they would spend over 19 years (i.e., the length of Fractional Club membership) on holidays with "no return" in contrast to spending the same amount of money as Fractional Club members – thus demonstrating the financial advantages of membership.

Page 53 included the following slides and accompanying notes:



> *"We aren't only talking about 10 years, we are talking about 10 years, we are talking about 19 years. So in actual fact, with the travel agent over 19 years you would have spend over £… with no return.*
>
> *However, with [the Supplier] you would still have spent the same £… because once your fraction is paid for, the remaining years of holiday accommodation is taken care of.*
>
> *We also agreed that you would get nothing back from the travel agent at the end of this holiday period. Remember with your fraction at the end of the 19 year period, you will get some money back from the sale, so even if you only say £5,000, it would still be more than you would get renting your holidays from a travel agent wouldn't it."*

I acknowledge that the slides above set out a "return" that is less than the total cost of the holidays and the "initial outlay". But that was just an example and, given the way in which it was positioned in the 2017 Fractional Training Manual, the language did leave open the possibility that the return could be equal to if not more than the initial outlay – which is at least the impression that Mr and Mrs G say they were given. Furthermore, the slides above represent Fractional Club membership as:

1. The right to receive holiday rights for 19 years whose market value significantly exceeds the costs to a Fractional Club member; plus

2. A significant financial return at the end of the membership term.

And to consumers (like Mr and Mrs G) who were looking to buy holidays anyway, the comparison the slides make between the costs of Fractional Club membership and the higher cost of buying holidays on the open market was likely to have suggested to them that the financial return was in fact an overall profit. The timeshare advice company noted when speaking to Mr and Mrs G on 4 February 2022, that they reasoned that they *"take holidays anyway so this seemed like a great idea to invest at same time"*.

What's more, I think the Supplier's sales representatives were encouraged to make prospective Fractional Club members (like Mr and Mrs G) consider the advantages of owning something and view membership as a way of generating a return, rather than simply paying for holidays in the usual way. That's the impression that Mr and Mrs G say they were given. That was likely to have been reinforced throughout the Supplier's sales presentations by describing membership as a form of property ownership referring to the prospect of a "return". Mr and Mrs G say their understanding of Fractional Club membership was that they would *"own part of a property… we would get our monty back and maybe more."* And, with that being the case, I think the language used during the Supplier's sales presentations was likely to have been consistent with the idea that Fractional Club membership was an investment, which is how Mr and Mrs G seem to have understood it.

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

When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that:

> *"'[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3)).'* [1]

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 S*hawbrook & BPF v FOS* when, Mrs Justice Collins Rice said the following:

> *"[…] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle,* ***it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3). […] Getting the governance principles and paperwork right may not be quite enough.***
> ***The problem comes back to the difficulty in articulating the intrinsic benefit of 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."*
>
> (my **emphasis** added)

Given what I've already said about the Supplier's training material and the way in which I think it was likely to have framed the sale of Fractional membership to prospective members (including Mr and Mrs G), I think it is more likely than not that the Supplier did, at the very least, imply that future financial returns (in the sense of possible profits) from a Fractional Membership were a good reason to purchase it.

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[1] 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

So, overall, I think the Supplier's sales representative was likely to have led Mr and Mrs G to believe that Fractional membership was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I don't find them either implausible or hard to believe when they say that they were told that they would own part of a property and would get their money back or maybe more, and that upgrading at the Time of Sale would be better for them because the Allocated Property was worth more (implying a potentially greater profit in the end). Overall, I think that's likely to be what Mr and Mrs G were led to believe by the Supplier at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs 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.

It also it seems to me in light of *Carney* and *Kerrigan* that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs 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.

On my reading of Mr and Mrs G testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase. I say this because it seems to me that the Supplier gave them the impression that Fractional Club membership was an investment (as defined above) – something the evidence shows Mr and Mrs G have said consistently since October 2021 when seeking help with this matter – and that by upgrading they were gaining ownership of part of a more valuable property, which implied to them that the potential profit from this would be greater than if they did not upgrade.

That doesn't mean Mr and Mrs G were not interested in holidays. Their own evidence demonstrates that they quite clearly were. And that is not surprising given the nature of the product at the centre of this complaint and that they gained additional Fractional Points as part of the purchase. But as Mr and Mrs G say (plausibly in my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit – especially given what they recall being told by the Supplier at the Time of Sale. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

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

Conclusion

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

Fair Compensation

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

Mr and Mrs G was an existing Fractional Club member ('FC Membership 1') and their membership was traded in against the purchase price of Fractional Club membership in question (which I'll refer to as 'FC Membership 2' from heron in). Under FC Membership 1, they had 1,130 Fractional Points. And, like FC Membership 2, they had to pay annual management charges as part of FC Membership 1. So, had Mr and Mrs G not purchased FC Membership 2, they would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs G from the Time of Sale as part of FC Membership 2 should amount only to the additional annual management charges payable under FC Membership 2 over and above what they would have paid if they had remained FC Membership 1 members instead of upgrading.

Further, Mr and Mrs G paid for FC Membership 1 using finance ('Loan 1') that they refinanced using the Credit Agreement. So, part of what they borrowed at the Time of Sale was used to repay the borrowing under Loan 1 that always had to be repaid. So, I do not think it would be fair for the Lender to refund everything that was paid and, if relevant, due to be repaid under the Credit Agreement, otherwise Mr and Mrs G would be in a better position than they would have been if they hadn't purchased FC Membership 2. Given that, I think this ought to be reflected in my redress when remedying the unfairness I have found.

FC Membership 1 is the subject of a separate complaint which I have provisionally upheld.

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

(1) The Lender should refund the difference between Mr and Mrs G's repayments to it under the Credit Agreement and what they would have paid under Loan 1, including the difference between any sums paid to settle the debt owing under the Credit Agreement and what would have needed to have been paid to settle Loan 1. The Lender should also reduce any outstanding balance under the Credit Agreement, if there is one, so that Mr and Mrs G would only owe now what they would have owed under Loan 1 and change any future repayments so that they are making the same

repayments they were towards Loan 1.[2]

(2) In addition to (1), the Lender should also refund the difference between the annual management charges paid after the Time of Sale under FC Membership 2 and what Mr and Mrs G's annual management charges would have been under FC Membership 1 had they not purchased FC Membership 2.[3]

(3) The Lender can deduct:

i. The value of any promotional giveaways that Mr and Mrs G used or took advantage of; and

ii. The market value of the holidays* Mr and Mrs G took using FC Membership 2 *if* the Points value of the holiday(s) taken amounted to more than the total number of Fractional Points they would have been entitled to use at the time of the holiday(s) as ongoing FC Membership 1 members. However, this deduction should be in proportion to the additional Fractional Points that were required to take the holiday(s) in question.

For example, if Mr and Mrs G took a holiday worth 2,550 Fractional Points after the Time of Sale and they would have been entitled to use a total of 2,500 Fractional Points under FC Membership 1 at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if they would have been entitled to use 2,600 Fractional Points under FC Membership 1, for instance, there should be no 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 and Mrs G's credit files in connection with the Credit Agreement reported within six years of this decision.

(6) If Fractional Membership 2 is still in place at the time of this decision, as long as Mr and Mrs G 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 Fractional Membership 2.

*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 and Mrs 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.

[2] As I have provisionally upheld a complaint about Loan 1, if that outcome remains the same, Mr G will receive as part of that settlement the amount consolidated into the Credit Agreement from Loan 1.
[3] As above, the proposed settlement in the case about Loan 1 accounts for the annual management charges that would have been payable under FC Membership 1.

My final decision

For the reasons I've explained, I uphold this complaint and direct Shawbrook Bank Limited to pay fair compensation to Mr and Mrs G as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 19 January 2026.

Phillip Lai-Fang
Ombudsman