

The complaint

Mr H complaint is, in essence, that Tandem Bank Limited¹ (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mr H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 21 April 2019 (the 'Time of Sale'). he entered into an agreement with the Supplier to buy 1,210 fractional points at a cost of £16,632 (the 'Purchase Agreement') after trading in his Trial membership.

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

Mr H paid for his Fractional Club membership by taking finance of £20,019 from the Lender (the 'Credit Agreement'). The additional amount was used to pay off/consolidate a loan (from the Lender) used by Mr H to pay for Trial membership.

Mr H – using a professional representative (the 'PR') – wrote to the Lender on 29 March 2022 (the 'Letter of Complaint') to raise several different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr H's concerns as a complaint and issued its final response letter on 21 July 2022, rejecting it on every ground.

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

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

I issued a provisional decision explaining that I was planning to uphold the complaint.

The Lender disagreed with my provisional decision and provided some further comments and evidence for me to consider.

The PR said that Mr H accepted my provisional decision.

¹ Tandem Bank Limited was not the original credit provider but it is now responsible for the credit relationship arising from the Credit Agreement.

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.

Following the responses from both parties, I've considered the case afresh. Having done so, I've reached the same decision as that which I outlined in my provisional findings – and for the same reasons. A copy of my provisional findings is below. As such, I uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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 Mr H as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and the Lender unfair to him for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are several aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mr H in the same or a better position than he would otherwise be in.

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

Having considered the entirety of the credit relationship between Mr H and the Lender along with all the circumstances of the complaint, I think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and
4. The inherent probabilities of the sale given its circumstances.

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

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

The Lender does not dispute, and I am satisfied, that Mr H 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 H says that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

Mr H share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr H as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr H, the financial value of his share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr H as an investment.

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

14(3) of the Timeshare Regulations.

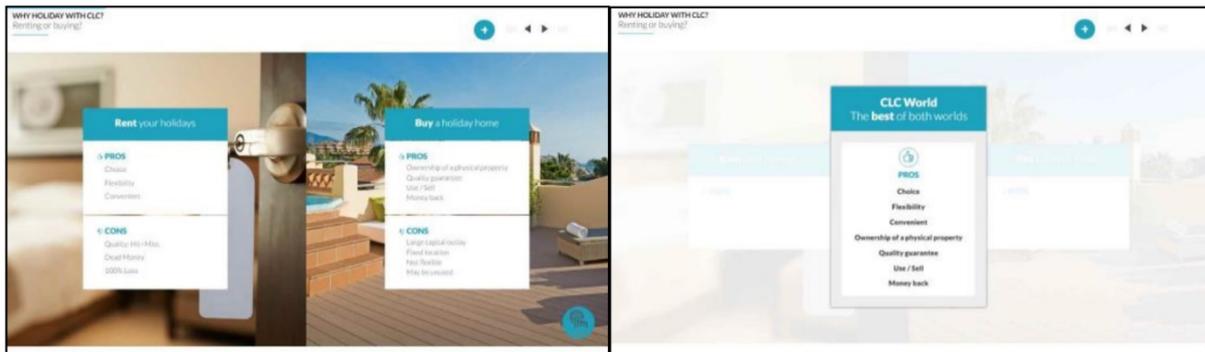
How the Supplier marketed and sold the Fractional Club membership

During 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 H – which includes a document called the “Fractional Property Owners Club Fly Buy Manual 2017” (the ‘2017 Fractional Training Manual’).

As I understand it, the 2017 Fractional Training Manual was used from November 2017 onwards 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 H appear to have purchased. It is not entirely clear whether he would have been shown the slides included in the Manual. But it seems to me to be reasonably indicative of:

- (1) The training the Supplier's sales representatives would have got before selling Mr H Fractional Club membership; and
- (2) how the sales representatives would have framed the sale of Fractional Club membership to him.

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 H 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 (both of which Mr H recalls being told – see below) – 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 (or the Trial membership Mr H had already purchased).

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.²

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”*. And 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 particular 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.

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

² Mr H's evidence shows that Mrs H described Fractional Club membership as an investment on 3 December 2021 when speaking to a timeshare advice company prior to contacting the PR. When speaking to the PR Mrs H also described her expectation being that they would get all their money back if not more (which is repeated in Mrs H's statement explaining her and Mr H's recollections from the Time of Sale).

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 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. 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 H) 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.

What’s more, I think the Supplier’s sales representatives were encouraged to make prospective Fractional Club members (like Mr H) 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 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”. 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.

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 H the financial value of the proprietary interest he was 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)).'*³ 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.

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 H), 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 – which is consistent with Mr H's recollections of the sale.

So, overall, on the balance of probabilities, I think the Supplier's sales representative was likely to have led Mr H 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 do not find him either implausible or hard to believe when he says that he was were told that he may get his money back and maybe more (that is, a profit). On the contrary, given everything I have seen so far, I think that is likely to be what Mr H was led to believe by the Supplier at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

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

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr H and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr H and the Lender that was unfair to him and warranted relief as a

³ 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>

result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Mr H testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when he decided to go ahead with his purchase. I say this because the following evidence supports this conclusion:

- Timeshare advice company questionnaire said, *"Sounded like a great way to get good holidays & getting money back @ end sold it to them. Unhappy with all - don't think investment will pay off - lots of lies."*

While this was not written by Mr H it was based on a conversation with Mrs H, who was a joint owner of the Fractional Club with Mr H and who was present at the Time of Sale. It seems that Mrs H said in this call that it was the prospect of getting money back at the end that sold the purchase to them. And in giving further context to this she described it as an investment and that she was unhappy as she did not believe it would pay off. That seems to indicate that part of the complaint was about Mrs H thinking that she would not only not make a profit, but that she may get nothing back.

- The PR's call note dated 6 December 2021 said, *"go on hols anytime we like - even better this fraction wld b sold as we now owned part of apt - we wld get all our money back if not more!"*

Again, this was not written by Mr H but by the PR during a call with him. But it seems to make clear that Mr H recalled being told (or it was implied) that he could make a profit from the purchase (that is, that it was an investment as defined above). That is in line with what was written in the earlier questionnaire referred to above.

- Mr and Mrs H's statement (again written by Mrs H) said a similar thing – *"They said we could go on holiday as many times in the year as we could fit in and at the end of the time they would sell the property and we would get our money back, if not more."*

So, it seems that Mr and Mrs H have consistently said that they were led to believe Fractional Club membership was more than a way of taking holidays or of getting something back at the end. They seem to have been given the impression that it was in fact an investment that could lead to them making a profit. On balance, I am persuaded that this is what happened and that it was material to Mr H's decision to purchase.

That doesn't mean he was not interested in holidays. His own evidence demonstrates that he quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr H says (plausibly in my view) that Fractional Club membership was marketed and sold to him at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think his purchase was motivated by his share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from his Trial membership (which only gave him the right to take a set number of holidays over several years). And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision he ultimately made.

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

END OF COPY OF PROVISIONAL FINDINGS

The Lender's response to my provisional decision

The Lender disagreed with my provisional decision. In summary, it said that:

- The salesperson involved only joined the Supplier in 2019, so had not seen the pre-2017 training manual mentioned above, and so could not have been influenced by that. The presentation used at the Time of Sale cannot be considered anything other than a presentation about a holiday membership that would provide holidays for the duration of the membership term.
- Most ombudsman decisions on this type of complaint are not upheld, and the Lender does not think the circumstances here differ significantly in such a way as to justify the complaint being upheld.
- There was no misrepresentation by the Supplier at the Time of Sale.
- The Lender provided the comments of the Supplier, which included the following points:
 - The Letter of Complaint and referral to the Financial Ombudsman Service did not say Mr H was motivated by a profit but said that he expected to *“recoup some of his total investment”*.
 - The complaint about being sold Fractional Club membership as an investment was made late in this process despite the PR apparently having the call note and statement from before the claim was made.
 - Shortly before contacting the timeshare advice company, Mr H had complained to the Supplier about a holiday he had taken using his membership.
 - The webform and email sent to the timeshare advice company (which I did not mention in my provisional decision but had considered) were forwarded and could have been manipulated. These only say Mr H would get his money back at the end, not that there was a prospect of a financial gain.
 - The timeshare advice company questionnaire had leading (yes/no) questions on it, including some ticked yes that did not apply to Mr H – about being told he would receive rental income and the only exit option being to upgrade.
 - The PR's handwritten call notes were not written by Mr H so are not the best evidence of his motivations.

- Mr H stopped paying management charges and his membership was suspended. He did not enquire about what that would mean for his “investment”, after which Mr H pursued legal action through the Spanish Courts which did not mention Fractional Club membership being sold as an investment.

I have considered these points, but I still think it is fair and reasonable to uphold this complaint.

While the salesperson did not see the earlier training, I do not think the 2017 Fractional Training Manual is sufficient for me to conclude that on the balance of probabilities Mr H was not sold Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulation. As I said in my provisional decision, it alluded to the prospect of an investment benefit while not explicitly using the word investment. That, in my opinion, would be enough to breach Regulation 14(3), and Mr H’s recollection is that this is what happened.

It is unfortunate that the PR did not raise this point in the Letter of Complaint and referral to the Financial Ombudsman Service. But my experience shows that the PR was convinced that Fractional Club membership was an Unregulated Collective Investment Scheme (an argument it initially made in many similar complaints), which would mean the complaint should be upheld – and it clearly focussed on that in its correspondence, rather than what Mr H recalled happening at the Time of Sale. I acknowledge those letters also said Mr H was told he would recoup some of his total investment (rather than make a profit). But this appears to be a generic line that the PR used in its letters around that time, which does not always match what its clients told it. I do not think that is sufficient to override or significantly undermine the other evidence, particularly that evidence provided or informed by Mr H himself (or Mrs H on his behalf).

While it is possible the timeshare advice company webform and email could have been manipulated, I do not think that is likely in this case. There is no evidence that is what happened. And while neither go so far as to suggest Mr H hoped or expected to make a profit, both are brief. The email, for example, is largely about the fact that documents have been posted, although it does refer to Fractional Club membership as an investment. The webform says:

“We were totally misled, made many promises none of which are true we won[’t] get ou[r] money back like they said.”

While this only refers to Mr H getting his money back, it also indicates this was one of many promises which Mr H does not think were true. Clearly the short message in the webform is not a full description of what happened and everything Mr H was told by the Supplier at the Time of Sale. So, I do not think it significantly undermines the other evidence I have referred to above and which I have found to be plausible and persuasive.

The timeshare advice company questionnaire does have some leading questions that do not apply to Mr H’s circumstances. The *“Did the sales representative say... you would receive rental income”* question was ticked “yes”, but written next to it was *“if rented could do”*. My understanding is that a Fractional Club member could privately rent out their fractional points, in which case they could receive some income. So, the answer to this question is plausible in my opinion – the salesperson may well have said this.

The question about being told the only exit option being to upgrade being answered yes is not a plausible response. Mr H was a trial member at the Time of Sale. The trial provided a fixed number of weeks holiday which had to be taken in a set period of time, after which the trial membership ended. So, clearly Mr H did not need to do anything to exit that

membership, other than use the holidays or wait for the membership term to expire. Nevertheless, I do not think this question being answered in this way significantly undermines the information in the “*any other comments*” section of the questionnaire. That appears to have been informed by what Mrs H told the timeshare advice company representative. Albeit that is brief and does not explicitly mention making a profit, it does say that “*getting money back @ end sold it to them*”. So, according to this, the purchase was motivated by the prospect of getting money back at the end of the membership term (without specifying how much that might be). The call note and statement are more detailed than the other evidence from Mr H, and I think give a fuller picture of his recollections. I do not think his recollections across the various evidence are contradictory to such an extent that I should give little weight to the call notes or statement.

Mr H allowed his membership to be suspended without querying what this meant for his investment. But I do not think that means his recollections are wrong about what happened at the Time of Sale and why he purchased Fractional Club membership. It is quite possible that his recollections are correct but that being dissatisfied with his membership such that he no longer wanted to use it (as his complaint to the Supplier seems to suggest), and no longer believing he would make a profit (or get anything back) at the end – as he told the timeshare advice company – he preferred to give it up and seek a refund by making a claim or complaint (which is what he subsequently did). His Spanish legal action apparently did not mention being sold Fractional Club membership as an investment. But I don’t see why it would when, as I understand it, the claim was based on a specific legal point or points that such recollections would not be relevant to.

Overall, I remain of the opinion that upholding this complaint is a fair and reasonable outcome in all the circumstances of this complaint.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr H 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 H 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 him back in the position he would have been in had he 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 H both agree to assign to the Lender his Fractional Points or hold them on trust for the Lender if that can be achieved (if they still hold the membership).

Mr H was a trial member before purchasing Fractional Club membership. As I understand it, trial membership involved the purchase of a fixed number of week-long holidays that could be taken with the Supplier over a set period in return for a fixed price. The purpose of trial membership was to give prospective members of the Supplier’s longer-term products a short-term experience of what it would be like to be a member of, for example, the Fractional Club. According to an extract from the Supplier’s business plan, roughly half of trial members went on to become timeshare members.

If, after purchasing trial membership, a consumer went on to purchase membership of one of the Supplier's longer-term products, their trial membership was usually cancelled and traded in against the purchase price of their timeshare – which was what happened at the Time of Sale. Mr H's trial membership was, therefore, a precursor to their Fractional Club membership. With that being the case, the trade-in value acted, in essence, as a deposit on this occasion and I think this ought to be reflected in my redress when remedying the unfairness I have found.

So, given all the above, here's what I think needs to be done to compensate Mr H – whether or not a court would award such compensation:

- (1) The Lender should refund Mr H'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:
 - i. The annual management charges Mr H paid because of Fractional Club membership.
 - ii. The difference between the trade-in value given to Mr H's trial membership and the capital sum refinanced from the loan taken to pay for the trial membership into the Credit Agreement.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr H used or took advantage of; and
 - ii. The market value of the holidays* Mr H took using his Fractional Points.

(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 H's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr H's Fractional Club membership is still in place at the time of this decision, as long as he and Mrs H both 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 him against all ongoing liabilities as a result of his Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr H took using his 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 his usage.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 March 2026.

Phillip Lai-Fang
Ombudsman