

The complaint

Ms D and Mr R 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 a claim under Section 75 of the CCA.

What happened

Ms D and Mr R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 June 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 910 fractional points at a cost of £12,366 (the 'Purchase Agreement') after trading in their existing trial membership.

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

Ms D and Mr R paid for their Fractional Club membership by taking finance of [£...] from the Lender (the 'Credit Agreement').

Ms D and Mr R – using a professional representative (the 'PR') – wrote to the Lender on 4 October 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not uphold the complaint. Ms D and Mr R 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 Ms D and Mr R at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Ms D and Mr R was rendered unfair to them for the purposes of section 140A of the CCA.

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

I issued a provisional decision explaining I was planning to uphold the complaint. The PR responded on behalf of Ms D and Mr R to say they agreed with my provisional decision. The Lender disagreed and provided some comments for me to consider.

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 done so, and having considered the responses to my provisional decision, I still 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 Ms D and Mr R as an investment, which, in the circumstances of this complaint, rendered the credit relationship between them and the Lender unfair to them for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to 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 proposing puts Ms D and Mr R in the same or a better position than they 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 Ms D and Mr R and the Lender along with all of 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 Ms D and Mr R 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 Ms D and Mr R 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 Ms D and Mr R say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were 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.

Ms D and Mr R share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But 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 Ms D and Mr R 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 Ms D and Mr R, 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 Ms D and Mr R 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

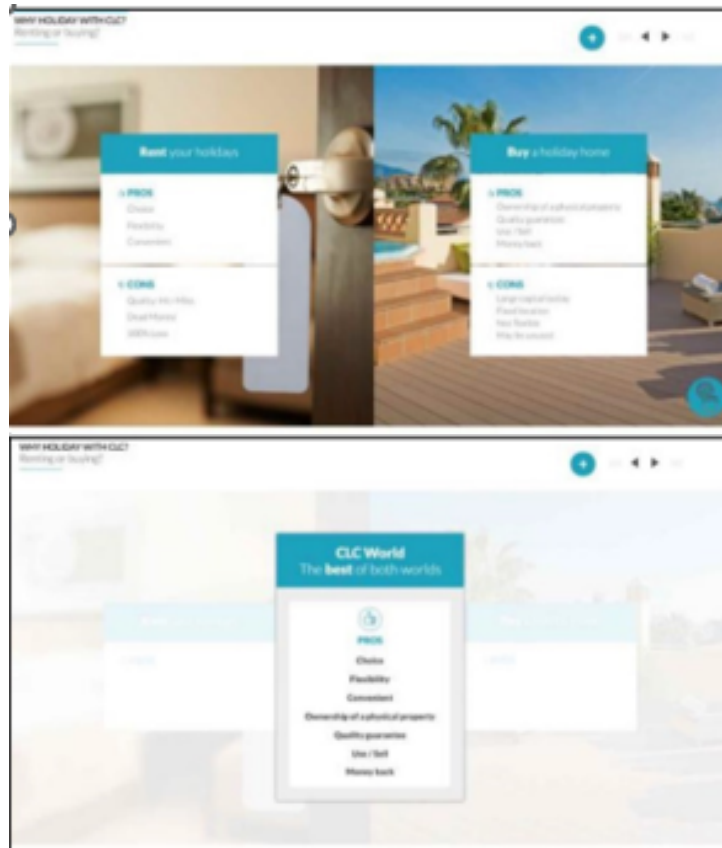
During the course of the Financial Ombudsman Service’s work on complaints about the sale of timeshares, the Supplier provided information on how it sold membership of timeshares like Ms D and Mr R – which includes a document called the “Fractional Property Owners Club Fly Buy Manual 2017” (the ‘2017 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 Ms D and Mr R 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 Ms D and Mr R Fractional Club membership; and

- (2) how the sales representatives would have framed the sale of Fractional Club membership to them.

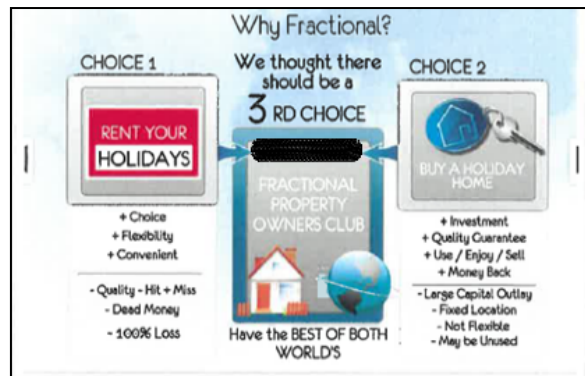
Having looked through the Manual, my attention is drawn first to page 19 (of 74) – which includes two slides called “Why holiday with [the Supplier]? Renting or buying?”.



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 Miss I and Mr S 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"*. 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 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. 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 Ms D and Mr R) 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 Ms D and Mr R) 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 Ms D and Mr R 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.

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 Ms D and Mr R), 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, broadly speaking, is consistent with Ms D and Mr R recollections of the sale.

So, overall, on the balance of probabilities, I think the Supplier’s sales representative was likely to have led Ms D and Mr R 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 them either implausible or hard to believe when they say that they were told that they were buying an investment that may lead to a financial gain. On the contrary, given everything I have seen, I think that is likely to be what Ms D and Mr R 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 Ms D and Mr R 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.

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>

Indeed, it seems to that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Ms D and Mr R 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 Ms D and Mr R's evidence, 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 their statement said:

"...they said it would be an investment and that we could pass it on to our children..."

They said again, we can just pass it on to our children as an investment as it would increase in value. They told us we would get our money back once the property is sold and we would get a portion of the sale. They said that the property would increase in value."

The PR has also provided:

1. A webform submission to a timeshare advice company, which says, *"We have signed up for an investment with CLC but its not working for us."*
2. A questionnaire completed by the timeshare advice company, which says, *"Persuaded as would essentially get holiday for free as would get money back or more at the end."*
3. Its call note dated 4 May 2022 when it first spoke to Ms D, which says, *"Client was led to believe it was a wise investment that could lead to profits by the value of property increasing"*

So, in my opinion, Ms D and Mr R have consistently said in the above evidence that Fractional Club membership was an investment, and where they have expanded on that indicate their hope or expectation was that they would get more than their money back (that is, a profit). It seems likely that hope or expectation occurred due to what the Supplier told them at the Time of Sale. And I think it influenced their decision to purchase.

That doesn't mean they were not interested in holidays. their own testimony demonstrates that they quite clearly were. And that is not surprising given the nature of the product at the centre of this complaint. But as Ms D and Mr R 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 as that share was one of the defining features of membership that marked it apart from their existing trial membership. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Ms D and Mr R have not said or suggested, for example, that they would have pressed ahead with the purchase in question 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.

I acknowledge the Lender's concerns about the evidence provided. But I am not persuaded that is sufficient for me to disregard or give such little weight to Ms D and Mr R's recollections that it would be unfair or unreasonable for me to uphold this complaint.

The Lender's response to my provisional decision

The Lender disagrees with my assessment of Ms D and Mr R's evidence. In summary it said:

- The evidence is insufficient for me to conclude that the prospect of a financial gain was an important and motivating factor when Ms R and Mr D decided to purchase Fractional Club membership at the Time of Sale.
- Ms R and Mr D's statement says that they went ahead with the purchase because they were worn down by the sales process, not because of the prospect of a financial gain.
- Because Ms R and Mr D said they wanted to cancel the purchase (thus giving up the possibility of any return on what they paid for Fractional Club membership), they were not interested in the prospect of a return at the Time of Sale.
- The Letter of Complaint says Ms R and Mr D were told they would recoup *some* of their total investment rather than make a profit. And that they purchased to get better quality accommodation and better availability.
- The description of what happened and Ms R and Mr D's motivation for the purchase is not consistent across the timeshare advice company evidence, the PR's call note and the statement. And it has questioned the timing² of when this evidence was provided.

I have considered these points (and the other more general points the Lender has made regarding my approach to this complaint) but am not persuaded to depart from my provisional findings.

I appreciate the Lender's concerns about the evidence provided – both in terms of its timing and its contents. But I think there is enough within the evidence to show that Ms R and Mr D understood Fractional Club membership to be an investment as defined above. They consistently described it as an investment, and where they clarified what they meant by that, they spoke of getting their “money back or more” and that it could “lead to profits”. In their statement they speak of getting their money back and being told the property would increase in value. While they have not specifically said in the statement that they might make a financial gain, I think that is implied by their use of the word investment and the expectation that the value of the Allocated Property would increase.

² Statement provided 7 August 2023.

Call note provided 6 May 2025 (sent after the Financial Ombudsman Service became aware that the PR held call notes and we requested them, these were sent around that time on dozens of cases). Timeshare advice company webform and questionnaire provided 9 May 2025.

The Lender suggests that Ms R and Mr D purchased due to being worn down by the sales process. While that may have been the case the Supplier had nevertheless given them a presentation on the holiday benefits and the benefits of owning a fraction of the Allocated Property. And in my opinion, this (including the possibility of making a profit) was likely material to Ms R and Mr D's decision. That is, had they not been told they might make a profit, I am not persuaded they would have agreed to the purchase when they felt they could not really afford it.

That Ms R and Mr D were apparently willing to cancel the purchase and give up any chance of a profit does not mean they were not influenced by the prospect of a financial gain when they agreed to purchase. It may simply be that having thought about it more, the down sides and cost of the purchase in the short term to medium term outweighed any potential profit they might make in the long term.

Ideally, the PR would've provided all the evidence at the outset of the complaint. But I have no compelling reason to conclude that the timeshare advice company's evidence was created later than the dates shown on them. This means that on 15 February 2021 – 18 months before the complaint was made and sometime before speaking to the PR – Ms R and Mr D told the timeshare advice company they had bought an *“investment”* from the Supplier. And having spoken to Ms R and Mr D the timeshare advice company wrote in its questionnaire on 28 March 2021 that Ms R and Mr D believed Fractional Club membership to be an *“investment that could lead to profits by the value of the property increasing”*.

The Letter of Complaint gave some other reasons why Ms R and Mr D purchased Fractional Club membership. But I do not think it is unreasonable to think that they purchased for those reasons as well as because they saw it as an investment as defined above.

I appreciate this complaint is finely balanced, and I can understand the Lender's concerns. But its comments have not persuaded me that another outcome would be more appropriate in this case. Overall, I think the evidence is sufficient for me to uphold this complaint, which in my opinion is the most 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 Ms D and Mr R 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 Ms D and Mr R 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 Ms D and Mr R agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Ms D and Mr R 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. Ms D and Mr R'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 of the above, here's what I think needs to be done to compensate Ms D and Mr R – whether or not a court would award such compensation:

- (1) The Lender should refund Ms D and Mr R'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 Ms D and Mr R paid as a result of Fractional Club membership.
 - ii. The difference between the trade-in value given to Ms D and Mr R'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 Ms D and Mr R used or took advantage of; and
 - ii. The market value of the holidays* Ms D and Mr R took using their 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 Ms D and Mr R's credit files in connection with the Credit Agreement reported within six years of this decision.
- (6) If Ms D and Mr R's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Ms D and Mr R took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

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

My final decision

For the reasons I've explained I've decided to uphold this complaint. I direct Shawbrook Bank Limited to pay fair compensation to Ms D and Mr R as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D and Mr R to accept or reject my decision before 23 March 2026.

Phillip Lai-Fang
Ombudsman