

The complaint

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

What happened

Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 16 June 2019 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,370 fractional points at a cost of £18,699 (the 'Purchase Agreement') after trading in her trial membership.

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

Mrs M paid for her Fractional Club membership by taking finance of £22,362 from the Lender (the 'Credit Agreement').

Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 15 October 2021 (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 did not uphold the complaint.

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

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mrs M 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 her purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mrs M was rendered unfair to her for the purposes of section 140A of the CCA.

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

I issued a provisional decision explaining why I was planning to uphold this complaint. The PR responded to say that Mrs M agreed with my provisional decision.

The Lender responded to say it disagreed, and provided some additional comments for me to consider, including some comments and call notes from the Supplier.

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 broadly the same reasons. A copy of my provisional findings is below. As such, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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

Having considered the entirety of the credit relationship between Mrs M 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. 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.

I have then considered the impact of these on the fairness of the credit relationship between Mrs M 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 Mrs M Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But Mrs M says that the Supplier did exactly that at the Time of Sale – saying, in summary, that she 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.

Mrs M share in the Allocated Property clearly constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But 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 Mrs M as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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

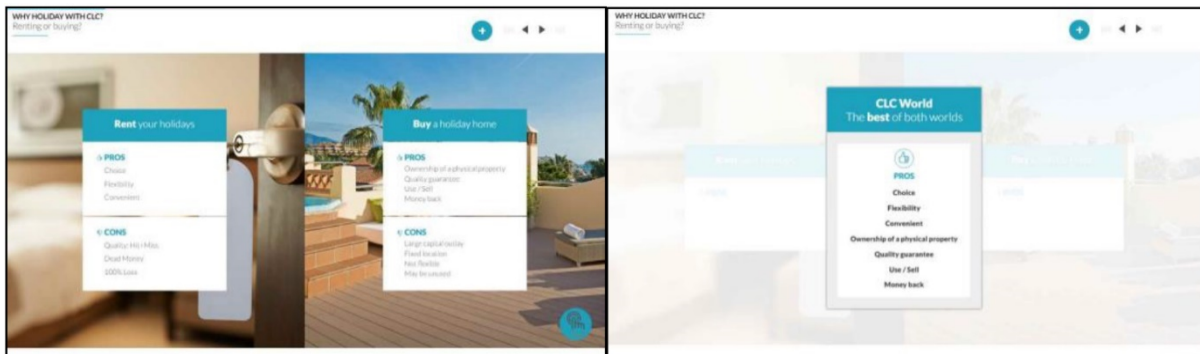
How the Supplier marketed and sold the Fractional Club membership

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 Mrs M – 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 Mrs M appear to have purchased. It is not entirely clear whether she 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 Mrs M Fractional Club membership; and
- (2) how the sales representatives would have framed the sale of Fractional Club membership to her.

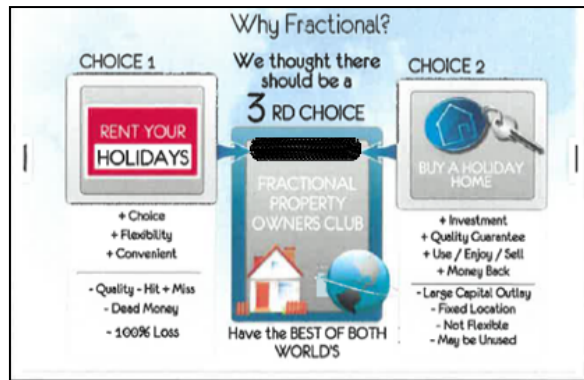
Having looked through the Manual, my attention is drawn first to page 19 (of 74) – which includes two slides called “Why holiday with [the Supplier]? Renting or buying?”.



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:

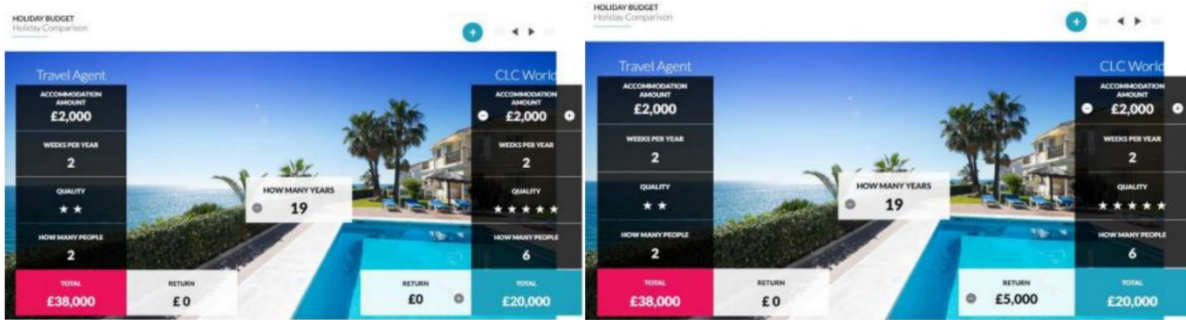
“A major benefit is that after 19 years of fantastic holidays, the property in which you own a fraction is sold and you will receive your share of the sale proceeds according to the number of fractions owned.”

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 Mrs M) 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 her 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 Mrs M) 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 Mrs M the financial value of the proprietary interest she 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)).’*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 Mrs M), 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 Mrs M recollections of the sale.

So, overall, on the balance of probabilities, I think the Supplier’s sales representative was likely to have led Mrs M 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 her either implausible or hard to believe when she says that she was told that she was buying shares in a property that, being an investment, may well lead to a financial gain. On the contrary, given everything I have seen so far, I think that is likely to be what Mrs M 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 Mrs M 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 Mrs M and the Lender that was unfair to her and warranted relief as a result, whether the Supplier’s breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Mrs M testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when she decided to go ahead with her purchase.

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>

I say this because her statement, which the PR says was taken on 30 September 2021, says:

*"We went for a free 1 week holiday in Fuengirola in Spain. They put us up in the best apartment. We had to attend a presentation where they convinced us to upgrade. The presentation was long and quite high pressured. They said we could use it to take holidays anywhere in the world and **it would also act as an investment for our future as they would sell it and we would get a profit.** We were 61 & 64 at the time so that sounded good. Junior was retired at the time and I was still working."*

[my emphasis]

While the statement is undated and unsigned and was only provided on 22 November 2023, what it says is corroborated by other evidence as follows:

- Timeshare Advice Company questionnaire dated 24 September 2021, which says:

"Told buying would own percentage of property & be guaranteed luxury & share in future profit. This is not true - would not have purchased if had known"

- The PR's call notes dated 30 September 2021, which says:

"He said wherever wanted to leave b4 the term they wld find buyer - appreciation of prop at end of term wipe out maint cost + make money on top... We should own part of property by being fractional. Guaranteed luxury as well as future profits."

So, Mrs M herself says in her statement that she understood Fractional Club membership to be an investment which would lead to a profit. And it seems she said similar to the Timeshare Advice Company and the PR when speaking to them. In light of this it seems she has consistently said this since she first began the process of making a complaint.

I note the Supplier's call notes and a call recording it provided, which shows Mrs M was interested in holidays. That is not surprising given the nature of the product at the centre of this complaint.

But as Mrs M says (plausibly in my view) that Fractional Club membership was marketed and sold to her at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think her purchase was motivated by her share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from her trial membership – which only provided a set number of holidays over a fixed period with no money back at the end.

Indeed, the call recording provided shows that when contacting the Supplier on 25 August 2023, one of the things she queried was the value of the Allocated Property and if she could sell before the end of her membership term. She did not seem interested in surrendering her membership (giving it up for nothing) even though she was unhappy with the availability of holidays. That suggests that she wanted to hold onto her membership due to its perceived value and the opportunity to get money back at the end (which from her earlier statement it seems clear that she hoped or expected would be a profit). And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision she ultimately made.

I am aware that Mrs M has continued to make use of her Fractional Points to take holidays. But she has confirmed that she wishes to proceed with the complaint and understands that if her complaint is upheld then her membership will end. She has said that she continued to take holidays since she was paying the annual management fees – which is something she would need to do to retain her right to a share in the net sale proceeds of the Allocated Property.

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

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional findings about an unfair relationship

In summary the Lender and Supplier said:

- Mrs M is still actively using her membership, with future bookings in place for later this year utilising her 2027 fractional points allocation.
- They disagree with my analysis of the 2017 Training Manual, which they say provides no firm evidence for my conclusion that 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.
- Other "identical cases" from the PR have not been upheld and there is no material difference in this case that justifies a different outcome.
- The only complaints the Supplier received from Mrs M were in relation to not getting the holidays she wanted in Jamaica and other issues with availability.
- The timeshare advice company questionnaire involved leading tick box questions and referred to a share in profits rather than a guaranteed financial gain.
- The PR's handwritten notes were made after the questionnaire and are not Mrs M's direct testimony, just notes made by the PR. The Supplier suggests the words "+ invest for future & sell property + we get the profit" may have been added later as the writing is inconsistent with the rest of the document. It also says that it is highlighted, which must have been done later given Mrs M's complaint was not focussed on this point until later.
- What happened at the Time of Sale is described very briefly with no colour or context as to how Fractional Club membership was presented or how it was positioned as an investment (as defined).
- The Supplier says it had a call with Mrs M, *"during which she confirmed the only problem she had with the Membership was availability and when being told what would happen on the sale date, not once did she ask about where her profit would come from."*

My role as an Ombudsman isn't to address every single point which has been made, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

I acknowledge that Mrs M has complained to the Supplier on occasion about holiday availability. But I do not think that precludes the possibility that she purchased Fractional Club membership in part because it was sold to her as an investment in breach of Regulation 14(3) of the Timeshare Regulations. Indeed, when the PR wrote the Letter of Complaint it clearly considered that arguing that Fractional Club membership was an Unregulated Collective Investment Scheme was the best approach to getting Mrs M's money back. It was only later that it became clear that there had been a breach of Regulation 14(3) of the Timeshare Regulations and that could lead to a successful claim in relation to an unfair relationship under Section 140A of the CCA.

I appreciate the Lender and Supplier's concerns with some of the evidence provided by the PR in this case. But I am not persuaded that the evidence should be given little weight when reaching my decision. In this case I am not persuaded, for example, that it is more likely than not that the webform, questionnaire, or call notes were created or altered at a late stage to support this claim after the PR became aware of the reasons an ombudsman may uphold a complaint like this. While that is possible, I think it is more likely in this instance that the dates on those documents are accurate in terms of when they were created.

The webform submission to the timeshare advice company is dated 24 September 2021. The questionnaire was dated the same day – suggesting the webform prompted further contact (probably a phone call) when more detail was obtained and the questionnaire was completed, after which the timeshare advice company (in line with what I have seen in many similar cases) referred Mrs M to the PR, whose call note is dated 30 September 2021. Mrs M signed a letter of authority for the PR to act on her behalf in the matter on 1 October 2021 and the Letter of complaint was sent two weeks later.

I appreciate the Lender and Supplier disagree with my assessment of the evidence. And I acknowledge that this complaint is finely balanced. But I think the evidence is sufficiently plausible and persuasive to justify me upholding this complaint. Each case is decided based on its individual circumstances. So, while multiple complaints about timeshares may share similarities, the outcome of the individual complaints often comes down to the evidence specific to that case – such as a customer's recollections of what happened. In this instance, having considered the available evidence, I think upholding this complaint is the most fair and reasonable outcome.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mrs M 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 Mrs M would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mrs M (and all members named on the Purchase Agreement and Fractional Rights Certificate) agree/s to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Mrs M 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. Mrs M'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 Mrs M – whether or not a court would award such compensation:

- (1) The Lender should refund Mrs M'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 Mrs M paid as a result of Fractional Club membership.
 - ii. The difference between the trade-in value given to Mrs M'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 Mrs M used or took advantage of; and
 - ii. The market value of the holidays* Mrs M took using her 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 Mrs M's credit file in connection with the Credit Agreement reported within six years of this decision.
 - (6) If Mrs M's Fractional Club membership is still in place at the time of this decision, as long as she agree to hold the benefit of her interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify Mrs M against all ongoing liabilities as a result of her 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 Mrs M took using her 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 her 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. I direct Tandem Bank Limited to pay fair compensation to Mrs M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 23 March 2026.

Phillip Lai-Fang
Ombudsman