

## **The complaint**

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

## **What happened**

Mr S and Ms R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 12 February 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,380 fractional points at a cost of £15,674 (the 'Purchase Agreement') after trading in his existing trial membership.

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

Mr S and Ms R paid for their Fractional Club membership by taking finance of £15,674 from the Lender in Mr S's name only (the 'Credit Agreement'). As such only Mr S can complain to the Lender about this.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 9 September 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to the outcome of this complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender didn't respond to the complaint in the time allowed. The complaint was then referred 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 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 that I was planning to uphold the complaint. The Lender disagreed with my provisional decision and provided some additional comments for me to consider. The PR said that Mr S and Ms R agreed with my provisional decision and had nothing to add.

## **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 decision – for the same reasons. A copy of my provisional findings is below. As such, I uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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

Having considered the entirety of the credit relationship between Mr S 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 standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material.
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier.
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.
5. The inherent probabilities of the sale given its circumstances.
6. Any existing unfairness from a related credit agreement.

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

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

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

But Mr S 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 S 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 S 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 S, 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 S 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.

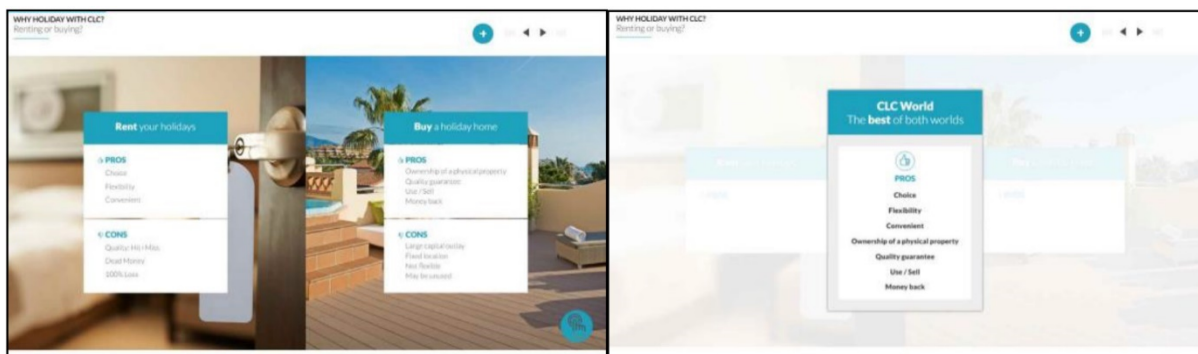
### How the Supplier marketed and sold the Fractional Club membership

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 Mr S – 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 S 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 S Fractional Club membership; and
2. how the sales representatives would have framed the sale of Fractional Club membership to him.

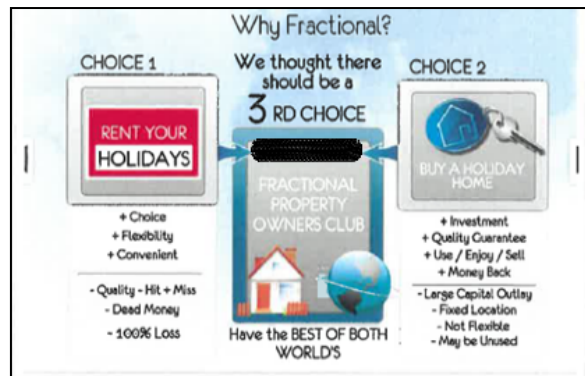
Having looked through the Manual, my attention is drawn first to page 19 (of 74) – which includes two slides called "Why holiday with [the Supplier]? Renting or buying?".



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 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 Mr S) 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 him 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 S) 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 S 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)).'*<sup>1</sup> 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 S), 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 Mr S'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 S 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 told that he was buying a share in property that, being an investment, may well lead to a financial gain if the property value increased. On the contrary, given everything I have seen so far, I think that is likely to be what Mr S 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 S 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.

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<sup>1</sup> 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 Mr S and the Lender that was unfair to him and warranted relief as a 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 S 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 for the following reasons.

Mr S's statement says:

*"They told us about the fractional. They said that the property was a shared ownership. It was an investment. We could get some great holidays and after a period of time they would sell the property and we would get our money back. We felt that it was a good investment as it was a good property the sea-side and that the property value would probably go up. We were told that the maintenance fees would stay the same so the cost of the holiday wouldn't change. We have paid a few maintenance fees."*

I appreciate this statement is undated and unsigned and was provided relatively late in the complaint process, but I think it is the best evidence available of Mr S's recollections. I am not aware that the Lender requested a statement from Mr S before we requested it. It speaks of Mr S getting his money back and goes on to describe the purchase as a good investment because the value of the Allocated Property would probably increase. In this context, I think by "good investment" Mr S meant that a profit was at least possible.

The statement is also supported by other evidence provided by the PR as follows:

- An email to a timeshare advice company on 17 June 2022, which said, "[the Supplier] promised money back at end which we won't get yet still have to pay them".
- A timeshare advice company questionnaire dated 17 June 2022, which says Mr S was convinced to purchase "as [he] was told return @ end, but has lost timeshare & still has to pay - won't get the profit promised - or the holidays - paying for nothing."
- The PR's call notes dated 20 June 2022 say, "[The Supplier] presented fractional shared ownership - told it was an investment with recoup of funds invested once property was sold later - the property will increase in value as good area which is a good investment."

While the email does not mention or allude to making a profit, it is clearly very brief and not Mr S's full recollections of what he was told.

The questionnaire was not completed by Mr S directly. But I understand it was completed during a call with him. It seems to make clear that Mr S was convinced to purchase for reasons relating to the return at the end of the membership term. It then expands on what that meant and indicates Mr S was promised a profit.

The PR's call note was made during a conversation with Mr S and largely matches his statement. It says Fractional Club membership was an investment, that he would get his money back and that it would be a good investment if the Allocated Property increased in value (which is what Mr S expected to happen).

In addition to this, the Letter of Complaint says that Mr S purchased Fractional Club membership because of the *“sales rep telling them that they should purchase a full Fractional membership which would give them the ability to have “fantastic” holidays and to allow them an investment opportunity.”*

So, this clearly states that the Supplier told Mr S the purchase was an investment opportunity. Which I think is in line with what he told the timeshare advice company and the PR, and what is written in Mr S’s statement.

Overall, I find the evidence to be sufficiently clear, consistent, plausible and persuasive for me to conclude that Mr S was motivated to enter the Purchase Agreement because the Supplier told him or implied that he could make a financial gain from doing so – that is that it was an investment as defined above.

That doesn’t mean Mr S was not interested in holidays. His own recollections demonstrates that he was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr S says (plausibly in my view) that Fractional Club membership was marketed and sold to him at the Time of Sale as an investment, on the balance of probabilities, I think his purchase was motivated by his share in the Allocated Property and the possibility of a profit if the value of the Allocated Property increased. 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 have no reason to think that Mr S 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.

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END OF COPY OF PROVISIONAL FINDINGS

### The Lender’s response to my provisional decision

My role as an Ombudsman isn’t to address every single point which has been made to date, 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.

The Lender responded to my provisional decision to make a few generic points about my approach to deciding this complaint – points it has made in response to many provisional decisions from various ombudsmen about fractional timeshares like the one here. I do not agree with its characterisation of my provisional decision as being premised on a material error of law in its approach to the prohibition under Regulation 14(3) of the Timeshare Regulations, or that it is premised on a material error of law in its approach to the legal test to determine the existence of an unfair relationship.

Specific to the circumstances of this complaint, the Lender says that relying on the evidence provided by Mr S – being his statement, the PR’s call notes and the questionnaire and email discussed above – is unsafe. The Lender says this is because the allegations about being sold Fractional Club membership as an investment are brief, vague, inconsistent, generic, and lacks particularity and detail.

In terms of Mr S's statement, it starts by describing Mr S's purchase of trial membership from the Supplier. It goes on to describe Mr S's recollections of what happened at the Time of Sale. It includes details such as where Mr S was on holiday at the time, that it was a "bonus week" provided as part of his trial membership and that there was a complimentary breakfast prior to a tour and sales presentation in a large meeting room with lots of people and the Supplier's staff. It goes on to describe what Mr S was told about Fractional Club membership and the Allocated Property – *"We could get some great holidays and after a period of time they would sell the property and we would get our money back. We felt that it was a good investment as it was a good property by the sea-side and that the property value would probably go up."*

Considering this, I do not agree the Lender's assessment of the statement and the allegations therein. The statement provides some details around the circumstances of the sale, what would happen at the end of the membership term and why Mr S understood it to be a good investment – which I think is consistent with the PR's call notes, the questionnaire and email. This was linked to the idea that the value of the Allocated Property would increase, which I think the slides in the 2017 Fractional Training Manual allude to. And so, I find Mr S's statement to be sufficiently plausible and persuasive for me to uphold this complaint – given all the evidence in this complaint.

The Lender says I have dismissed the disclaimers in the contractual paperwork. But I have considered these alongside all of the other evidence. While I think the disclaimers point to the Supplier having attempted to comply with the Timeshare Regulations, I am not persuaded that they are sufficient to show that it did comply with them in this instance. And I do not think the disclaimers here overcome what appears to have happened during the sales presentation – which in my opinion is that Mr S was given the impression that purchasing Fractional Club membership could lead to him making a financial gain when the Allocated Property was sold at the end of the membership term – if the value of the property increased.

As such, for the reasons explained in my provisional findings above, I still think this complaint should be upheld.

## **Conclusion**

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

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Having found that Mr S 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 S and Ms R both agree to assign to the Lender his Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr S 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 S'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 Mr S – whether or not a court would award such compensation:

- (1) The Lender should refund Mr S'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 S paid as a result of Fractional Club membership.
  - ii. The trade-in value given to Mr S's trial membership.
- (3) The Lender can deduct:
  - i. The value of any promotional giveaways that Mr S used or took advantage of; and
  - ii. The market value of the holidays\* Mr S 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 S's credit file(s) in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr S's Fractional Club membership is still in place at the time of this decision, as long as Mr S and Ms R 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 Mr S 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 S 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 Shawbrook Bank Limited to pay fair compensation to Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 March 2026.

Phillip Lai-Fang  
**Ombudsman**