

The complaint

Miss I complaint is, in essence, that Shawbrook 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 a claim under Section 75 of the CCA.

What happened

Miss I purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 4 September 2013 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,480 fractional points at a cost of £22,459 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Miss I 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.

Miss I paid for her Fractional Club membership by taking finance of £22,459 from the Lender (the 'Credit Agreement').

Miss I – using a professional representative (the 'PR') – wrote to the Lender on 26 July 2022 (the 'Letter of Complaint') to raise several different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender rejected Miss I's concerns. Miss I 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 Miss I 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 Miss I 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.

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.

I've decided to uphold this complaint – for the same reasons set out in my provisional decision. A copy of my provisional findings is below.

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 Miss I 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 Miss I 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 Miss I 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 Miss I 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.

Miss I 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 Miss I 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 Miss I, 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 Miss I 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 has provided training material used to prepare its sales representatives – including:


1. a document called the 2013/2014 Sales Induction Training (the ‘2013/2014 Induction Training’);
2. screenshots of a Electronic Sales Aid (the ‘ESA’); and
3. a document called the “FPOC2 Fly Buy Induction Training Manual” (the ‘Fractional Club Training Manual’)

Neither the 2013/2014 Induction Training nor the ESA I’ve seen included notes of any kind. However, the Fractional Club Training Manual includes very similar slides to those used in the ESA. And according to the Supplier, the Fractional Club Training Manual (or something similar) was used by it to train its sales representatives at the Time of Sale. So, it seems to me that the Training Manual is reasonably indicative of:

1. the training the Supplier's sales representatives would have got before selling Fractional Club membership; and
2. how the sales representatives would have framed the Supplier's multimedia presentation (i.e., the ESA) during the sale of Fractional Club membership to prospective members – including Miss I.

The "Game Plan" on page 23 of the Fractional Club Training Manual indicates that, of the first 12 to 25 minutes, most of that time would have been spent taking prospective members through a comparison between "renting" and "owning" along with how membership of the Fractional Club worked and what it was intended to achieve.

Page 32 of the Fractional Club Training Manual covered how the Supplier's sales representatives should address that comparison in more detail – indicating that they would have tried to demonstrate that there were financial advantages to owning property, over 10 years for example, rather than renting:



- Re-visit the idea of renting a house and talk them through the example of renting a home for £500 highlighting the fact of no return
- Refer to their decision to purchase a property as it made more financial sense to own than rent because, not only are they are building equity in their property, they can also continue to enjoy living in their home once it is paid for
- Ask: "if it cost a little more to own rather than rent would they be happy to pay the extra to own?" (*Increase amount of owning and continue to do this for a couple of times until they don't agree.*)

CLOSE: So what you are telling me is that, as long as it's comfortably affordable, you would always choose to own rather than rent, is that correct?

LINK: Now let me show you the relevance this has when it comes to your holidays because what you are currently doing is ...

CLOSE:

Indeed, one of the advantages of ownership referred to in the slide above is that it makes more financial sense than renting because owners "are building equity in their 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 the mortgage secured against it, one of the advantages of ownership over renting was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth over time.

I acknowledge that the slides don't include express reference to the "investment" benefit of ownership. But the description alludes to much the same concept. It was simply rephrased in the language of "building equity". And with that being the case, it seems to me that the approach to marketing FCM was to strongly imply that 'owning' fractional points was a way of building wealth over time, similar to home ownership.

Page 33 of the Fractional Club Training Manual then moved the Supplier's sales representatives onto a cost comparison between "renting" holidays and "owning" them. Sales representatives were told to ask prospective members to tell them what they'd own if they just paid for holidays every year in contrast to spending the same amount of money to "own" their holidays – thus laying the groundwork necessary to demonstrating the advantages of Fractional Club membership:

• You are currently spending £xxxx on your holidays each year... (taken from survey)
 • Confirm exactly what clients get for that money in terms of quality, people travelling and weeks
 • Confirm the client will holiday for the next 10 years
 • Explain total cost, with no inflation over a ten year period and ask what they own at the end of that period
 • Compare spending the same money to own your holidays with better benefits, so that at the end of the ten years they would have received better value

✍️ **CLOSE:** So, looking at the two options which way makes more sense, to own or rent your holidays? (Get the answer "Owning") This is why so many people choose to holiday with ~~£30000~~.

✍️ **LINK:** Before I show you how the product works, I am just going to tell you how ~~£30000~~ started and where we are today.

CLOSE:

With the groundwork laid, sales representatives were then taken to the part of the ESA that explained how FCM worked. And, on pages 41 and 42 of the Fractional Club Training Manual, this is what sales representatives were told to say to prospective members when explaining what a 'fraction' was:

*"FPOC = small piece of [...] World apartment which equals **ownership of bricks and mortar** [...]"*

*Major benefit is the property is sold in nineteen years (**optimum period to cover peaks and troughs in the market**) when sold you will get your share of the proceeds of the sale*

SUMMARISE LAST SLIDE:

*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**? **How would you feel if there was an opportunity of doing that?***

[...]

*LINK: Many people join us every day and one of the main questions they have is **"how can we be sure our interests are taken care of for the full 19 years?"** As it is very important you understand how we ensure that, I am going to ask Paul to come over and explain this in more details for you.*

[...]

*"Handover: (Manager's name) John and Mary love FPOC and have told me the best for them is.....**Would you mind explaining to them how their interest will be protected over the next 19 year[s]?"***

(My **emphasis** added)

The Fractional Club Training Manual doesn't give any immediate context to what the manager would have said to prospective members in answer to the question posed by the sales representative at the handover. Page 43 of the manual has the word "script" on it but otherwise it's blank. However, after the Manual covered areas like the types of holiday and accommodation on offer to members, it went onto "resort management", at which point page 61 said this:

"T/O will explain slides emphasising that they only pay a fraction of maintaining the entire property. It also ensures property is kept in peak condition to maximise the return in 19 years['] time.

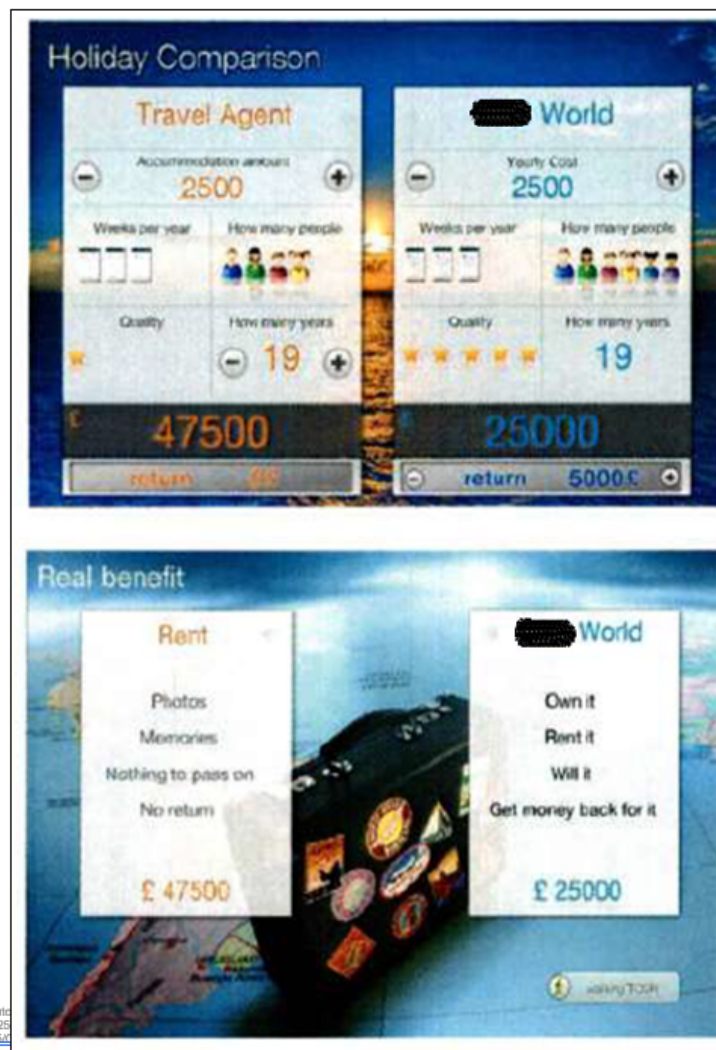
[...]

CLOSE: I am sure you will agree with us that this management fee is an extremely important part of the equation as it ensures the property is maintained in pristine condition so at the end of the 19 year period, when the property is sold, you can get the maximum return. So I take it, like our owners, there is nothing about the management fee that would stop you taking you holidays with us in the future?..."

(My **emphasis** added)

By page 68 of the Fractional Training Manual, sales representatives were moved on to the holiday budget of prospective members. Included in the ESA were a number of holiday comparisons. It isn't entirely clear to me what the relevant parts of the ESA were designed to show prospective members. But it seems that prospective members would have been shown that there was the prospect of a "return".

For example, on page 69 of the Fractional Club Induction Training Manual, it included the following screenshots of the ESA along with the context the Supplier’s sales representatives were told to give to them:



[...]

“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 got a small part of your initial outlay, 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 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 FCM 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 Miss I) who were looking to buy holidays anyway, the comparison the slides make between the costs of FCM 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.

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 Miss I 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 Miss I), 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 Miss I recollections of the sale.

So, overall, on the balance of probabilities, I think the Supplier's sales representative was likely to have led Miss I 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 an investment that may lead to a financial gain. On the contrary, given everything I have seen so far, I think that is likely to be what Miss I 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 Miss I 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

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>

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 Miss I 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 Miss I 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. I say this because Miss I has said the following:

1. In a webform submission to a timeshare advice company on 28 March 2018 – *“You are helping my brother Femi claim back money for a bad investment with CLC I am in the same situation they told me I could get luxury holiday and at the end get back money I have spend.”*
2. In a questionnaire completed by the timeshare advice company on 2 November 2021 – *“[Miss I] saw it as a way to get back money spent on holiday could sell @ any time & make money.”*
3. In the PR's call notes dated 2 November 2021 – *“fractional bought - lovely hols but invest - own apt - could sell anytime + make money.”*
4. In her statement – *“The reps told us that the Fractional was great as we could have lovely holidays, but it was also an investment and that I could sell it at any time and make money.”*

So, it appears to me that Miss I has consistently described Fractional Club membership as an investment, and whenever she has expanded on this, she has indicated that she hoped or expected to make money (that is, a profit).

That doesn't mean she was not interested in holidays. her own testimony demonstrates that she quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Miss I 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 the more 'standard' type of timeshare. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision she ultimately made.

Miss I has not said or suggested, for example, 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.

Potential concerns about Miss I's evidence

Aside from the webform submission, it is not clear that the other documents were completed or written by Miss I herself (indeed, the questionnaire and call notes were not). But I have little reason in this instance to doubt that they were completed based upon what Miss I told

the timeshare advice company and the PR. And consistently through those documents and in the Letter of Complaint, Fractional Club membership has been described as an investment.

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 couple of 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.

The Lender has also argued that in this case the evidence of Miss I's recollections (as analysed above on page 9) is insufficiently plausible and persuasive to justify me upholding this complaint. I appreciate that the Lender disagrees with my analysis of the evidence, but I am not persuaded by its comments that my provisional decision was unfair or unreasonable.

The evidence seems to me to show that Miss I was led by the Supplier to believe that Fractional Club membership was an investment (as defined above) and that she held out the hope or expectation of making a profit. The allegation that it was sold to her as an investment appears in the Letter of Complaint, which is dated 26 July 2022. While the PR focussed on other points in the Letter of Complaint to argue the complaint should be upheld, the allegation there is consistent with Miss I having told the PR that Fractional Club membership was sold to her as an investment. She described it that way in the webform submission, to the timeshare advice company when it completed the questionnaire, to the PR when it made its call notes and in her own statement. And I am satisfied that it is likely that this was material to her decision to enter into the Purchase Agreement and the Credit Agreement.

For clarity, the webform and questionnaire were provided to the Financial Ombudsman Service on 12 May 2025, the call note on 6 May 2025 (in response to our request after we became aware the PR held such notes that may support their client's claims) and the statement on 26 November 2023. I have considered the timing of their submission but am not persuaded this undermines them such that I should give them little or no weight when reaching my decision.

It appears that Miss I started the process of seeking redress in 2018 when she contacted the timeshare advice company, explored making a claim against the Supplier in the Spanish Courts, and then contacted the PR in 2021. She described Fractional Club membership as an investment throughout, which was also mentioned in the Letter of Complaint in 2022. So, I do not think the judicial review judgement referred to by the Lender has tainted or influenced the evidence Miss I has provided, which was dated before that judgement.

I have considered the Lender's comments that Miss I's allegations are vague, brief, lack detail and are generic. While the allegation is fairly brief, I find it is clear and consistent

throughout Miss I's evidence and I am not convinced I should conclude that it is not specific to her recollections of the Time of Sale nor that it is so lacking in detail that it is unreasonable to uphold this complaint – particularly considering Miss I's evidence alongside what I know of how the Supplier sold Fractional Club membership at that time.

So, I remain of the opinion that this complaint should be upheld.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Miss I 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 Miss I 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 Miss I agree(s) to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Here's what I think needs to be done to compensate Miss I with that being the case – whether or not a court would award such compensation:

1. The Lender should refund Miss I'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 the annual management charges Miss I paid as a result of Fractional Club membership.
3. The Lender can deduct:
 - a. The value of any promotional giveaways that Miss I used or took advantage of; and
 - b. The market value of the holidays* Miss I took using her Fractional Points.
4. (I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)
5. 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.
6. The Lender should remove any adverse information recorded on Miss I's credit file(s) in connection with the Credit Agreement reported within six years of this decision.
7. If Miss I'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 her 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 Miss I 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 Shawbrook Bank Limited to pay fair compensation to Miss I as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 27 March 2026.

Phillip Lai-Fang
Ombudsman