

The complaint

Mr and Mrs C'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 them 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 and Mrs C were members of a timeshare provider (the 'Supplier') – having purchased memberships known as the 'Balkan Jewel' memberships on 26 August 2014 and 17 June 2015. They purchased 11,000 and 4,000 fractional points respectively, however these purchases fall outside the scope of this complaint as they were funded by other means.

The product at the centre of this complaint is their further purchase of the Balkan Jewel membership – which they bought on 30 September 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 9,000 fractional points at a cost of £5,600 (the 'Purchase Agreement').

Mr and Mrs C paid for their Balkan Jewel membership by taking finance of £5,600 from the Lender (the 'Credit Agreement').

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

Mr and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 24 August 2020 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

On 20 October 2020, the Lender sent a letter explaining that it couldn't investigate Mr and Mrs C's complaint as it had not received some information it had requested. The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I considered the matter and issued a provisional decision (the 'PD') dated 3 March 2026. In that decision, I said:

"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.

My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Balkan Jewel membership to Mr and Mrs C as an investment, which, in the circumstances of this complaint, rendered the credit relationship between them and the Lender unfair to them for the purposes of Section 140A of the CCA.

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

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

Having considered the entirety of the credit relationship between Mr and Mrs C 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 Mr and Mrs C 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 and Mrs C's Balkan Jewel 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 Balkan Jewel 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 and Mrs C say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they told by the Supplier that if they purchased more Balkan Jewel points, it would add to their existing investment.

The term “investment” is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, an 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 and Mrs C share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Balkan Jewel 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 Balkan Jewel. They just regulated how such products were marketed and sold.

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

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

The Supplier sold two similar types of memberships at the same time. One was the Balkan Jewel membership, which is the membership Mr and Mrs C purchased. They also sold another version, simply called the Fractional Owners’ Club.

I’ve seen a variety of internal materials produced by the Supplier dating from around the time it started selling these products. Including witness statements from various staff members who worked for the Supplier commenting on the materials that the Lender shared with us in response to the Investigator’s view. These materials appear to relate to the Fractional Owners Club and it’s not clear if they were ever intended to be directly

relevant to the sale of Balkan Jewel Membership particularly since it isn't specifically mentioned within the materials. But nonetheless, it seems inherently unlikely that the sale of Balkan Jewel membership would have taken place in a materially different way to the sale of the Fractional Owners' Club, particularly since there was, at certain points, overlap with the two products being sold at the same time, and the similarities in the way the products worked. For example, they were both asset-backed with the net proceeds of the sale of the allocated properties split between the fractional owners at the end of the membership term.

In general, I do think some of these materials indicate that the Supplier was focused on avoiding breaching Regulation 14(3). But other materials, like the presentation slides, implied that the Supplier's brand and other attributes would contribute to enhancing the value of the fractional asset at the end of the membership term.

Although I can't be certain of what was shown to Mr and Mrs C during their sales process, or what specifically any sales representative may have said to them, any more than the Supplier or Lender can. But I think from what I've seen, there was the potential for the Balkan Jewel product to be sold in a way which meant the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations. And I don't think the Supplier would have needed to deviate very far from a simple description of how the product worked in terms of the sale of the fractional asset at the end of the term to have fallen foul of 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.

For, if I'm wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 100 of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice said the following:

"[...] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3). [...] Getting the governance principles and paperwork right may not be quite enough.

The problem comes back to the difficulty in articulating the intrinsic benefit of fractional ownership over any other timeshare from an individual consumer perspective. [...] If it is not a prospect of getting more back from the ultimate proceeds of sale than the fractional ownership cost in the first place, what exactly is the benefit? [...] What the interim use or value to a consumer is of a

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>

prospective share in the proceeds of a postponed sale of a property owned by a timeshare company – one they have no right to stay in meanwhile – is persistently elusive.”

“[...] although the point is more latent in the first decision than in the second, it is clear that both ombudsmen viewed fractional ownership timeshares – simply by virtue of the interest they confer in the sale proceeds of real property unattached to any right to stay in it, and the prospect they undoubtedly hold out of at least 'something back' – as products which are inherently dangerous for consumers. **It is a concern that, however scrupulously a fractional ownership timeshare is marketed otherwise, its offer of a 'bonus' property right and a 'return' of (if not on) cash at the end of a moderate term of years may well taste and feel like an investment to consumers who are putting money, loyalty, hope and desire into their purchase anyway.** Any timeshare contract is a promise, or at the very least a prospect, of long-term delight. [...] A timeshare-plus contract suggests a prospect of happiness-plus. And a timeshare plus 'property rights' and 'money back' suggests adding the gold of solidity and lasting value to the silver of transient holiday joy.” (emphasis my own)

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 Balkan Jewel membership to prospective members (including Mr and Mrs C), 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 Balkan Jewel was a good reason to purchase it – which, broadly speaking, is consistent with Mr and Mrs C's recollections of the sale.

In this case, Mr and Mrs C were already Balkan Jewel members and rather than increasing their existing membership, they made another separate purchase meaning they had the right to the net sale proceeds from the sale of three Allocated Properties rather than one. So it seems likely to me, given this set of particular circumstances, that the Supplier would have focused on that benefit when making their further purchase as this is what comes across in what Mr and Mrs C say about the sale of their Balkan Jewel membership when they say they were told it would further add to their existing investment.

So, overall, on the balance of probabilities, I think the Supplier's sales representative was likely to have led Mr and Mrs C to believe that Balkan Jewel was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I do not find them either implausible or hard to believe when they say that they were told that they were buying shares in property that, being an investment, will lead to a financial gain. On the contrary, given everything I have seen so far, I think that is likely to be what Mr and Mrs C were led to believe by the Supplier at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

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

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

Indeed, it seems to that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs C and the Lender that was unfair to them and

warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration. To help me decide this point, I've carefully considered what Mr and Mrs C has said in the course of their complaint about how the membership was sold to them and their motivation for taking it out.

On my reading of Mr and Mrs C's testimony, the prospect of a financial gain from Balkan Jewel membership was an important and motivating factor when they decided to go ahead with their purchase. I do however accept that Mr and Mrs C were interested in holidays but that isn't surprising given the nature of the product at the centre of this complaint so I'm not surprised to see Mr and Mrs C making use of the holiday benefits given to them as part of their membership.

As I set out at the start of my decision, Mr and Mrs C were already Balkan Jewel members a total of 15,000 fractional points. Mr and Mrs C then entered into a separate agreement to purchase 9,000 more Balkan Jewel fractional points.

I think it's important to set out what Mr and Mrs C say they were told when they first purchased their membership. Although it's not the subject of this complaint, I think it is fair for me to consider what Mr and Mrs C say they were told as that is likely to set the tone for their subsequent purchases including the sale at the heart of this complaint – especially as this was the same type of product so I think it's likely it would have been sold in a very similar way.

During the course of investigating Mr and Mrs C's other complaints, we've been provided with a witness statement dated 24 October 2019 which explains their entire history with the Supplier.² In this statement, they say the following about their first purchase in 2014:

"At the sales presentations, we were told that if we made a purchase with [Supplier], that we would be investing and would have access to luxurious, exclusive holidays with great availability, not to mention an increase in value which also meant a sound return on our investment. [...]"

We were told that the contract would only last 15 years and that after that time period we would make a profit from the sale. We were told repeatedly that this would be an investment."

When they upgraded on 17 June 2015, Mr and Mrs C say:

"...we were told that if we purchased further points that we would be increasing our investment and that it would greatly improve our return on investment.

2 I've attached a copy of this as it doesn't appear the Lender has seen sight of this. [...]"

...we decided to make the purchase to benefit from the increase in value of the investment."

This would suggest that Mr and Mrs C purchased their agreement initially on the belief that they would receive a profit at the end of their membership term. As I've mentioned earlier, Mr and Mrs C say they were told that by purchasing more points at the Time of Sale, it would add to their investment. I don't find it unreasonable to assume that Mr and Mrs C would have maintained their belief that they would be making a profit as a result of purchasing additional points. As I've stated earlier as a result of this purchase, Mr and Mrs C were entitled to receive the net sale proceeds from three Allocated Properties rather than one.

² I attached a copy of this as it doesn't appear the Lender has seen sight of this.

After the purchase in question, Mr and Mrs C purchased a different type of timeshare membership which just provided holiday points. This could suggest they wanted or needed more holiday points but this doesn't detract from what they were told about the investment element at the Time of Sale by the Supplier nor that the investment element was material in their purchasing decision.

The Lender says there is a system note left by the Supplier which would suggest Mr and Mrs C purchased their product for holiday purposes and say the notes lack sufficient detail to infer that Mr and Mrs C were making an investment. There may be no mention of the membership being bought by Mr and Mrs C as an investment in the sales note but I don't think that means it wasn't sold or bought for that reason. Given that the sales representative would likely have been aware that they should not market and/or sell the membership as an investment, I am not at all surprised there's no reference to this within the note the sales representative left.

Taking everything into consideration, I think Mr and Mrs C say (plausibly in my view) that Balkan Jewel membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from the more 'standard' type of timeshare available to them. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Mr and Mrs C has not said or suggested, for example, that they would have pressed ahead with the purchase in question had the Supplier not led them to believe that Balkan Jewel membership was an appealing investment opportunity. And as they faced the prospect of borrowing and repaying a substantial sum of money while subjecting themselves to long-term financial commitments, had they not been encouraged by the prospect of a financial gain from membership of the Balkan Jewel, I'm not persuaded that they would have pressed ahead with their purchase regardless.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs C under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Fair Compensation

Having found that Mr and Mrs C would not have agreed to purchase Balkan Jewel membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under Section 140A of the CCA, I think it would be fair and reasonable to put them back in the position they would have been in had they not purchased the Balkan Jewel membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs C agree to assign to the Lender their 9,000 fractional points or hold them on trust for the Lender if that can be achieved.

As mentioned, Mr and Mrs C were existing Balkan Jewel members (Membership 1 and 2), but their memberships weren't traded in against the purchase price of Balkan Jewel membership in question ('Membership 3') at the Time of Sale. I believe the Supplier charged Mr and Mrs C annually for their management charges. But, the Lender should only be responsible for the management charges associated with Mr and Mrs C's 9,000 fractional points. With that being the case, any refund of the annual management charges paid by Mr and Mrs C from the Time of Sale as part of Membership 3 should amount only to the difference between those charges and the annual management charges they would have paid as part of Membership 1 and 2.

So, here's what I think needs to be done to compensate Mr and Mrs C with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr and Mrs C'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 difference between the annual management charges paid after the Time of Sale under Membership 3 and what Mr and Mrs C's annual management charges would have been under Membership 1 and 2, had they not purchased Membership 3.*
- (3) The Lender can deduct:*
 - i. The value of any promotional giveaways that Mr and Mrs C used or took advantage of; and*
 - ii. The market value of the holidays* Mr and Mrs C took using Membership 3 if the Points value of the holiday(s) taken amounted to more than the total number of Fractional Points they would have been entitled to use at the time of the holiday(s) as ongoing Membership 1 and 2 members. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.*

For example, if Mr and Mrs C took a holiday worth 2,550 Fractional Points after the Time of Sale and they would have been entitled to use a total of 2,500 Fractional Points under Membership 1 and 2 at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if they would have been entitled to use 2,600 Fractional Points under Membership 1 and 2, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (3) 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.*
- (4) The Lender should remove any adverse information recorded on Mr and Mrs C's credit file in connection with the Credit Agreement reported within six years of this decision.*
- (5) If Mr and Mrs C's Balkan Jewel membership is still in place at the time of this decision, as long as he agrees to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their purchase of 9,000*

Balkan Jewel fractional points.

**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 and Mrs C took using their fractional points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.*

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

The PR responded to the PD and accepted it.

The Lender also responded but did not accept the PD and provided some further comments and evidence they wish to be considered.

In summary, they stated:

- It had concerns with the timing of when we received Mr and Mrs C's statement and questioned its reliability and credibility. It highlighted inconsistencies and inaccuracies in their allegation that it would like me to consider further.
- It didn't understand how Mr and Mrs C could claim that their purchase in 2016 was sold as an investment if this did not contain an investment allegation – it provided Mr and Mrs C with additional holiday points.
- It didn't agree that any alleged breach of Regulation 14(3) induced Mr and Mrs C to enter into the agreement. Rather they felt the evidence suggests Mr and Mrs C purchased their membership due to the holiday options that the Supplier had to offer.
- It disagreed that any investment motivations played a material role in Mr and Mrs C's decision to purchase.

Having received the relevant responses from both parties, I'm now finalising my decision.

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, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

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 and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, 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.

In terms of the timing of the statement, I have seen evidence in the form of a screenshot, that the PR spoke to their client on 24 October 2019 and obtained their statement. So, on balance, I think the statement was written on the date recorded on the statement. Our service received Mr and Mrs C's statement on 15 November 2023 so I understand why the Lender may have concerns that their statement was coloured by the judgment in Shawbrook & BPF v FOS. However, I don't think their testimony is worded in a way that suggests it was coloured by the judgment. What's more, Mr and Mrs C have been consistent throughout the journey of their complaint in that their membership was sold to them as an investment.

The Lender says their testimony surrounding their allegation that their membership was sold to them as an investment was different to that in the Letter of Complaint. It appears that the Letter of Complaint is somewhat generic but it does state that Mr and Mrs C were told they would make a profit at the end of their membership term which does tie in with the contents of their own statement. I agree their testimony doesn't accurately describe how the sale of the Allocated Property would work but I don't think this detracts from their belief that their membership was sold to them as an investment in breach of Regulation 14(3).

In my provisional decision, I noted that Mr and Mrs C purchased more holiday points in

2016. Although Mr and Mrs C claimed that these points were sold as an investment – this purchase did not involve an asset from which Mr and Mrs C could expect a financial return from. So, I do understand why the Lender has concerns over this particular allegation. However, as I said in my PD, I don't think what Mr and Mrs C say in relation to this purchase undermines their recollections about the sale in question. When thinking about their recollections as a whole, I'm satisfied that the Balkan Jewel membership was sold to them by the Supplier as an investment and this was material to their purchasing decision.

The Lender also says that Mr and Mrs C's recollections are directly contradicted by the contemporaneous written documentation in the form of the sales note which states Mr and Mrs C purchased their membership for holiday rights. However, this note provides me with no insight as to how their membership was sold and I'm still of the opinion that the absence of any investment motivation within this note does not negate the fact that the membership was sold or bought for that very reason.

Having carefully considered the contents of Mr and Mrs C's statement, I think it is more than likely that this was an honest account of their recollections of how their membership was sold to them by the Supplier. And although I accept there's some inconsistencies in the testimony, I don't think this undermines the core of acceptable evidence it contains.

For the avoidance of doubt, I think Mr and Mrs C were clearly interested in holidays but I'm simply not convinced that they would have pressed ahead with the purchase in question had the Supplier not led them to believe that Balkan Jewel membership was an appealing investment opportunity.

Having reconsidered everything again, I remain satisfied that it is safe to place weight on Mr and Mrs C's testimony when considering what most likely happened at the Time of Sale. And I find that their testimony, when considered alongside all of the evidence and circumstances, persuades me that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, and that breach was material to Mr and Mrs C's purchasing decision.

Putting things right

Having found that Mr and Mrs C would not have agreed to purchase Balkan Jewel membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under Section 140A of the CCA, I think it would be fair and reasonable to put them back in the position they would have been in had they not purchased the Balkan Jewel membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs C agree to assign to the Lender their 9,000 fractional points or hold them on trust for the Lender if that can be achieved.

As mentioned, Mr and Mrs C were existing Balkan Jewel members (Membership 1 and 2), but their memberships weren't traded in against the purchase price of Balkan Jewel membership in question ('Membership 3') at the Time of Sale. I believe the Supplier charged Mr and Mrs C annually for their management charges. But, the Lender should only be responsible for the management charges associated with Mr and Mrs C's 9,000 fractional points. With that being the case, any refund of the annual management charges paid by Mr and Mrs C from the Time of Sale as part of Membership 3 should amount only to the difference between those charges and the annual management charges they would have paid as part of Membership 1 and 2.

So, here's what I think needs to be done to compensate Mr and Mrs C with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr and Mrs C'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 difference between the annual management charges paid after the Time of Sale under Membership 3 and what Mr and Mrs C's annual management charges would have been under Membership 1 and 2, had they not purchased Membership 3.

(3) The Lender can deduct:

- i. The value of any promotional giveaways that Mr and Mrs C used or took advantage of; and
- ii. The market value of the holidays* Mr and Mrs C took using Membership 3 if the Points value of the holiday(s) taken amounted to more than the total number of Fractional Points they would have been entitled to use at the time of the holiday(s) as ongoing Membership 1 and 2 members. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.

For example, if Mr and Mrs C took a holiday worth 2,550 Fractional Points after the Time of Sale and they would have been entitled to use a total of 2,500 Fractional Points under Membership 1 and 2 at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Points that were required to take it. But if they would have been entitled to use 2,600 Fractional Points under Membership 1 and 2, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (3) 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.
- (4) The Lender should remove any adverse information recorded on Mr and Mrs C's credit file in connection with the Credit Agreement reported within six years of this decision.
- (5) If Mr and Mrs C's Balkan Jewel membership is still in place at the time of this decision, as long as he agrees to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their purchase of 9,000 Balkan Jewel fractional points.

*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 and Mrs C took using their fractional points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

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

My final decision

For the reasons set out above, I uphold this complaint and direct Shawbrook Bank Limited to calculate and pay Mr and Mrs C fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 29 May 2026.

Sameena Ali
Ombudsman