

The complaint

Mr and Mrs C 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 several products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 2 June 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 7,000 fractional points at a cost of £11,760 (the 'Purchase Agreement').

Fractional Club 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 the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs C paid for their Fractional Club membership by trading in 7,000 European Collection points at a value of £7,000, making a direct payment by cheque of £1,000, and taking finance of £3,760 from the Lender (the 'Credit Agreement').

Mr and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 7 November 2016 (the 'Letter of Complaint') to raise several 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 dealt with Mr and Mrs C's concerns as a complaint and issued its final response letter on 19 January 2017, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. Since then, the PR added a complaint about the Lender paying commission to the Supplier in relation the loan without telling Mr and Mrs C about this. The complaint 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 issued my first provisional decision on 19 August 2025, explaining why I was not planning to uphold the complaint, but saying that I would later communicate my findings in relation to Mr and Mrs C's concerns about undisclosed commission. I did this on 5 January 2026 – again explaining why I did not think the complaint should be upheld.

The Lender agreed with my provisional findings. The PR disagreed with my overall conclusion. When doing that, it provided significant submissions at first, but it went on to withdraw them and replace them with more concise submissions.

Having reconsidered all the available evidence and arguments afresh, I was of the opinion that the complaint should be upheld. And I issued a second provisional decision on 30 March 2026 explaining why.

Mr and Mrs C did not respond to this. The Lender said it disagreed. In summary it said:

- Mr and Mrs C say they purchased as a way of exiting their European Collection membership rather than for the shorter membership term.
- Following the purchase, they remained European Collection members, still having 4,000 European Collection Points – so their membership of the Supplier would not end at the end of their Fractional Club membership term. The Lender suggests this would make sense if their intention was to shorten the life of some of their points in favour of a more economical and more appropriate points entitlement in later years.
- Mr and Mrs C were notified of the Exceptional Circumstances Policy in writing in December 2011, just one a half years before the Time of Sale.
- They were also provided with this information in writing in April 2014 and March 2016.
- The Supplier has no record of being informed of Mr C's health issues prior to April 2014. They could have sought to give up their membership at that point, did not do so. Nor did they provide evidence of Mr C's health issues when requested in December 2016.
- If I uphold the complaint, the interest on the refund should be limited to reflect that Mr and Mrs C delayed making their complaint after April 2014 and failed to provide evidence of Mr C's health issues in 2016.

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.

For the same reasons set out in my provisional decision dated 30 March 2026, which are incorporated below, I have decided to uphold this complaint. In summary, that was because Mr and Mrs C were motivated to make the purchase to obtain a shorter membership term – but this was not in fact of much use to them. I say this for the reasons below.

The Letter of Complaint said:

“Our Clients decided in 2012 that they would book a week at a resort in Tenerife as they were both in need of a holiday, but, in the end, they had to cancel the same as Mr C had a seizure 6 days before they were due to fly on the 4th January 2013. Our Clients doctor advised them not to go, as this would invalidate their travel insurance.

In February 2013, Mr C was diagnosed with a brain tumour and their lives were turned upside down. During the next 3 months, Mr C had two spells in hospital. During this time, Our Clients were also waiting for an appointment for him to have brain surgery. Our Clients decided that they would take a chance and booked a weekend at [one of the Supplier's UK resorts].

When Our Clients were there, Our Clients asked if they could see anyone from the Timeshare Owner as **they wanted to talk to them about returning their points, due to the fact that, at that time, Mr. C's life was in the balance.** An appointment was given to Our Clients and they duly sat with a representative of [the Supplier] who **told them that they were not allowed to return points, but [the Supplier's founder], the man they were told who was the head of the Timeshare Owner, had come up with a scheme whereby Our Clients could convert some of their points into Fractional Points.**

This would be a two stage operation and **Our Clients were told that this was the only way forward. If they did not purchase a Fractional membership then they would be stuck with their points in perpetuity.** Our Clients would be buying part of a property that they could sell at a later date. After many hours of intense talking, Our Clients were persuaded to use 7000 of their 11000 points as 'this offer was only available on this day' and they could not go home and think about it. Our Clients were told that as soon as the second phase was ready for allocation they would be contacted.

It, of course, involved Our Clients spending more money on top of the thousands that they have already spent, but Our Clients didn't feel as if they had a choice. It was going to cost Our Clients another £4,760.00. A deposit of £1000.00 was paid on the day by credit card and a loan for the balance of £3,760.00 was arranged by the Timeshare Owner with Shawbrook Bank.

Our Clients are now fully aware that the Timeshare Owner in fact offers an exit from the club under "exceptional circumstances", including in circumstances of illness. This means that the most important facts were withheld from Our Clients by the Timeshare Owner, in order to get Our Clients to spend over £4,000 on something that they never needed nor wanted."

(my **emphasis**)

So, it appears from this that Mr and Mrs C were concerned due to Mr C's ongoing health issues (which they have provided evidence of to the Financial Ombudsman Service) at the Time of Sale that they may not be able to make much use of their European Collection membership going forward. And they asked about giving up their European Collection membership. And that they were persuaded to purchase Fractional Club membership as a result, because that was the "only way forward" for them. They were not told that in their circumstances they would in fact be able to give up their European Collection membership.

In Mr and Mrs C's statement, signed and dated 25 August 2016 and provided to the Financial Ombudsman Service on 21 July 2025, Mr and Mrs C say:

"We decided in 2012 that we would book a week at a resort in Tenerife as we were both in need of a holiday, but in the end we had to cancel. My husband had a seizure 6 days before we were due to fly on the 4th January 2013 & our doctor advised him not to go as this would invalidate our travel insurance.

In February 2013 my husband was diagnosed with a brain tumour & our life was turned upside down. During the next 3 months he had two spells in hospital. During this time we were also waiting for an appointment for him to have brain surgery. We decided that we would chance it & booked a weekend at [one of the Supplier's UK resorts].

When we were there my husband asked if he could see anyone from [the Supplier] as we wanted to talk to them about returning our points due to the fact that at that time his life was hanging by a thread. An appointment was given to us & we duly sat with a [Supplier] representative who told us that we were not allowed to return points but [the Supplier's founder] had come up with a scheme whereby we could convert some of our points to Fractional Points. This would be a two stage operation & we were told this was the only way forward. We would be buying part of a property that we could sell at a later date for a profit. After many hours of intense talking we were persuaded to use 7,000 of our 11,000 points as 'this offer was only available on this day' & we could not go home & think about it."

Mr and Mrs C's statement matches with what was written in the Letter of Complaint. Indeed, given the date on it, it seems it would've informed the Letter of Complaint. Again, it seems that the purchase was motivated by Mr and Mrs C's desire to give up their membership due to Mr C's ill health and being told this was the only way forward. Otherwise they would be forced to retain their European Collection membership for the long term.

When responding to my first provisional decision, the PR wrote:

"this case is entirely distinct from standard timeshare complaints because it involves the active exploitation of extreme medical vulnerability, specifically [Mr C]'s facing life threatening surgery for a brain tumour, which the supplier used to falsely present the purchase as the sole method of exiting their previous liabilities."

Looking at Mr and Mrs C's circumstances at the Time of Sale, it is hard to see what motivated the purchase other than the shorter membership term (enabling an earlier exit from their membership than was the case under European Collection membership). They already held 7,000 European Collection points at the Time of Sale and traded these in for the same number of Fractional Points. So, they did not increase their ability to purchase holidays, given the points were worth the same in terms of purchasing holidays.

The other differences between European Collection and Fractional Club membership were the shorter membership term and gaining a share of the net sale proceeds of the Allocated Property – which their statement says could lead to a profit.

Mr and Mrs C's statement suggests to me that their purchase was largely motivated by the shorter membership term. Given their circumstances it seems unlikely that they would've made the purchase for other reasons. While they mention the benefit of owning a share of the Allocated Property, the statement and Letter of Complaint do not persuade me that they would've gone ahead with the purchase solely for this benefit.

However, considering Mr and Mrs C's ages and Mr C's ongoing health issues, alongside the European Collections Exceptional Circumstances Policy, it does not appear to me that the shorter membership term was of any real benefit to Mr and Mrs C. The reason I say this is that the Exceptional Circumstances Policy says the Supplier will consider allowing membership to be surrendered in certain circumstances including the following:

- Either member being over 75 years of age with no wish to transfer the membership to a family member.
- Medical problems of either member necessitating reduced travel and/or a decrease in financial resources to maintain the membership.

So, Mr and Mrs C could've surrendered their membership:

- (1) At the Time of Sale or any time later due to Mr C's health problems.
- (2) At the latest in 2025, when Mrs C turned 75 – and that would be two years earlier than the Fractional Club membership was due to end.

So, it seems clear that Mr and Mrs C were not told of those options for surrendering their European Collection membership at the Time of Sale. Neither the Lender nor the Supplier has claimed they were. Had they been informed of this I do not think they would have gone ahead with the purchase.

Instead, they were persuaded to convert their European Collection points to Fractional Points to end their membership of the Supplier sooner. So, it seems to me that they were misled by this omission on the part of the Supplier, as well as being told the only way forward was to convert their European Collection points to Fractional points.

The Lender has said that Mr and Mrs C had been informed of the Exceptional Circumstances Policy in 2011. At that time they appear to have been interested in selling their European Collection membership – not simply surrendering it – so the Exceptional Circumstances Policy may not have been of much interest to them at that stage. This was two years prior to the Time of Sale, so I can understand why they did not think of it when entering into the purchase of Fractional Points. Especially given what they recall asking about and being told at the Time of Sale.

Given their questions at the Time of Sale, it is clear that Mr and Mrs C did not recall the Exceptional Circumstances Policy at that time. And I do not think it is unreasonable to expect the Supplier to inform them of that policy at the Time of Sale when they enquired about returning their European Collection points. Or for them to rely on what they were told at the Time of Sale – which was that they could not do this, and the only thing they could do was to convert their European Collection Points to Fractional Points.

With that being the case, I think Mr and Mrs C were misled – which caused them to enter the purchase when they otherwise would not have done so. And that this is either a misrepresentation that gives them a valid claim against the Lender under Section 75 of the CCA and/or that this created an unfair relationship between them and the Lender, since the misleading information or omission caused them to enter the Purchase Agreement and the Credit Agreement when they otherwise wouldn't have done so. As such, I think it would be fair and reasonable to uphold this complaint.

The Lender's further comments

The Lender says Mr and Mrs C say they purchased as a way of exiting their European Collection membership rather than for a shorter membership term. But I think they are one and the same thing. They understood that there was no way of exiting European Collection membership other than (1) waiting for its term to end at the end of 2054 or (2) by converting their European Collection points to Fractional Points by buying Fractional Club membership, which would end in 15 years (2028). Had they been told at the Time of Sale of the third option of giving up their European Collection membership at any time due to Mr C's health problems or when one of them reached 75 years of age, it seems unlikely they would've entered into the purchase.

I acknowledge that Mr and Mrs C retained 4,000 European Collection points after the purchase. But Mr and Mrs C's statement says they expected to be offered the opportunity to convert those points to Fractional at a later date. That they didn't do so could be indicative of them having been notified of the Exceptional Circumstances Policy in 2014. But in any case this does not lead me to think I should alter my findings above.

In my provisional decision I acknowledged that Mr and Mrs C were sent the Exceptional Circumstances Policy in 2011. And I have explained above why I do not think this means I should not uphold this complaint. At that time they were interested in selling their European Collection membership, and at that stage Mr C's health issues had not yet arisen.

My decision is not made on the basis that Mr and Mrs C would've given up their European Collection membership at the Time of Sale. I think they were uncertain at that time as to whether they would be able to continue using it depending on what happened with Mr C's health. Clearly they were able to continue to take holidays after the Time of Sale and did not choose to surrender their memberships in 2014 when they were informed of the Exceptional Circumstances Policy. At that time Mrs C mentioned to the Supplier that Mr C was not very well. But her request was for a copy of the sales documents as she couldn't find them. The Supplier's notes do not suggest she was seeking to give up their membership at that time.

I have thought about the Lender's suggestion that compensation should be in some way limited due to Mr and Mrs C not making their complaint sooner – for example in 2014 when they were sent the Exceptional Circumstances Policy, and so had the necessary information to realise that they did not need to purchase Fractional Club membership in order to exit their European Collection membership sooner. And/or due to them not providing evidence of Mr C's health issues in 2016. But I am not persuaded that Mr and Mrs C unreasonably delayed making their complaint in such a way that compensation should be limited.

The complaint was made on 7 November 2016, about 18 months after the Exceptional Circumstances Policy was sent to them. Under our rules (and for example under the time limits for making Section 75 claims) customers must make a complaint within six years after the event complained of. Or, with our rules, within three years of becoming aware they had cause to complain. And we would not generally limit compensation just because a customer has complained towards the end of the six years or three years. So, complaining within 18 months does not seem unreasonable.

In addition to this, the Lender is aware of the reasons it has taken time to make final decisions on timeshare complaints like this one. Including that it brought a judicial review of an early case that was upheld against it – judgement in that case being handed down in May 2023. As well as other court cases relevant to the question of undisclosed commission, decided by the Supreme Court in November 2024. And the time taken for the Lender to provide the necessary information about commercial and commission arrangements on these cases. In light of this, I do not think that Mr and Mrs C making their complaint sooner would've made much difference to how long it has taken to reach a final decision on this complaint. And I do not think limiting compensation in the way suggested by the Lender would be fair and reasonable in the circumstances of this complaint.

Fair Compensation

Having found that Mr and Mrs C would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for being misled and the impact of that breach meaning that, in my view, they had a valid misrepresentation claim under Section 75 and/or their relationship with the Lender was unfair to Mr and Mrs C under section 140A of the CCA, I think it would be fair and reasonable to put Mr and Mrs C back in the position they would have been in had they not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs C agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr and Mrs C were existing European Collection members, and their membership was traded in against the purchase price of Fractional Club membership. Under their European Collection membership, they had 11,000 European Collection Points, of which they traded in 7,000 towards their purchase. And, like Fractional Club membership, they had to pay annual management charges as European Collection members. So, had Mr and Mrs C not purchased Fractional Club membership, they would have always been responsible to pay an annual management charge of some sort. 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 their Fractional Club membership should amount only to the amount of those charges over and above the annual management charges they would have paid as ongoing European Collection members.

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 Mr and Mrs C's Fractional Club annual management charges paid after the Time of Sale and what their European Collection annual management charges would have been had they not purchased Fractional Club membership.
- (3) The Lender can deduct¹:
 - a. The value of any promotional giveaways that Mr and Mrs C used or took advantage of.

(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 and Mrs C's credit files in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr and Mrs C's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

*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

¹ A deduction for the market value of the holidays Mr and Mrs C took using their Fractional Points does not need to be made, since they would've had the same number of points whether or not they entered the Purchase Agreement, so could have still taken the same holidays.

pay fair compensation to Mr and Mrs C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 22 May 2026.

Phillip Lai-Fang
Ombudsman