

## **The complaint**

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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), and (2) deciding against paying claims under Section 75 of the CCA

## **What happened**

Mrs C (and the late Mr C) was a member 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 1 April 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 56,000 Fractional Points at a cost of £63,538 (the 'Purchase Agreement').

Mr and Mrs C paid for their Fractional Club membership by trading in their existing 54,000 European Collection Points at a value of £54,000, making a direct payment of £5,538 and taking finance of £30,000 from the Lender in Mrs C's name (the 'Credit Agreement').

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

Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 1 December 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 Mrs C's concerns as a complaint and issued its final response letter on 27 January 2017, rejecting it on every ground.

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.

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

An additional letter of complaint was sent to the Lender on 12 February 2025, which provided more reasons why the PR thought the relationship between the Lender and Mrs C was unfair under Section 140A of the CCA. The Lender responded to this on 3 April 2025, maintaining its rejection of the complaint

I issued a provisional decision on 23 April 2026, explaining that I thought the complaint should be upheld. Briefly, this was because Mrs C was motivated to make the purchase to obtain a shorter membership term – but this was not in fact of much use to her – and the Supplier failed to point this out or give her sufficient information that she could've realised this. If it was not for this, I did not think Mrs C would've made the purchase or entered the

Credit Agreement to pay for it. And as such her credit relationship with the Lender was unfair to her.

The PR responded to say that Mrs C agreed with this outcome.

The Lender responded to say it disagreed. It said that:

- Some of the comments in Mrs C's statement were about what she was told during a sale in 2012, rather than at the Time of Sale.
- The Supplier's notes do not record Mrs C advising it of Mr C's illness or asking how they could exit their European Collection membership. Had she done so, she would've been provided with a letter setting out her options, including the Exceptional Circumstances Policy.
- Mrs C continued to use their Fractional Club membership to take holidays up until being told not to by the PR.
- Mrs C's statement does not allege that at the Time of Sale that she informed the Supplier that they wanted to exit because of age/illness nor that the Supplier advised them the only way to exit was by purchasing the Fractional Club membership. They instead allege Fractional Club membership was represented as an investment again which would 'increase their profit', although this was Mrs C's first purchase of a fractional membership.
- The Supplier's notes taken the day after the sale say that Mrs C's reason for the purchase was *"exit in 15 years time and return"*.

I have reconsidered the information and evidence in this complaint, including the Lender's response to my 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.

For the same reasons set out in my provisional decision dated 23 April 2026, I have decided to uphold this complaint. My provisional decision said:

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START OF COPY OF PROVISIONAL DECISION FINDINGS

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I now think that this complaint should be upheld because Mrs C was motivated to make the purchase to obtain a shorter membership term – but this was not in fact of much use to her – and the Supplier failed to point this out or give her sufficient information that she could've realised this. I say this for the reasons below.

The PR also provided a letter from Mrs C dated 24 October 2016. This set out her experience as a timeshare owner with the Supplier and included the following:

*"Unfortunately my husband's memory continued to deteriorate. This was apparent to me, but I couldn't convince him that he had a problem. We were desperate to find a way out of being a member of Diamond resorts but as far as we had been told by various representatives there was no exit strategy. Our children's circumstances had*

changed and they were no longer Interested in taking over our Diamond commitments, apart from the fact they could not afford the management fees, which were considerable.

It was at this time we thought we had found a solution to our problem. We had managed to book a week at Kenmore Country Club, Perthshire... we were introduced to the concept of the Fractional Owners Club. Our European Collection Points would be exchanged for Fractional Points, at a cost. We were told that all the fine details had not been sorted yet but it would be in our interests to invest in this new plan. We were very much encouraged to do this as we were told it would enable us to become an Owner in Diamond Resort Fractional Club and that we would be investing in Diamond property and that we would automatically leave Diamond when the property was sold in 2027, 15 years time and we would receive a profit from the sale. My husband was almost 80 and I was 74. This was pointed out to [the Supplier's representative] who said it wasn't a problem. **We were told this was the only way we could leave Diamond, other than when the original contract came to an end In 2054.** Our children were not interested in continuing with Diamond and so it seemed worth considering. When we expressed an interest we were told that it was necessary to have points in multiples of 9 for the process to go ahead. We had 50000 DRI points and we would need to buy an extra 4000 to bring us up to 54000 so that we would be in an excellent position to go ahead with the scheme, when it was up and running...

**As we were told this was the only exit strategy and as we were also buying into property, it seemed like a good Investment, so we went ahead... At last there seemed to be a light at the end of the tunnel as we would be out of Diamond in 15 years time with property to sell and a profit made whilst enjoying holidays.**

Our next holiday was at Sahara Sunset which was familiar to my husband. We arrived on Saturday 30th March 2013 and almost Immediately we were greeted by an agent of the sales team and invited to a presentation in order to be updated with the latest news re Diamond Fractional Owners Club system...

Unfortunately for us it was pointed out that we needed multiples of 7 points, not the 9 we were told we needed at Kenmore, to go ahead with the purchase and as we had 54000 points which is not a multiple of 7, we needed to buy even more points. We had to buy an extra 2000 points to make it up to 56000 points... The price of the Investment was £35,538. It was a lot of money but we were assured we would get it back when the property, we were investing in, was sold on 31st December 2027.

We were allocated 4 Fractional weeks and our property was Unit 23B, 2 Bed Standard (sleeps 6) in the resort of Jardines Del Sol, Costa Blanca, Lan2arote, which we could sell at he end of 2027, when the scheme would end and we could leave Diamond.

**It was pointed out by Carlos that even though it was 15 years it was better than 2054. He emphasised that the Fractional ownership would last 15 years and then we could sell our allocation."**

(my **emphasis**)

The PR has also provided a questionnaire completed and signed by Mrs C on 25 August 2017. This includes the following about what happened in 2012 – and the last question quoted explains why Mrs C purchased Fractional Points at the Time of Sale:

***“...Very reluctantly we agreed to attend & then got the hard sell about Fractional Points & using it as an exit strategy for leaving [the Supplier] with some return on our investment.***

*What product did you understand you were purchasing from the timeshare owner? An extra 4,000 points making 54000 in all, a multiple of 9 so that we were in the best position to buy Fractional Points when they became available...*

***Were you ever advised that there was an option to exit your membership?  
No...***

*What were the main reason for you to enter a contract with the timeshare owner? We were advised to buy extra 4000 points giving us a multiple of 9 so that we were ready to buy into the Fractional Points system which we were told would be launched to a limited number of members in 2013. This would enable us to leave [the Supplier] in 15 years time...*

*Please provide us with any other information you believe is of importance in relation to your membership of the timeshare owner.  
**The main reason for buying these points & going for Fractional Points was to provide us with an exit strategy. My husband was 79 & in ill health. I was 73. At no time were we advised about being able to leave any other way.***

(my **emphasis**)

The Letter of Complaint says that in 2012 Mrs C purchased additional European Collection points (under their existing timeshare membership) to qualify for Fractional Club membership. And that Fractional Club membership was the only way to exit their existing timeshare before 2054. Fractional Club membership would last for 15 years and then the Allocated Property would be sold and their membership would end. Mrs C thought this was her only option and the main benefit of the purchase was that after the 15-year membership term her membership would end. This was compared with European Collection membership, which would continue to 2054 and require the payment of annual management charges – regardless of whether Mrs C could use it to travel. This ties up with Mrs C’s letter and questionnaire referred to above.

It appears to me that Mrs C was not informed at the Time of Sale that rather than making a further purchase, if she needed to give up her timeshare, she could do so under the European Collection membership’s Exceptional Circumstances Policy, which allowed a member to surrender their membership in certain circumstances including:

- 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.

It appears that Mrs C could’ve given up her European Collection membership at the Time of Sale or earlier because:

- Mr C was already 75 years of age, and their children did not wish to take on the membership.

- Mr C had medical problems that necessitated reduced travel – by the Time of Sale Mrs C say Mr C's health conditions restricted them to travelling within the United Kingdom.

Overall, I am satisfied that Mrs C has consistently and persuasively said that she purchased Fractional Club membership mainly for the shorter membership term, with a view to exiting her membership of the Supplier's timeshares sooner than she could under her European Collection membership.

I think it is likely that Mrs C was unaware of and was not told about the Exceptional Circumstances Policy at the Time of Sale. Had she been made aware of this at the Time of Sale, I think it is unlikely that she would've purchased Fractional Club membership.

I appreciate that Mrs C purchased an additional 2,000 Fractional Points at the Time of Sale. That slightly increased her holiday purchasing power. But she has said that the only reason she did this is because she was told she could only purchase Fractional points in multiples of seven. And so those additional points were simply to facilitate the purchase.

With that being the case, I think Mrs C was misled into thinking the only way to reduce her commitment to the Supplier was to trade in her European Collection membership for Fractional Club membership – which caused her to enter the purchase when she otherwise would not have done so. And that this is a misrepresentation that gives her a valid claim against the Lender under Section 75 of the CCA and/or that this created an unfair relationship between Mrs C and the Lender, since the misleading information or omission caused her to enter the Purchase Agreement and the Credit Agreement when she otherwise wouldn't have done so. As such, I think it would be fair and reasonable to uphold this complaint.

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END OF COPY OF PROVISIONAL DECISION FINDINGS

#### The Lender's comments in response to my provisional decision

I have considered the Lender's comments, but they do not persuade me that my provisional decision I reached an unfair or unreasonable outcome.

Mrs C has consistently said that the main reason for her purchase of Fractional Club membership was for the shorter membership term of 15 years as opposed to European Collection membership which would continue until 2054 (about 41 years at the Time of Sale). She has said that this was because of her and Mr C's ages and health, and that their children were not in a position to or did not want to take on the membership.

Mrs C said she thought the purchase was her only option based on what the Supplier's representatives had told her at various times – including that at the Time of Sale the salesperson pointed out that even though the membership term was 15 years it was better than it running until 2054.

The Lender seems to acknowledge that the Supplier's own notes confirm that Mrs C purchased for the shorter membership term – as well as to get a return on the sale of the Allocated Property.

That Mrs C expected a return is in line with what Mrs C said in her statement, in which she said that although the purchase price was a lot of money, she was "*assured we would get it back when the property... was sold on 31 December 2027.*" So, it seems that Mrs C may have been misled about what she would get back – in that there was no guarantee that she would get back what she paid for Fractional Club membership.

Overall, I do not think that the Supplier provided Mrs C with information about her options for exiting European Collection membership. In the circumstances, I think that would've been a reasonable thing to do given her and Mr C's age (regardless of whether it was aware of Mr C's health issues) and given that they were committing a significant amount of money to the purchase in part for the shorter membership term, which was of little benefit to her. And without that information Mrs C was not able to make a fully informed decision.

My decision is not based on the idea that Mrs C would've ended her European Collection membership at the Time of Sale. Clearly, she continued to holiday using her Fractional Club membership, and I expect she would've continued to use her European Collection membership had she not entered the Purchase Agreement. My decision is based on Mrs C's evidence that an important and motivating factor in her decision to purchase was to get a shorter membership term to reduce her commitment to the Supplier, which she understood would otherwise have continued until 2054 (when she would be 115 years old).

Ultimately, I remain of the opinion that if the Supplier had given her information on the European Collection's Exceptional Circumstances Policy, and had she therefore understood that she could give up that membership at no cost at any time, I do not think she would've entered the Purchase Agreement or the Credit Agreement at the Time of Sale. And as such her relationship with the Lender was unfair to her. So, I uphold this complaint.

### **Fair Compensation**

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Having found that 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 Mrs C under section 140A of the CCA, I think it would be fair and reasonable to put Mrs C back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mrs C agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mrs C was an existing European Collection member, and her membership was traded in against the purchase price of Fractional Club membership<sup>1</sup>. Under her European Collection membership, she had 54,000 European Collection Points which they traded in towards her purchase of 56,000 Fractional Points. And, like Fractional Club membership, Mrs C had to pay annual management charges as a European Collection member. So, had Mrs C not purchased Fractional Club membership, she 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 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 Mrs C with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund 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.

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<sup>1</sup> Mrs C continued to holiday with the Supplier until 2016, so I am not persuaded that she would've surrendered her European Collection membership at the Time of Sale if she had not purchased Fractional Club membership.

(2) In addition to (1), the Lender should also refund the difference between 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 deduct:

- a. The value of any promotional giveaways that Mrs C used or took advantage of; and
- b. The market value of the holidays\* Mrs C took using her Fractional Points if the Points value of the holiday(s) taken amounted to more than the total number of European Collection Points she would have been entitled to use at the time of the holiday(s) as an ongoing European Collection member. 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 Mrs C took a holiday worth 2,550 Fractional Points and she would have been entitled to use a total of 2,500 European Collection Points 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 she would have been entitled to use 2,600 European Collection Points, 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)

- (4) Simple interest\*\* at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mrs C's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mrs C's Fractional Club membership is still in place at the time of this decision, as long as she 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 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 Mrs C 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've decided to uphold this complaint. I direct Shawbrook Bank Limited to pay fair compensation to Mrs C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 21 May 2026.

Phillip Lai-Fang  
**Ombudsman**