

The complaint

Mr and Mrs B's complaint is, in essence, that First Holiday Finance Ltd (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 a claim under section 75 of the CCA.

Background to the complaint

Mr and Mrs B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 1 March 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 5,230 fractional points at a cash price of £62,628 (the 'Purchase Agreement'). But after trading in their existing fractional points, they ended up paying £6,000 for the difference in value.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs B 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 B paid for their Fractional Club membership by paying a deposit of £600 and taking finance for the balance of £5,400 from the Lender (the 'Credit Agreement'). The APR was 0%. The loan term was two years, during which they would make 24 payments of £225.

Mr and Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 13 November 2018 (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.

I haven't seen evidence that the Lender sent Mr and Mrs B or the PR a final response letter at the time. In January 2019 the complaint was then referred to the Financial Ombudsman Service. It's not clear what happened next, but that complaint seems to have been closed later that year, without a decision being made about its merits. The matter was raised again with our service in April 2024. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs B 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.

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.

And having done that, I do not think this complaint should be upheld.

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, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, that the cash price of the purchase must not exceed £30,000. But as I've already said, the cash price of Mr and Mrs B's fractional points was more than double that amount. So section 75 did not apply to their purchase.

However, I can still consider the alleged misrepresentations under section 140A instead.

Sections 75 and 75A of the CCA: the Supplier's breach of contract

Mr and Mrs B say that they could not always holiday where and when they wanted to. That was framed, in the Letter of Complaint, as part of their complaint about the fairness or otherwise of their credit relationship with the Lender under section 140A of the CCA. However, I don't think that section 140A makes the Lender liable for breaches of contract by the Supplier. Under that section, the Lender is only responsible for (i) its own conduct, and (ii) the Supplier's conduct at the Time of Sale but not later on.

However, on my reading of the complaint, this allegation suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. Sections 75 and 75A of the CCA, where they apply, potentially make the Lender jointly liable for breaches of contract by the Supplier.

Again, section 75 does not apply, for the same reason I gave above. And while section 75A applies to purchases costing more than £30,000, it is capped at £60,260, so it does not apply either.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs B any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

Having considered the entirety of the credit relationships between Mr and Mrs B and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were likely to have been rendered unfair for the purposes of

section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Times 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 Times of Sale; and
4. The inherent probabilities of the sales given their circumstances.

I have then considered the impact of these on the fairness of the credit relationships between Mr and Mrs B and the Lender.

Misrepresentation

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs B were told by the Supplier:

- (1) that Fractional Club membership had a guaranteed end date when that was not true;
- (2) that they were buying an interest in a specific piece of "real property" when that was not true;
- (3) that Fractional Club membership was an "investment" when that was not true.

The words and/or phrases allegedly used by the Supplier to misrepresent the Fractional Club for the reason given in point 1 were set out by the PR in the Letter of Complaint, and they were limited to: "*the membership was sold to our clients on the basis that the Scheme had a fixed duration of 16 years from 2015, thus coming to an end in 2031. It was sold on the basis that there was a specified end date of 2031, beyond which they would have no further liability in respect of management charges after that date.*" (But I note that the Sale Date on Mr and Mrs B's ownership certificate was 31 December 2033.)

The PR says that such a representation was untrue because the Sales Process begins on the Sale Date as defined in the Fractional Club Rules, and under Rule 9, particularly Rules 9.2.9 and 9.2.12, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrase above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Mr and Mrs B entered into. And while, under Rules 9.1 and 9.2.9 of the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor',¹ longer than that if there were problems selling and the 'Owners'² agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I do not accept that the representation above constituted a false statement of fact even if it was made.

As for points 2 and 3, neither of them strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a

¹ Defined in the FPOC Rules as "CLC Resort Developments Limited".

² Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

So, while I recognise that Mr and Mrs B – and the PR – have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under section 140A of the CCA, for the reasons I've set out above, I don't think that there was resulting unfairness.

The Supplier's sales and marketing practices at the Time of Sale

Mr and Mrs B's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

They include, for various reasons, the allegation that the Supplier misled Mr and Mrs B and carried on unfair commercial practices under regulations 5 and 6 of the CPUT regulations.³ However, as regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Time of Sale (which I make no formal finding on), they led Mr and Mrs B to make the purchasing decision they did, I'm not persuaded that anything done or not done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under regulation 7 Schedule 1 of the CPUT regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also says that:

1. the right checks weren't carried out before the Lender lent to Mr and Mrs B;
2. Mr and Mrs B were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale;
3. there was one, or more, unfair contract terms in the Purchase Agreement.

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs B was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs B.

I acknowledge that Mr and Mrs B may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional

³ The Consumer Protection from Unfair Trading Regulations 2008.

Club membership when they simply did not want to. They were also given a 14-day cooling-off period and they have not provided a credible explanation for why they did not cancel their membership during that time. Moreover, they did go on to upgrade their purchase in 2016 – which I find difficult to understand if the reason they went ahead with their 2015 purchase was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs B made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs B's credit relationship with the Lender was rendered unfair to them under section 140A for any of the reasons above. But there is another reason why the PR now says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of a prohibition against selling timeshares in that way.

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 B's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

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

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

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs B were 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.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs B 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 Fractional Club membership included an investment element did not, itself, transgress the prohibition in regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs B as an investment in breach of regulation 14(3), I have to find 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 Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership

was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs B, 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. For example, the Member's Declaration, which Mr and Mrs B both signed, says in paragraph 5:

"We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction."

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, based on the materials the Supplier used to train its sales representatives (a slide show titled "2013 / 2014 Sales Induction", which was still in use in 2015). So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs B as an investment in breach of regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and Mr and Mrs B rendered unfair?

Having found that it was possible 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 B 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 me that, if I am to conclude that a breach of regulation 14(3) led to a credit relationship between Mr and Mrs B and the Lender that was unfair to them and warranted relief as a result, then an important consideration is whether the Supplier's breach of regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs B decided to go ahead with their purchase. No witness statement by either Mr or Mrs B has been provided, and so their recollections come to me as just what the PR wrote in the Letter of Complaint, which was limited to saying the Allocated Property "*would be sold after 15 years, and our clients would get their money back*", "*it was an investment in 'bricks and mortar'*", and "*the property would rise in value, implying it was an investment, and that our clients could make money from it.*" That does not necessarily suggest a profit, or that this was a motivating factor in their decision to purchase. And the Supplier's contemporary contact notes show that at the Time of Sale Mr and Mrs B had said that they were upgrading to avoid the booking fees that they were being charged under their existing contract.

That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as on the balance of probabilities, I don't think that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of regulation 14(3) of the Timeshare Regulations, I am not satisfied that Mr and Mrs B's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs B and the Lender was unfair to them even if the Supplier had breached regulation 14(3).

The provision of information by the Supplier at the Time of Sale

The PR says that Mr and Mrs B were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs B sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as I don't think that Mr and Mrs B would have decided not to press ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs B in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not satisfied that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Finally, I recognise that the Lender was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between Mr and Mrs B and the Lender unfair to them such that I should uphold the complaint. I say that because the Supplier had tried without success to find a loan with two of its approved external finance companies, before the Lender agreed the loan in question. Also, as I've said, no commission or subsidy was paid in respect of the loan. So, I'm not persuaded that Mr and Mrs B were led into a credit agreement with the Lender because it was tied in some way to the Supplier.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant section 75 claim, and I am not satisfied that the Lender was party to a credit relationship with Mr and Mrs B under the Credit Agreement that was unfair to them for the purposes of section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 2 January 2026.

Richard Wood
Ombudsman