

The complaint

Mr and Mrs L have complained that First Holiday Finance Ltd (“FHFL”), acted unfairly and unreasonably by being a party to an unfair debtor-creditor relationship with them under s.140A of the Consumer Credit Act 1984 (“CCA”).

What happened

In 2016 Mr and Mrs L purchased a trial membership of a timeshare from a timeshare provider (the ‘Supplier’). This provided the right to reserve five holiday weeks within the following three years. The price of the trial membership was £3,995.

Whilst on holiday in September 2016, Mr and Mrs L purchased full membership of a timeshare (the ‘Fractional Club’) from the Supplier (the ‘Time of Sale’). They entered into an agreement with the Supplier to buy 850 fractional points at a cost of £14,824 (the ‘Purchase Agreement’). But after trading in their existing trial membership, they ended up paying £10,829 for membership of the Fractional Club.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs L 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 ended. Although Mr and Mrs L’s membership was suspended and has been ever since, after their 2017 management charge went unpaid.

Mr and Mrs L paid for their Fractional Club membership by paying a £1,100 deposit and taking finance of £9,729 from the FHFL in joint names (the ‘Credit Agreement’).

Mr and Mrs L – using a professional representative (the ‘PR’) – wrote to FHFL on 17 October 2023 (the ‘Letter of Complaint’) to complain about:

- 1) FHFL being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
- 2) A breach of the Consumer Credit sourcebook (‘CONC’) of the Financial Conduct Authority’s (“FCA”) handbook.

(1) Section 140A of the CCA: FHFL’s participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr and Mrs L say that the credit relationship between them and FHFL was unfair to them under Section 140A of the CCA. In summary, they include the following:

- Fractional Club membership was marketed and sold to them as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the ‘Timeshare Regulations’).
- The decision to lend was irresponsible because FHFL didn’t carry out the right creditworthiness assessment.
- There was commission paid to the Supplier by FHFL, and this was not disclosed to Mr and Mrs L.

(2) FHFL's breach of CONC

Mr and Mrs L also say that FHFL breached CONC by not disclosing to them that it paid commission to the Supplier for brokering the Credit Agreement.

FHFL dealt with Mr and Mrs L's concerns as a complaint and issued its final response letter on 09 January 2024, rejecting it on every ground.

The PR, on behalf of Mr and Mrs L, then referred the complaint to the Financial Ombudsman Service.

Mr and Mrs L's complaint was assessed by an Investigator at this Service who, having considered the information on file, upheld the complaint on its merits. The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs L at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs L was rendered unfair to them for the purposes of section 140A of the CCA.

FHFL disagreed with the outcome the investigator had arrived at. But upon a subsequent review of Mr and Mrs L's complaint, it changed its position and agreed to make them an offer which it described as being in line with the approach taken at this service. The offer it made Mr and Mrs L consisted of the following:

- A refund of Mr and Mrs L's repayments to FHFL under the Credit Agreement, including any sums paid to settle the debt.
- A refund of the annual management charges Mr and Mrs L paid as a result of Fractional Club membership.
- A deduction of the value of any promotional giveaways that Mr and Mrs L used or took advantage of.
- The addition of simple interest at 8% per annum.
- FHFL to remove any adverse information recorded on Mr and Mrs L's credit files in connection with the Credit Agreement.

Upon Mr and Mrs L's acceptance, FHFL said it would ask the Supplier to reinstate their trial membership so that Mr and Mrs L could make use of the five holiday weeks over the following 33 months, should they so choose.

Mr and Mrs L are unwilling to accept FHFL's offer as it stands because it fails to include the trade-in value given to their Trial Membership. They say FHFL should pay them a cash sum equivalent to the trade-in value instead of reinstating the trial membership.

The investigator suggested to FHFL that it reconsider its offer to include a cash sum to the value of the Trial Membership, which would follow the approach taken by this service in other cases. But FHFL wouldn't reconsider, saying that the Trial Membership was a standalone product, not a deposit and that it was financed by another lender. It considers that FHFL has agreed to put Mr and Mrs L back in the position they were in had they not made the Fractional Purchase which (in full accordance with the contractual agreement) is five weeks of holiday to be enjoyed over a 33-month period.

As our Investigator was unable to reach a resolution, the matter has come to me to decide.

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.

As FHFL has agreed to settle Mr and Mrs L's complaint, I'm not looking at their purchase of the Fractional Club membership nor whether their lending relationship was unfair. I'm only looking at whether the compensation that FHFL has offered is fair and, as far as possible, puts Mr and Mrs L in the position they would've been in now if they hadn't entered the Credit Agreement.

It is unfortunate that the parties have been unable to reach an agreement without my involvement, given FHFL is looking to settle Mr and Mrs L's complaint. As far as I can see, Mr and Mrs L's Trial Membership is the only matter preventing this from happening.

Mr and Mrs L were trial members before purchasing Fractional Club membership. As I understand it, trial membership involved the purchase of five week-long holidays that could be taken with the Supplier over a set period in return for a fixed price. It also included an additional 'prelude' introductory week-long holiday, during which Mr and Mrs L were required to attend a sales presentation. The five week-long holidays were only accessible once the prospective members had returned from the prelude holiday.

The purpose of Trial Membership was to give prospective members of the Supplier's longer-term products a short-term experience of what it would be like to be a member of, for example, the Fractional Club. Indeed, a director of the Supplier has previously described it as: *"Trial membership is offered as a means of 'test driving' [the Supplier's] product, enjoying five holidays at a choice of 30 resorts over a fixed period of 34 months."*

If, after purchasing trial membership, a consumer went on to purchase membership of one of the Supplier's longer-term products, their Trial Membership was usually cancelled and traded in against the purchase price of their timeshare. According to an extract from the Supplier's business plan, roughly half of trial members went on to become full timeshare members. It also set out: *"... [clients] have the opportunity to stay at a resort seeing first-hand what they are buying and perhaps most important of all is that clients will have months to consider their relationship with [the Supplier] and to research the products and company before any purchase of a full product. The clients have the added re-assurance of having many opportunities to cancel and walk away for whatever reason during the process due to the timeshare legislative framework."*

Mr and Mrs L were one of those trial members that went on to become full timeshare members and their Trial Membership was cancelled and traded in against the purchase price of their timeshare. FHFL accepts it was wrong to lend to Mr and Mrs L to fund their purchase of Fractional Club membership – and by doing so effectively denied them the opportunity to make use of their Trial Membership. To put this right, I must consider how Mr and Mrs L would've used their Trial Membership had they not gone on to purchase Fractional Club membership during their prelude holiday.

It's impossible to know for sure how Mr and Mrs L would've used their Trial Membership and it isn't a simple matter to determine. I have carefully considered FHFL's arguments for reinstating the Trial Membership with the same terms as those remaining at the point of surrender – five weeks of holiday left to take over a 33-month period. It says this would leave Mr and Mrs L in the same position as they were in before making their purchase and in FHFL's opinion, there is no detriment.

I have also considered how Mr and Mrs L went on to use their Fractional Club membership. I understand they took one holiday in 2017 before their membership was suspended later that year after Mr and Mrs L failed to pay the management fee. I don't know Mr and Mrs L's reasons for not paying the management fee, whether they couldn't afford to pay – they raised previous problems repaying credit and having a history of defaulted credit agreements as part of their initial complaint – or whether they simply no longer wanted to continue with their membership. I note that Mr and Mrs L have not sought the reinstatement of either membership – the Trial membership nor Fractional Club membership – since they lapsed some eight years ago.

On balance, I think it's more likely than not Mr and Mrs L would've exercised the option to leave the Trial Membership without committing to a long-term membership, noting the Supplier's intentions behind offering a trial and a sample of its holiday offering. In the circumstances, I consider it unfair to suggest that putting things right would be to re-establish the relationship between Mr and Mrs L and the Supplier and to now reinstate their Trial Membership.

I also think Mr and Mrs L's trial membership was a precursor to their Fractional Club membership. And with that being the case, the trade-in value acted, in essence, as a deposit on this occasion – despite what FHFL has said – and I think this ought to be reflected as such in its offer of compensation.

In summary, I think FHFL should revise its offer of compensation to reflect the trade-in value Mr and Mrs L received for their Trial Membership when they upgraded to Fractional Club Membership, and refund that amount as a cash sum.

Putting things right

Given all of the above, here's what I think needs to be done to compensate Mr and Mrs L – whether or not a court would award such compensation:

- (1) FHFL should refund Mr and Mrs L'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), FHFL should also refund:
 - i. The annual management charges Mr and Mrs L paid as a result of Fractional Club membership.
 - ii. The trade-in value given to Mr and Mrs L's Trial Membership.
- (3) FHFL can deduct:
 - i. The value of any promotional giveaways that Mr and Mrs L used or took advantage of; and
 - ii. The market value of the holidays* Mr and Mrs L took using their Fractional Points.

(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 FHFL settles this complaint.
- (5) FHFL should remove any adverse information recorded on Mr and Mrs L's credit files in connection with the Credit Agreement reported within six years of this decision.

- (6) If Mr and Mrs L'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 FHFL (or assign it to FHFL if that can be achieved), FHFL must indemnify them against all ongoing liabilities as a result of their 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 Mr and Mrs L 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 FHFL to take off tax from this interest. If that's the case, FHFL must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

I uphold this complaint and direct First Holiday Finance Limited to calculate and pay fair compensation to Mr and Mrs L as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 12 February 2026.

Stefan Riedel
Ombudsman