

The complaint

Mr and Mrs H complain First Holiday Finance Ltd (the “Lender”) acted unfairly and unreasonably by refusing to refund money they’d paid for a timeshare they said had been mis-sold to them.

What happened

I issued a provisional decision on this complaint on 20 February 2025, in which I set out the background to Mr and Mrs H’s complaint, and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision.

Because of this, it’s not necessary for me to go into the details of the events leading up to this point, but in brief summary:

- Mr and Mrs H purchased a membership of a type of asset-backed timeshare (the “Fractional Club”) in September 2015, from a timeshare provider (the “Supplier”). The timeshare allowed Mr and Mrs H to exchange a certain number of “points” annually for holiday accommodation, and also gave them a share in the net sale proceeds of a specific apartment, which was to be sold after a certain number of years.
- In October 2016 Mr and Mrs H added additional points to their Fractional Club membership, taking their total points from 900 to 1,200. The extra points cost £5,163.22 but Mr and Mrs H had a loan outstanding of £14,404.78 from their previous purchase, which was consolidated into a loan with the Lender for this purchase.
- Mr and Mrs H complained to the Lender about the October 2016 purchase in May 2019. They complained about:
 - Having been put under a lot of pressure to purchase by the Supplier.
 - Having been falsely told that the Fractional Club timeshare was an investment.
 - Having been falsely told the resorts they had access to were exclusive and luxurious, and that there would be no problems getting the holidays they wanted, when they wanted.
 - The annual maintenance fees for the membership rising continually and being in perpetuity.
- The Lender rejected the complaint, and it was referred to the Financial Ombudsman Service. One of our Investigators then upheld it on the grounds the Supplier had improperly sold the Fractional Club membership to Mr and Mrs H as an investment, and this had caused them to go ahead with the purchase. Due to the way the law worked, this had caused the credit relationship between Mr and Mrs H and the Lender to have been unfair, and for them to be owed compensation.

The Lender appealed the Investigator's assessment, and the case was subsequently passed to me to review. I then issued my provisional decision. I didn't think the complaint should be upheld for reasons which were fully explained in the appended document, but in summary:

- I noted that Mr and Mrs H could potentially be owed compensation if they had a valid claim against the Lender under Section 75 of the Consumer Credit Act 1974 ("CCA") in respect of misrepresentation or breach of contract by the Supplier; or a valid claim that their credit relationship with the Lender was unfair under Section 140A of the CCA, because of something the Supplier had done or not done before the making of the loan agreement, or because of something the Lender had done or not done.
- I didn't think Mr and Mrs H had a valid Section 75 claim against the Lender, because there was insufficient evidence that the Supplier had misrepresented something to them, or had been in breach of its contract with them.
- I considered it was possible the Supplier had, in breach of the relevant regulations, sold or marketed the Fractional Club membership to Mr and Mrs H as an investment. If this was the case, then for the credit relationship between them and the Lender to have been made unfair, this impropriety on the Supplier's part would have needed to have had a material impact on their purchasing decision in October 2016.
- Having considered the circumstances and the evidence, I didn't think it was likely any potential impropriety by the Supplier in selling or marketing the product as an investment had had a material impact on Mr and Mrs H's purchasing decision. This was because:
 - It appeared Mr and Mrs H had made their purchase in October 2016 in order to secure more points to go on the kinds of holidays they wanted, because they had found the number of points they'd bought the previous year was not sufficient for their needs. It did not appear they'd made the purchase because they thought it was a financial investment.
 - When I had spoken to Mrs H about her experiences with the Supplier, she did not mention the Supplier having sold or marketed the product as an investment, or of this being an important feature of the product to her or of being unhappy about this aspect of it. She had not mentioned having had any hope or expectation of potentially making a profit from it.
- In light of those findings, I didn't think the credit relationship between Mr and Mrs H, and the Lender, had been rendered unfair within the meaning of Section 140A of the CCA, and I said I was not minded to uphold the complaint.

I invited the parties to the complaint to provide any further comments they wanted me to consider. Mr and Mrs H did not respond. The Lender said it agreed with the provisional decision. The case has now been returned to me to review once more.

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.

Having considered everything again, and because neither party to the complaint has provided any further submissions for me to consider, I see no reason to depart from the findings and conclusions I reached in my appended provisional decision, for the same reasons. It follows that I do not think this complaint should be upheld.

My final decision

For the reasons summarised above, and explained in full in my appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before **4 April 2025**.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our Investigator, so I need to give the parties to the complaint an opportunity to provide further submissions before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **6 March 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr and Mrs H complain First Holiday Finance Ltd (the "Lender") acted unfairly and unreasonably by refusing to refund money they'd paid for a timeshare they said had been mis-sold to them.

What happened

Mr and Mrs H had a history of purchasing timeshare products from a timeshare company (the "Supplier") going as far back as 2006. This complaint only relates to their last purchase, in 2016, but I think it's useful for reasons of context to outline their previous purchases. The following details come from a mixture of information provided by Mr and Mrs H, and the Supplier (via the Lender).

It appears Mr and Mrs H first bought a "Trial" membership from the Supplier in 2006. It's unknown how much was paid for this. By 2010, it appears whatever membership they had at the time had lapsed. The Supplier says it got in touch with Mr and Mrs H in 2015 to enquire about them restarting their membership. Mr and Mrs H say the Supplier did get in touch with them in 2015, but it had been to ask for money it claimed they owed. In any case, this led to Mr and Mrs H making a purchase of 900 "points" in a timeshare product I'll call the "Fractional Club", on 29 September 2015, for an unknown price, paid for with a loan. The points could be exchanged annually for holiday accommodation, but an additional feature of the Fractional Club was that it was asset-backed, in the sense that Mr and Mrs H's membership entitled them to a share in the net sale proceeds of an apartment (the "Allocated Property") named on their contract, which was due to be sold when their membership came to an end after a certain number of years.

The purchase Mr and Mrs H have complained about took place a year later, on 16 September 2016. On this day, Mr and Mrs H "topped up" their points in the Fractional Club to 1,200 points. However, based on the paperwork I've seen from the sale, the Supplier structured the purchase in the following way:

- £5,163.22 was the basic price of the 300 extra points.
- £14,404.78 was added to the price to cover the remaining balance on the loan for the 2015 purchase.
- This left a total price of £19,568 to pay.

Mr and Mrs H paid the Supplier a £500 advance payment, and the rest of the price was added to a new loan with the Lender of £19,068. Under the terms of the loan, Mr and Mrs H

were expected to make 144 monthly repayments of £271.75 each.

Mr and Mrs H submitted a complaint to the Lender on 3 May 2019, which was subsequently referred to the Financial Ombudsman Service. Mr and Mrs H complained about the following things:

- They had been subjected to hours of high pressure selling by the Supplier.
- They had been told the Fractional Club product was an investment which could be inherited by family members and would increase in value, but this wasn't true because all owners needed to agree to sell their shares. The Supplier was itself an owner and would (presumably) block any sale.
- They had been told they would be holidaying in exclusive resorts with luxurious and superior accommodation, but this wasn't true either because they had serious problems with holiday availability even with at least 2 years' notice, and the resorts were not exclusive at all. In fact, they could simply be booked on the Internet.
- The maintenance fees were in perpetuity and were rising ahead of inflation. They would leave an expensive debt to their children.

The Lender rejected the complaint, which was then looked at by one of our Investigators. She thought the complaint should be upheld because:

- She concluded the Supplier had sold or marketed the Fractional Club membership to Mr and Mrs H as an investment. This was a breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the "Timeshare Regulations 2010").
- Mr and Mrs H wouldn't have upgraded to a Fractional Club membership if the Supplier hadn't acted improperly by breaching Regulation 14(3).
- Due to how the law worked, this had meant the credit relationship between Mr and Mrs H and the Lender, had been made unfair, under Section 140A of the Consumer Credit Act 1974 ("CCA"), and they should be compensated appropriately.

The Lender disagreed with our Investigator. It noted that the Investigator appeared to have assumed that the 2016 purchase was Mr and Mrs H's first purchase of points in the Fractional Club, but actually this purchase was a top up of points, so her argument that Mr and Mrs H had upgraded to Fractional Club membership due to it being an investment, didn't make sense. It also noted that Mr and Mrs H were still booking lots of holidays, including using nearly all their points for 2024. The Lender said that it thought it was more likely that Mr and Mrs H had made their purchase in 2016 to be able to take more holidays, not because they thought the product was an investment.

Because an agreement couldn't be reached, the case was then passed to me to decide.

What I've provisionally 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.

Having done so, I don't currently think this complaint should be upheld.

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's to decide what's fair and reasonable in the circumstances of this complaint. So, if I've not commented on, or referred to, something that either party has said, that does not mean I haven't considered it.

I've also made my decision on the balance of probabilities – which means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Before looking at the specifics of Mr and Mrs H's complaint, I think it would be helpful to set out *how* the Lender can be found responsible to Mr and Mrs H for something the *Supplier* is alleged to have done wrong.

The two main avenues via which Mr and Mrs H could seek redress from the Lender are through a claim under Section 75 of the CCA, or through a complaint about the participation by the Lender in an unfair credit relationship under Section 140A of the CCA.

Section 75 of the CCA allows consumers a right to claim against lenders that provide finance for the purchase of goods or services from third party suppliers, in the event there's been an actionable misrepresentation and/or breach of contract by the supplier. In short, Section 75 allows Mr and Mrs H to make a claim against the Lender which is the same as the one they could make against the Supplier. Certain technical pre-conditions need to be met for Section 75 to apply to a purchase. It's not been disputed that these conditions have been met in this case.

The application of Section 140A is more complicated. But, for the purposes of Mr and Mrs H's case, it means that the relationship between them and the Lender can be found to have been unfair because of anything done (or not done) by, or on behalf of, the Lender, before the making of the loan agreement.

An unfair relationship can also be based on the terms of a related agreement (such as the contract to purchase the additional 300 points for the Fractional Club membership) and, when combined with Section 56 of the CCA, on anything done or not done by the *Supplier* on the creditor's behalf before the making of the loan agreement or any related agreement. That is because Section 56 of the CCA has the effect of making the Supplier the Lender's agent for the purposes of the negotiations leading up to the 2016 purchase. None of this is disputed by the Lender.

However, just because the Supplier may have done something wrong doesn't necessarily mean that the relationship between Mr and Mrs H and the Lender will have been made unfair. It's important to consider all the relevant facts before concluding that this is, or was, the case. I will look at this in more detail later, but first I've considered whether or not Mr and Mrs H had a valid claim against the Lender under Section 75 of the CCA.

Did Mr and Mrs H have a valid Section 75 claim?

I recognise Mr and Mrs H have concerns about how the additional points were sold to them in September 2016, but I'm not persuaded there was an actionable misrepresentation by the Supplier at the time of the purchase, or any subsequent breach of contract.

Mr and Mrs H says the Fractional Club membership was misrepresented as an investment, but in their view this wasn't true because in order for the Allocated Property to be sold at the end of the membership, all owners of the shares in the property needed to agree to sell it (including the Supplier). So there was no guarantee it would be sold, and the membership could continue indefinitely, with Mr and Mrs H remaining liable for annual management fees, potentially in perpetuity.

I think it's clear that there was an investment element to the Fractional Club membership, in that it involved Mr and Mrs H acquiring a share in the proceeds of the future sale of a specific apartment. So it would not be a *misrepresentation* for the Supplier to have told him the membership was an investment (although to market the product in this way was prohibited).

And while I appreciate Mr and Mrs H have concerns that the Allocated Property will not be sold when promised, based on my reading of the documents associated with the Fractional Club, it doesn't require the agreement of all the owners for a sale to take place¹, and it appears the property is set to be marketed for sale after a certain number of years. That time has not yet arrived, so at this stage it's unknown whether this part of the agreement would be honoured or not, and it's therefore not something that could result in Mr and Mrs H currently having a valid claim against the Lender under Section 75.

Regarding the lack of exclusivity, meaning non-members were able to stay at resorts simply by booking them on the Internet, the contemporaneous documents I've seen relating to the membership do not say that the resorts could only be booked by members. Resorts owned by the Supplier are described as "mixed use", while other resorts were described as resorts in which the Supplier had "secured accommodation...under its control" or which were "available through [our] partnerships with other resorts". None of this appears to state or imply that the resorts within the portfolio could only be booked by members. I accept that the Supplier is likely to have promoted various benefits that members could access, such as tailored holiday and cruise booking services, and participation in an exchange programme, and highlighted the quality of its resorts. However, I don't think there's enough evidence for me to conclude it falsely represented that *only* members could book at its resorts.

On the topic of availability more generally, it appears that, as with any holiday accommodation, availability at resorts in the Supplier's portfolio was not unlimited and will have been affected by higher demand at different times of year. Some of the sales paperwork Mr and Mrs H signed states that the availability of holidays was subject to demand, and I understand Mr and Mrs H have been able to take holidays using their membership regularly, albeit they find the places they want to go are booked up unless they book well in advance. I accept there may have been holidays Mr and Mrs H wanted to go on, which they were unable to, but I've not seen enough to persuade me that the Supplier breached the purchase agreement for the Fractional Club membership financed by the Lender, and that they therefore have a valid claim against the Lender under Section 75.

Was the relationship between Mr and Mrs H and the Lender rendered unfair by something the Supplier did or didn't do?

Mr and Mrs H set out two main concerns which could have made the credit relationship between them and the Lender unfair.

¹ Though it appears a sale can be postponed for a limited time if all members agree.

The first of these concerns is that they were subjected to hours of high-pressure selling techniques by the Supplier. I acknowledge that the Supplier's sales process may have been quite lengthy and Mr and Mrs H may have been somewhat exhausted by the end of this. But they haven't said much about what was said or done by the Supplier during the sales process that made them feel as if they had no choice but to add more points to their Fractional Club membership when they simply didn't want to. Mr and Mrs H were also given a cooling off period of 14 days and they haven't provided an explanation for why they didn't cancel the purchase during that time. With all this being the case, I think there's insufficient evidence to demonstrate that they made the decision to add more points to their Fractional Club membership in September 2016 because their ability to exercise that choice was significantly reduced by pressure from the Supplier.

The second of the concerns mentioned by Mr and Mrs H was the suggestion that the Supplier had marketed and sold the Fractional Club membership to them in September 2016 as an investment. To do so would be a breach of Regulation 14(3) of the Timeshare Regulations, as already correctly noted by our Investigator.

Based on what I know about how the Supplier sold and marketed memberships of the Fractional Club at the time Mr and Mrs H purchased the 300 additional points, I think it's possible that the Supplier marketed the product to them as an investment, either expressly or implicitly, alongside promoting its holiday-related benefits. This would have been a breach of the regulation above. But, as I've already said, just because the Supplier may have done something wrong, doesn't necessarily mean that the credit relationship between Mr and Mrs H and the Lender would have been rendered unfair.

And in this case, I am not convinced that this potential breach of the Timeshare Regulations *did* have a material impact on Mr and Mrs H's decision to increase their points in the Fractional Club in September 2016, and for that reason I don't think it had the effect of making the debtor-creditor relationship between them and the Lender unfair. I'll explain further.

For the Supplier's potential breach of the Timeshare Regulations to have rendered the credit relationship between Mr and Mrs H and the Lender unfair, it would have needed to have made a material difference to their decision to purchase the extra points. In other words, they would need to have been motivated to buy the points *because* the Supplier had improperly marketed the product to them as an investment.

So Mr and Mrs H's motivation for buying the extra 300 points is very important. Having reviewed all the evidence I, like the Lender, thought it was possible our Investigator had mistakenly believed the 2016 purchase was Mr and Mrs H's first purchase of a membership in the Fractional Club. I also formed the impression, having read the original complaint Mr and Mrs H had sent to the Lender, that it may have been a template written by someone else for them to send, or possibly downloaded from the Internet.² So I couldn't be sure how representative it was of their concerns.

I could see that our Investigator had spoken to Mrs H in December 2023, and I thought that listening to this call might help to clear things up. Unfortunately, there was no recording of the call on our systems, so I arranged to speak to Mrs H myself.

² This is an impression I formed based on my experience of having seen many complaint letters like this.

When I spoke to Mrs H, she explained that after she and Mr H had bought the 900 points in September 2015, they'd found this wasn't enough for them to take the holidays they wanted. Resorts in the UK, for example, were 1,000 points or more to book. They had also found there were problems with booking availability. Mrs H said the Supplier had got them in for a meeting in September 2016 and they'd been with them all day from about 9am. The Supplier had showed them that they could get better holidays in better places and so on. I asked Mrs H why she had become unhappy with the membership, and she explained that it was, in essence, for reasons relating to holiday availability and needing to book far in advance. Mrs H said that the main reason why she and Mr H were continuing to use the membership was because they were still having to pay for it and otherwise they'd be paying for nothing. Significantly, Mrs H did not mention on our phone call having had any hope or expectation that the membership was an investment that could potentially make a profit when the Allocated Property was sold, or even that the Supplier had marketed the membership in that way.

It's difficult for me to conclude, in light of the conversation I had with Mrs H, that she or Mr H purchased the extra 300 points in September 2016 because the Supplier improperly marketed the product as an investment (if indeed it did market the product in this way on that occasion – which I think is now quite doubtful). It appears far more likely to me that they purchased the extra points so they could make the kind of holiday bookings they wanted, and which they'd found they were unable to make with just 900 points.

So, overall, I don't think any potential breach by the Supplier of Regulation 14(3) of the Timeshare Regulations was material to their decision to add 300 points to their Fractional Club membership in September 2016, or that it rendered the credit relationship between Mr and Mrs H and the Lender unfair for the purposes of Section 140A of the CCA.

My provisional decision

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs H's Section 75 claim, and I'm not persuaded the Lender was party to a credit relationship with them which was unfair under Section 140A of the CCA. And, having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

If there is any further information on this complaint that Mr and Mrs H wish to provide, I would invite them to do so in response to this provisional decision. I will allow until **6 March 2025** for either party to make any further submissions.

Will Culley
Ombudsman