DRN-5385798

The complaint

Mr and Mrs P'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.

What happened

Mr and Mrs P purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 July 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,010 fractional points at a cost of £21,142 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs P 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 ends.

Mr and Mrs P paid for their Fractional Club membership by paying a £500 deposit, and taking finance for the remaining balance of £20,642 from the Lender in Mr and Mrs P's joint names (the 'Credit Agreement').

Mr and Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 4 June 2018 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. The decision to lend being irresponsible because (1) the Lender did not carry out the right creditworthiness assessment.

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

Mr and Mrs P say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – however the Letter of Complaint only set out one:

- The Supplier told them that no maintenance fees would be due for the first two years of membership. This was not true.

Mr and Mrs P say that they have a claim against the Supplier in respect of the misrepresentation set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs P.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr and Mrs P say that the credit

relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

- They were induced to purchase by misrepresentation.
- They were pressured into purchasing Fractional Club membership by the Supplier and had to sit through a meeting which lasted 10 hours.
- The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment, as Mrs P was in an Individual Voluntary Arrangement ('IVA') at the time.
- No alternative finance options were provided, and they were not informed who the finance provider was nor what the APR was until one month later.

The Lender dealt with Mr and Mrs P's concerns as a complaint and forwarded it on to the Supplier for its response. The Lender subsequently issued its final response letter, rejecting the complaint on every ground.

Mr and Mrs P, via the PR, referred the complaint to the Financial Ombudsman Service[1]. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits. She thought that the Supplier had sold and/or marketed the Fractional Club membership to Mr and Mrs P as an investment in contravention of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And in doing so had rendered the credit relationship between Mr and Mrs P and the Lender unfair to them under Section 140A of the CCA.

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

I considered everything that had been submitted, and having done so, I didn't think Mr and Mrs P's complaint ought to be upheld. So I set out my initial thoughts in a provisional decision, and invited all parties to submit any new evidence or arguments that they wished me to consider.

In my provisional decision I began by setting out 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.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75 and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare Regulations.*
- *The Consumer Rights Act 2015.*
- *The Consumer Protection from Unfair Trading Regulations 2008.*

[1] After the referral of their complaint to this Service, Mr and Mrs P decided to represent themselves and brought the complaint in their own right.

- *Case law on Section 140A of the CCA – including, in particular:*
  - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
  - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
  - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
  - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
  - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
  - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
  - *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').*

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

I then went on to address the merits of Mr and Mrs P's complaint:

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld. I understand that this will come as a disappointment to Mr and Mrs P, and I'm sorry about that.

But before I explain why I have come to the provisional decision that I have, 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.

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

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs P could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr and Mrs P at the Time of Sale, the Lender is also liable.

I think it may be useful to set out what a misrepresentation is. A material and actionable misrepresentation is an untrue statement of existing fact, made by the Supplier, that induces a consumer into entering a contract. So, in Mr and Mrs P's case, for me to say there had been a pre-contractual misrepresentation by the Supplier, I would have to be satisfied, on the balance of probabilities, that Mr and Mrs P were told something that was factually untrue, and that this induced them to make their Fractional Club purchase.

In this part of the complaint Mr and Mrs P said in the Letter of Complaint sent by the PR, that they had been induced to make the purchase of Fractional Club membership by misrepresentation. However, only one alleged misrepresentation was raised – that the Supplier had told them that no maintenance fees would be due for the first two years of membership when this was not true.

However, Mr and Mrs P have not expanded on this initial allegation in any way. They have not said what it was that they were told at the Time of Sale, who said it and in what context. They have not said what they were about when any maintenance fee would be due, how much these fees would be, and who, if anyone, would be responsible for paying them. They have also not said what they have actually paid and how this was different to what they allege they were told at the Time of Sale.

What's more, as there's nothing else on file that persuades there were any false statements of existing fact made to Mr and Mrs P by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reason they allege.

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs P any compensation for the alleged misrepresentation of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mr and Mrs P was misrepresented by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr and Mrs P also says that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between the Mr and Mrs P and the Lender was unfair.

Under Section 140A of the CCA, a debtor-creditor relationship, like the one between the Lender and Mr and Mrs P, can be found to have been or be unfair to the debtor (Mr and Mrs P) because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA).

Such a finding of unfairness may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) 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 credit agreement or any related agreement.

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr and Mrs P's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). So, they were what is known as antecedent negotiations under Section 56(1)(c) – so they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

So, this means that the Supplier is deemed to be the Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. It needs to take into account the entirety of the credit relationship, which in this case, is up to the point of this provisional decision as the Credit Agreement remains in place.

So, I have considered the entirety of the credit relationship between Mr and Mrs P and the Lender, along with all of the circumstances of the complaint In carrying out my analysis, and in coming to my conclusion, I have looked at:

1. *The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;*
2. *The provision of information by the Supplier at the Time 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 Time of Sale; and*
4. *The inherent probabilities of the sale given its circumstances.*

I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs P and the Lender. And having done that, I do not think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. I'll explain.

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

Mr and Mrs P's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.

They include the allegation that the Supplier pressured them into purchasing Fractional Club membership at the Time of Sale. I acknowledge that they 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 Club membership when they simply did not want to. It seems, from the notes made by the sales staff, that Mr and Mrs P were on this particular holiday with friends, and they wanted to purchase the same type of membership their friends were getting so they would be able to take their holidays together in the future. And Mr and Mrs P 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.

And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs P made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

In the Letter of Complaint Mr and Mrs P say that the right checks weren't carried out before the Lender lent to them, and it was irresponsible of the Lender to provide the finance as Mrs P was in an IVA at the time.

In response to the complaint, the Lender has provided details of the checks it carried out when it received the finance application. I can see it ran credit checks on both Mr and Mrs P and I can also see that the results of these checks did not show that Mrs P was in an IVA. It is not known why this was not included in the results of the check, as there is no doubt that Mrs P was in an IVA at the time, and in normal circumstances this would have been included in the results provided to the Lender. But this was not on this occasion, so I cannot see a reason for the Lender to have known about it. The Lender relied upon the information that was provided to it in the application form completed by Mr and Mrs P and sent by the Supplier, and it said it verified their stated income and were satisfied that they were in a position to furnish the level of overall debt they would be in if the application was approved. So, from what I have seen, it seems that the Lender conducted proportionate checks. 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 P 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 I'm not currently persuaded that the lending was unaffordable for Mr and Mrs P at the Time of Sale. I know Mr and Mrs P have said that they do not think it was, but from what I have seen both Mr and Mrs P were in full-time employment at the Time of Sale. I can see, for example, that in the three months leading up to the lending decision, Mrs P had an average monthly income of £2,713 and Mr P £1,907. So, this meant that they had, on average, a monthly joint income of about £4,620. And although they were making a monthly mortgage payment of £800, along with furnishing repayments to credit cards and other utility bills, I cannot see that the additional £294.18 repayment of the Credit Agreement was unaffordable for them at the Time of Sale. It seems that the repayments only became unaffordable for Mr and Mrs P in the months following the Time of Sale when Mrs P says she was made redundant. But I can't see that this was foreseeable by the Lender at the Time of Sale.

So, from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs P. If there is any further information on this (or any other points raised in this provisional decision) that the Mr and Mrs P wish to provide, I would invite them to do so in response to this provisional decision.

I'm not persuaded, therefore, that Mr and Mrs P credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, mentioned by Mrs P in an email to the Investigator in November 2023, why they say their 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 which would benefit them in their daily life and in the future. And if this was the case, it would have been a breach of the prohibition against selling timeshares in that way.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr and Mrs P'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 membership of the Fractional Club 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 Mrs P has suggested to this Service that the Supplier did that at the Time of Sale. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, 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" at [56]. I will use the same definition.

Mr and Mrs P's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But 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 P as an investment in breach of Regulation 14(3), I have to be persuaded 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 evidence in this complaint 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 P, 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. There were, for instance, disclaimers in the contemporaneous

paperwork that state that Fractional Club membership was not sold to Mr and Mrs P as an investment.

With that said, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. And while that was not alleged by either Mr and Mrs P nor their PR when they first complained about a credit relationship with the Lender that was unfair to them, I accept that it's possible that Fractional Club membership was marketed and sold to them as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

So, I have taken all of that into account. However, on my reading of the evidence provided and Mr and Mrs P's initial recollections of the sales process at the Time of Sale, that is not what appears to have happened at that time. They have not described what the Sales staff said about the Allocated Property at all and have at no point said or suggested that the Supplier led them to believe that their Fractional Club membership would lead to a financial gain (i.e., a profit).

So, while Mrs P now says that they bought the Fractional Club as it "…will be beneficial for us in our daily life and in the future" there is simply no evidence that it was sold to them as an investment with a potential profit on the sale of the Allocated Property. Indeed, the benefit being referred to here is, in my view, more likely to relate to the prospect of holidays as Mrs P has said they have been unable to take any and so have "…received ZERO benefit…".

Indeed, Mr and Mrs P's initial recollections in the Letter of Complaint were put together much closer to the Time of Sale and are, in my view, better evidence of what they remember of the sales process at that time and why they were unhappy with it, than her very recent recollections. After all, if Fractional Club membership had been marketed and sold as an investment by the Supplier at the Time of Sale, it is difficult to understand why the PR made no mention of it in the Letter of Complaint. And with that being the case, in the absence of persuasive evidence to suggest otherwise, I find that it is unlikely that the Supplier led them to believe that membership offered them the prospect of a financial gain (i.e., a profit), given their evolving version of events.

But even if I am wrong to conclude that, on this occasion, membership was unlikely to have been sold in that way, given what I have already said about Mr and Mrs P's recollections of the sales process at the Time of Sale, I am not currently persuaded that would make a difference to the outcome in this complaint anyway.

<u>Was the credit relationship between the Lender and Mr and Mrs P rendered unfair?</u>

There has been a significant amount of case law in this area, and I have to take it all into consideration here. For example, as the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A.

So, what does that mean to the complaint I am considering here? If I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs P and the Lender that was unfair to them and warranted relief (for example compensation) as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

It appears Mr and Mrs P were not members of any type of timeshare or holiday club at the time they purchased their membership of the Fractional Club. They were at one of the Supplier's resorts on holiday with some friends who had purchased membership. So, I think it is a fair assumption to make that Mr and Mrs P were interested in holidays, and specifically the type of holidays the Supplier could provide.

But as I've already said, there was no suggestion in Mr and Mrs P's Letter of Complaint regarding the sales process at the Time of Sale, that the Supplier led them to believe that the Fractional Club membership was an investment from which they would make a financial gain, nor was there any indication that they were induced into the purchase on that basis. In fact, the Letter of Complaint makes clear that they were induced to make the purchase by the misrepresentation(s) made by the Supplier, and nowhere has it been said that there was a misrepresentation regarding the investment element of the Fractional Club. But, in any event, as I've already said, I'm not persuaded that any misrepresentations were 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 persuaded that Mr and Mrs P'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). I say this because the notes of sale recorded by the sales staff shortly after the Time of Sale suggests Mr and Mrs P wanted to be able to take the same holidays as their friends who were members. So, this I think was their motivation to purchase. And for that reason, I do not think the credit relationship between Mr and Mrs P 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

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr and Mrs P when they purchased membership of the Fractional Club at the Time of Sale. But they and PR say that the Supplier failed to provide them with all of the information they needed to make an informed decision.

Mr and Mrs P say they were not offered any alternative finance options by the Supplier. But I cannot see that this is correct. Mr and Mrs P have said that they had been declined credit from two other providers before being accepted by the Lender here. So, this point seems entirely misconceived. They also say that they were unaware who the Lender was, nor what the interest rate attached to the loan was, until about one month after the Time of Sale. But again, I'm not persuaded that this is correct. I can see that Mr and Mrs P signed the Credit Agreement at the Time of Sale which named the Lender providing the finance, set out the monthly repayments and term of the loan, along with the APR. So, it seems that Mr and Mrs P were likely provided with the required information here.

But even if I'm wrong about that, and Mr and Mrs P were not given sufficient time or information in order for them to make an informed decision, given the facts and circumstances of this complaint, I am not persuaded that any information failings by the Supplier are likely to have prejudiced Mr and Mrs P's purchasing decision at the Time of Sale anyway. I say this because I think they got what they wanted here. They were on holiday with friends who had also made a purchase, and they wanted to be able to continue taking holidays together. And there is nothing which makes me think Mr and Mrs P had any alternative financial means to make the purchase in any event.

As I've said, Plevin makes clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. So, it is my view that even if the Supplier did not give them sufficient information about the purchase and/or the Credit Agreement in good time (and I make no finding on this point), I do not think this would have rendered their credit relationship with the Lender unfair to them for the purposes of section 140A of the CCA anyway.

Moreover, as I haven't seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr and Mrs P was unfair to them because of an information failing by the Supplier, I'm not persuaded it was.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr and Mrs P was unfair to them for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

Conclusion

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 P's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of 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 Mr and Mrs P.

If there is any further information on this complaint that Mr and Mrs P wish to provide, I would invite them to do so in response to this provisional decision.

The responses to the provisional decision

The Lender responded to say that it agreed with my provisional findings and had nothing to add.

Mr and Mrs P also responded. They said that they didn't think it was fair that they had to continue to make monthly repayments of £294.18 to the Lender for the loan for the Fractional Club membership that they had been unable to use since 2017. They said they were not told by the Supplier who the lender was, nor how much they would need to pay, and were just told to sign the documentation. They did accept that no compensation is due to be paid to them, but they just wanted to be released from the Credit Agreement as it was putting significant pressure on them due to a reduced income and health issues, and would mean that they had to pay a total of £42,361.92 to the Lender. They said they hoped the Lender would consider their situation sympathetically.

As the deadline for responses has now passed, the matter has come back to me to reconsider.

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 so, and having thought about what Mr and Mrs P have said in response to my provisional decision, I'm afraid I have not changed my mind. I do not think their complaint

ought to be upheld, for the same reasons that I gave in my provisional decision.

I know this will be disappointing to Mr and Mrs P, and I'm sorry about that. I can see that they are under financial pressure, but because I am not persuaded that the Lender has done anything wrong here, or because I cannot see that it is responsible for anything that the Supplier may have done, I am unable to direct the Lender to do anything in respect of the Finance Agreement. I would, however, urge Mr and Mrs P and the Lender to come to a mutually agreeable way forward here.

My final decision

I do not uphold Mr and Mrs P's complaint against First Holiday Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 8 April 2025.

Chris Riggs
Ombudsman