DRN-5574165

The complaint

Mr M and Mrs N are assisted in bringing their complaint by "S", a third-party professional representative. The complaint is, in essence, that First Holiday Finance Ltd acted unfairly and unreasonably by (1) declining to meet their claim in misrepresentation under section 75 of the Consumer Credit Act 1974 ("CCA") and (2) being party to an unfair credit relationship with them under section 140A of the CCA.

Background to this decision

I recently issued my provisional decision setting out the events leading up to this complaint and my intended conclusions on how I considered the dispute best resolved. I've reproduced that provisional decision here and it is incorporated as part of my overall findings. I invited both parties to let me have any further comments they wished to make in response, and I will address their responses later in this decision.

My provisional decision

While on a promotional holiday in November 2012 (the "Time of Sale") Mr M and Mrs N attended a sales presentation by "C", a timeshare provider. After discussing things with the sales representative they purchased an upgrade to their existing membership of C's Fractional Points Owners' Club (the "Fractional Club").

Fractional Club membership was asset backed – which meant it gave Mr M and Mrs N more than just holiday rights. It also included a share in the net sale proceeds of a property (the "Allocated Property") named on Mr M and Mrs N's agreement with C (the "Purchase Agreement"), when it was sold on or after 31 December 2031 (the "Sale Date").

The Purchase Agreement bought Mr M and Mrs N 1,160 fractional points, described therein as equivalent to two weeks of fractional rights, at a cost of £14,371. This purchase was part-funded by credit of £13,871 in Mr M and Mrs N's names, provided by First Holiday Finance (the "Credit Agreement"). As part of the arrangements Mr M and Mrs N's existing week of fractional rights was 'traded-in' and their previous First Holiday Finance loan was repaid.

In November 2019 Mr M and Mrs N authorised a professional representative "S" to act on their behalf in pursuing complaints about their financial arrangements. With S's assistance Mr M and Mrs N wrote to First Holiday Finance on 19 November 2019 (the "Letter of Complaint") to complain about:

- Misrepresentations, omissions and unfair sales practices by C at the Time of Sale, including failing to give them important information relevant to their decision to purchase Fractional Club membership.
- First Holiday Finance unlawfully funding the arrangements of an Unregulated Collective Investment Scheme ("UCIS"), contrary to the provisions of the Financial Services and Markets Act 2000 ("FSMA").

The Letter of Complaint argued that First Holiday Finance was, as deemed principal of C and/or under connected lender liability provisions of section 75, liable to Mr M and Mrs N for the above and set out a claim in damages.

First Holiday Finance didn't agree that it was liable to compensate Mr M and Mrs N, who referred their complaint to us on 18 November 2019. They and S raised several points in relation to C's pre-contractual acts and omissions at the Time of Sale[1], which I've summarised below. These are that:

- C made an untrue statement to them that the Allocated Property would be sold in 180 months (15 years), bringing their Fractional Club membership to an end. They say there was no clear indication as to C's duty to actively market and sell the Allocated Property. Until the property was sold, they would continue to incur management fees.
- C failed to tell them that the developer could postpone the sale, in its absolute discretion, for up to two years past the set sale date.
- C didn't explain to Mr M and Mrs N that based on the contractual documentation, their beneficiaries would inherit their liability for management fees.
- C coerced or otherwise pressured Mr M and Mrs N to buy Fractional Club membership and that they didn't have the opportunity to decide if Fractional Club membership was right for them.
- the Fractional Club membership sold to Mr M and Mrs N was a UCIS, the promotion and financing of which was unlawful.
- the interest rate on the Credit Agreement was 13.810% compared to the Bank of England base rate of 0.50%, which was an unfair contract term.

Mr M and Mrs N said that in light of the concerns expressed against C, under the section 56 deemed agency and section 75 connected lender liability provisions of the CCA, First Holiday Finance was liable to compensate them. They also referenced FCA core principles they argued hadn't been complied with, as shown by the points they'd made, and expressed the view that First Holiday Finance was party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

Mr M and Mrs N's complaint was assessed by an investigator who wasn't persuaded that the complaint should be upheld on its merits. She concluded that the time taken to bring the section 75 claim provided First Holiday Finance with a complete defence under the Limitation Act 1980. And she didn't think any of the circumstances averred in the complaint correspondence were such that they gave rise to an unfair credit relationship between Mr M and Mrs N and First Holiday Finance. So she didn't propose upholding the complaint.

S, responding on behalf of Mr M and Mrs N, disagreed with the investigator's assessment. It asked for an ombudsman to review and determine matters[2].

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[1] The Letter of Complaint also references actions by C after Mr M and Mrs N entered into the arrangements, including their efforts to surrender membership. I won't be going into detail here about those aspects, as neither Mr M and Mrs N nor S have offered evidence that First Holiday Finance is responsible for C's actions in those matters.

[2] More recently, S has provided its attendance notes relating to its discussions with Mr M and Mrs N. These reflect the points raised in their Witness Statement so I haven't forwarded them to First Holiday Finance. But for the avoidance of any doubt, I've considered those notes in reaching my conclusions.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account relevant law and regulations, regulators' rules, guidance and standards and codes of practice, and (where appropriate), what I consider to have been good industry practice at the relevant time.

Where necessary, I've made my decision on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Relevant law and regulations

Of particular relevance to this complaint are:

- The CCA (including section 75 and sections 140A-140C).
- The law on misrepresentation.
- The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations").
- The Consumer Rights Act 2015 ("the CRA").
- The Consumer Protection from Unfair Trading Regulations 2008 ("CPUT").
- 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*").

Relevant Guidance – Goode: Consumer Credit Law and Practice

Goode: Consumer Credit Law and Practice is a widely recognised expert commentary on the application of the Consumer Credit Act 1974 and related legislation. It offers relevant guidance to certain of the matters at hand in this complaint.

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But I'm 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").

What I've provisionally decided – and why

After careful consideration, I'm currently minded not to uphold Mr M and Mrs N's complaint. Before I explain why, I want to make it clear that my role as an ombudsman doesn't mean I need to address every single point that has been made to date. Rather, it is to decide what's fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, that doesn't mean I haven't considered it.

There are various aspects to Mr M and Mrs N's complaint. These include the allegations of misrepresentation (and possibly of breach of contract) in respect of the Fractional Club membership, and the suggestion that First Holiday Finance ought to have accepted and met their claims under Section 75 of the CCA. I'll deal with those concerns first.

Section 75: How First Holiday Finance dealt with Mr M and Mrs N's claims about C's alleged misrepresentations at the Time of Sale and possible breach of contract[3]

Certain conditions must be met for section 75 to apply including, but not limited to, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Because of the way in which section 75 operates, if C is liable for having misrepresented something to Mr M and Mrs N at the Time of Sale or has breached its contract with them, that might give rise to a potential joint and several liability on the part of First Holiday Finance. Equally, of course, if C has a defence to such a claim, that defence is also available to First Holiday Finance.

Our investigator noted that the Limitation Act 1980 might afford a complete defence to the section 75 claim made by Mr M and Mrs N. S takes a different view. However, I've not found it necessary to reach a conclusion on that line of argument, because I'm not inclined to find that the conditions necessary to bring a section 75 claim are met in this case.

I say this because it's my understanding that when Mr M and Mrs N entered into the Credit Agreement in November 2012, they did so with First Holiday Finance Ltd based in the British Virgin Islands ("FHFBVI") and operating from the Isle of Man, rather than the UK entity of the same name. The UK entity has provided us with evidence that shows it wasn't engaged in regulated lending activity until it applied for permission from the Financial Conduct Authority ("FCA") in 2015. On 1 August 2015, FHFBVI assigned its loan book (including Mr M and Mrs N's loan) to the UK entity First Holiday Finance.

Section 75 enables a claim to be brought against the creditor. At the time the Credit Agreement was made, the creditor was FHFBVI. While FHFBVI assigned its loan book to First Holiday Finance, it didn't necessarily follow that *all of* its duties or other obligations – such as any potential liability for a section 75 claim – were similarly assigned. Although the CCA section 189(1) definition of creditor includes an assignee, *Goode*[4] indicates that this shouldn't be interpreted as creating a positive liability on the assignee for a monetary claim under (among other things) section 75.

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[3] Mr M and Mrs N's Witness Statement contains some comments that are capable of interpretation as allegations of a breach of contract in relation to the availability of properties under their Fractional Club membership.

[4] Goode: Consumer Credit Law and Practice – Division I Commentary – Part IC Consumer Credit Legislation – 45A Assignment – III Assignment and the CCA 1974: the assignee as creditor/lender or owner – 1 The basic rule – Pre-assignment breaches (para 45A.62)

I'm further conscious of the conclusions reached by the High Court in *Jones v Link Financial Ltd* [2012] EWHC 2402 ("*Jones*"), which drew a distinction between pre-assignment liabilities such as might arise under section 75 and those statutory duties under the CCA that the assignee was required to perform in order to enforce its assigned rights[5].

That's not to say that a claim can't be made along the lines outlined by Mr M and Mrs N. Rather, both *Goode* and *Jones* highlight the inherent difficulty Mr M and Mrs N might face in succeeding with that claim. And with this in mind, I can't say that First Holiday Finance acted unfairly or unreasonably towards Mr M and Mrs N when it declined to pay them compensation for the claims they said it was liable for under section 75.

Section 140A: did First Holiday Finance participate in an unfair credit relationship?

I've explained why I'm not persuaded Mr M and Mrs N's relationship with First Holiday Finance could lead to a successful section 75 claim and outcome in this complaint. But Mr M and Mrs N also make arguments that either say or infer that the credit relationship between them and First Holiday Finance was unfair under section 140A of the CCA, when looking at all the circumstances of the case, including C's representations and parts of its sales process at the Time of Sale they've mentioned.

Mr M and Mrs N's loan from FHFBVI was written under English law and regulated under the CCA. First Holiday Finance acquired and continued to administer the loan when Mr M and Mrs N made their complaint, so section 140A of the CCA is relevant law. It is not subject to the same difficulty as their section 75 claim[6]. So determining what's fair and reasonable in all the circumstances of the complaint includes considering whether the credit relationship between Mr M and Mrs N and First Holiday Finance was unfair.

Under section 140A, a debtor-creditor relationship can be found to have been or be unfair to the debtor 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)[7].

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

I see no great difficulty with the position that C is deemed agent of FHFBVI for the purpose of the pre-contractual negotiations, nor with the possibility referenced in *Goode* that the operation of sections 140A through 140C effectively extend the deemed agent provision to First Holiday Finance after the loan was assigned to it.

With this in mind I've considered the entirety of the credit relationship between Mr M and Mrs N and First Holiday Finance along with all of the circumstances of the complaint. Having done so, I don't think the credit relationship between them was likely to have been rendered unfair for section 140A purposes.

S (on behalf of Mr M and Mrs N) complained about First Holiday Finance being party to an unfair credit relationship for several reasons, which I've set out in this decision. It

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[5] *Jones* (paras 33-34)
[6] *Goode* (para 45A.65) indicates that section 140B empowers a Court to impose a positive liability on an assignee
[7] Section 140A(1) of the CCA

included in its submissions several examples in support of the allegation that C misled Mr M and Mrs N, either by misrepresentation[8] or by omission, and that C carried on unfair commercial practices (contrary to the CPUT Regulations).

Despite the breadth of the unfair relationship test under section 140A, a credit relationship isn't rendered unfair to a debtor simply because of a breach of a legal or equitable duty. Rather, the protection afforded to debtors by section 140A is the consequence of all of the relevant facts. As the Supreme Court said in *Plevin* (at paragraph 17):

"Section 140A…does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with…whether the creditor's relationship with the debtor was unfair."

I'm not persuaded the available evidence supports that C wrongly told Mr M and Mrs N that the Allocated Property would be sold after 180 months (15 years), or that it guaranteed membership would end on the date in question. The Schedule to the Fractional Rights Certificate C issued to Mr M and Mrs N doesn't contain any such guarantee. Nor does it reference a date in 2027, which would have been 15 years after they entered into the Purchase Agreement. The date specified on the Schedule is 31 December 2031. Further, it says that the sales process will be started (not completed) on the Allocated Property on the Sale Date. The Fractional Club rules define the Sale Date as meaning *"the date on which the sale process for an Allocated Property begins, as detailed in Rule 9 and in the Deed of Trust."* It follows that I'm not minded to conclude that C misrepresented these aspects.

Mr M and Mrs N's other concerns include that C failed to mention certain information at the Time of Sale. They say there was no clear indication as to C's duty to actively market and sell the Allocated Property, that the sale could be postponed and that Mr M and Mrs N would continue to incur management fees. They also say C didn't explain to them that liability for management fees would pass to their beneficiaries.

Such omissions could amount to an unfair commercial practice or a breach of the Timeshare Regulations. So the issues raised are relevant to considering the fairness of the credit relationship between First Holiday Finance and Mr M and Mrs N.

First Holiday Finance included in its submissions to us a copy of a letter from C to S, in which C rejects the assertion that Fractional Club membership (and its attendant liabilities) would automatically transfer to Mr M and Mrs N's beneficiaries. My understanding of the Fractional Club membership rules is that this is correct. I'm also conscious that the information Mr M and Mrs N have said C failed to tell them is set out in the documents provided to them at the Time of Sale. This is consistent with the Timeshare Regulations requirement that key information is provided in writing.

Mr M and Mrs N also say that they were pressured by C into purchasing Fractional Club membership at the Time of Sale. They've indicated the sales process lasted a whole day and that they were made to sign a lot of papers, and that there was an immense amount a lot of papers.

But across their complaint correspondence, Mr M and Mrs N have said little about what C actually said and/or did during the November 2012 sales presentation that made them feel as if they had no choice other than to purchase the Fractional Club membership when they didn't want to. Neither the overall time Mr M and Mrs N spent with C during the

[8] A misrepresentation is a false statement of fact (or law) that induces a party to contract.

sales process nor the number of documents they needed to read and sign appear to me to be particularly excessive, given the nature of the purchase they were making.

Mr M and Mrs N were given a 14-day cooling off period. I've seen no indication that they attempted to cancel their membership during that time, or anything else that suggests that they felt pressured or that they didn't have time to think about their decision.

Taking all of this into account, I don't propose to reach a finding that the available evidence demonstrates that Mr M and Mrs N made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by undue coercion or pressure from C.

Further, while the interest rate on the loan was higher than the Bank of England base rate, no reason has been offered for why this would form the basis of an unfair contract term. The applicable interest rate was clearly set out on the Credit Agreement with due transparency and prominence. Schedule 2, Part 1 of the Consumer Rights Act 2015 contains an indicative albeit non-exhaustive list of example terms (commonly referred to as the "grey list") which may be regarded as unfair. The interest rate comparison described doesn't fall within this list, and absent any reason why it should be unfair *per se* to charge interest above the base rate, I can't see how such an argument could be successful.

I now turn to the suggestion that the Purchase Agreement is to be treated as null and void. I'm not satisfied that Mr M and Mrs N's submissions make out a persuasive case for their Purchase Agreement being illegal. I'm aware their Letter of Complaint went to some lengths as to why they and S considered Fractional Club membership to be a UCIS and why this meant providing finance in relation to its sale was prohibited under FSMA. First Holiday Finance does not accept this; in line with C's response it says that membership was a timeshare rather than a Collective Investment Scheme ("CIS"), and so the arguments over the scope of FSMA don't apply.

In this respect, I must have regard for the conclusion reached in *Shawbrook & BPF v FOS*. That was that a timeshare contract is not a CIS (nor by extension a UCIS). I see no proper reason for me to depart from the court's carefully considered and clearly explained conclusion on this matter[9]. I'm satisfied that Mr M and Mrs N's Fractional Club membership met the definition of a *"timeshare contract"* regulated by the Timeshare Regulations. As a result the argument that the sale of finance in connection with a UCIS was prohibited under FSMA falls away.

It is nonetheless possible that C marketed and sold Fractional Club membership to Mr M and Mrs N as an investment. Regulation 14(3) of the Timeshare Regulations prohibited C from marketing or selling membership of the Fractional Club as an investment. The provision at the Time of Sale said that *"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."* I've thought about Mr M and Mrs N's evidence in this respect, and what prompted them to enter into the Purchase Agreement[10].

There's no suggestion in Mr M and Mrs N's recollections of the sales process at the Time of Sale that C led them to believe that the Fractional Club membership was an investment from which they would make a financial gain. Nor is there any indication that they were induced into the purchase on that basis.

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[9] *Shawbrook* (paras 43, 45, 47-48, 52)

[10] I'm mindful here of what HHJ Waksman QC (as he then was) and HHJ Worster respectively had to say in *Carney* (paragraph 51) and *Kerrigan* (paragraphs 213 and 214) on causation.

Mr M and Mrs N do say that a factor in their original purchase of Fractional Club membership was the prospect of being able to rent the timeshare and cover the cost of maintenance fees. But that was during a meeting some months prior to the purchase that is the subject of their complaint. And there's nothing in the way of any specific detail about what they were told about a financial gain or the profit they might make. I consider it some way distant from amounting to evidence that their purchase decision was prompted by C marketing and selling membership as an investment offering the prospect of financial gain or profit.

Had Fractional Club membership been marketed and sold as an investment by C at the Time of Sale and been a key factor in Mr M and Mrs N's purchase decision, it is difficult to understand why they did not mention this in their recollections, particularly in light of the lengths to which S's correspondence went in seeking to demonstrate the UCIS point.

Further, even if C marketed or sold the Fractional Club membership as an investment, I'm not persuaded that Mr M and Mrs N's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (a profit). So I'm not inclined to think the credit relationship between Mr M and Mrs N and First Holiday Finance was unfair to them whether or not C breached Regulation 14(3).

In conclusion, then, given all of the facts and circumstances of this complaint, I don't think the credit relationship between First Holiday Finance and Mr M and Mrs N was unfair to them for the purposes of Section 140A. So I don't propose to uphold this aspect of the complaint on that basis.

Having taken everything into account, I see no reason why it would be fair or reasonable to direct First Holiday Finance to compensate Mr M and Mrs N. Subject to any further comments or evidence I receive from the parties, I intend to issue a final decision that:

- First Holiday Finance did not act unfairly or unreasonably when it dealt with Mr M and Mrs N's Section 75 claim; and
- I am not persuaded that First Holiday Finance was party to a credit relationship with them under the Credit Agreement that was unfair to Mr M and Mrs N for the purposes of Section 140A of the CCA.

Responses to my provisional decision

First Holiday Finance accepted my intended conclusions and said it had nothing further to add. S, responding on Mr M and Mrs N's behalf, didn't accept my provisional decision. It said, in summary:

- There was no mention of FHFBVI anywhere in the loan documents. All the documents referenced First Holiday Finance ("FHF Ltd"), and to the layperson that meant First Holiday Finance was the loan originator and administrator. The documents on which my provisional findings were based were unaudited and unsubstantiated
- The provisional decision contained factual inaccuracies in respect of the above and failed to understand that Mr M and Mrs N's loan was for 180 months (15 years). S didn't suggest in the complaint that the Purchase Agreement will end in 2027. The loan will be paid off in 2027
- The ombudsman service clearly has jurisdiction to review Mr M and Mrs N's section 140A claim

- Mr M and Mrs N were advised that the membership represented ownership of a resort asset that would grow in value like conventional property, inducing them to believe that they were purchasing a capital-appreciating asset, whereas they were acquiring an uncertain share in a timeshare-based arrangement with no secondary market and no market valuation mechanism
- The oral representations made by C during the sales process breached the prohibition under Regulation 14(3) that "*A trader must not market or sell a proposed timeshare contract… as an investment*.". While I had found no breach due to lack of references to "*profit*" in contemporaneous evidence, the suggestion that Mr M and Mrs N would "*recoup some or all of* [their] *investment*" and the framing of the product as a property-based ownership structure – including certain language used — likely breached Regulation 14(3), tainting the fairness of the credit relationship
- It had sourced a YouTube video featuring one of C's sales directors that it considered supported its clients' position
- Mr M and Mrs N's Witness Statement included the suggestion that they could rent the timeshare and earn money from it by using it as a business. That amounted to promoting Fractional Club membership as an investment. It was in this belief (that membership was an asset-based purchase with capital return) that Mr M and Mrs N made their purchase, and they would not have otherwise done so

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.

I've read S's submissions in response to my provisional decision. Having done so, I'm not persuaded that it has supplied any persuasive evidence to demonstrate that it was First Holiday Finance (the UK entity) rather than First Holiday Finance (the British Virgin Islands entity) that was the lender under the Credit Agreement Mr M and Mrs N entered into in 2012.

The documents S has provided simply state that the agreement is with First Holiday Finance Ltd. That was the legal name of both the UK and the British Virgin Islands entity. It is unsurprising that there is no reference to FHFBVI in the documents; as I set out in my provisional decision, that was an abbreviation I have used to distinguish the two companies bearing the same name. It is because of this potential for confusion that I have based my finding not solely on the loan documents, but on other surrounding evidence such as the Companies House records and the lending book assignment.

I find that S has presented no basis for me to reach a different conclusion on this aspect from that set out in my provisional decision. It follows that I adopt in full my provisional findings in relation to the conclusion that First Holiday Finance has not acted unfairly or unreasonably in declining to meet Mr M and Mrs N's section 75 claim.

The point S seeks to make regarding the loan term is unclear. In the Letter of Complaint S submitted to First Holiday Finance, it stated the loan term as being 144 months (12 years). Given the Credit Agreement was taken out in 2012, I'm having some difficulty with why S now appears to suggest a longer loan term, or why this was a misunderstanding on my part. In terms of S's assertion that it didn't mention in the complaint that the Purchase Agreement would end in 2027, I can only refer again to the Letter of Complaint, in which S says:

> *"Our client was informed at each instance that, as per the Purchase Agreement, the Fractional product would be sold in 180 months which is approximately 15 years of purchase."*

I make no other comment on this, save that I see no reason to amend what I said in my provisional decision in both respects.

That our service has the power to deal with the section 140A aspect of Mr M and Mrs N's complaint isn't in dispute. I recognised this in my provisional decision. It's again unclear what point S is seeking to make here, but as this aspect seems to be accepted by all the parties, I have proceeded to deal with the merits of the section 140A complaint.

In respect of those merits, I don't consider S has said anything that I didn't take into account or explain in my provisional decision. My provisional findings were that Mr M and Mrs N's Fractional Club membership did include an investment (a profit) element, that it was possible that it was marketed and sold to them in that way in breach of Regulation 14(3), but that there was no persuasive evidence that a profit motive had been a material factor in Mr M and Mrs N's decision to purchase membership.

S's latest submissions aren't (for the most part) drawn from any direct testimony supplied in Mr M and Mrs N's Witness Statement. They say nothing in that statement about a belief that they were purchasing a capital-appreciating asset, or that this was an important aspect informing their decision to purchase membership. The only reference in their testimony to earning money through rental or as a business was (as I noted in my provisional decision) made during a meeting with C some months earlier that was not in the course of selling Fractional Club membership.

I have noted the content of the YouTube video cited by S. I find it offers little in the way of useful evidence about what happened during C's sale of Fractional Club membership to Mr M and Mrs N.

Overall, there is nothing that S has said in response to my provisional decision that points me towards reaching a different set of conclusions, or gives me good reason not to adopt my provisional findings in full as part of this final decision.

Accordingly, for the reasons I've set out here and in my provisional decision, I remain of the opinion that First Holiday Finance did not act unfairly or unreasonably when it dealt with Mr M and Mrs N's Section 75 claim, or that it was party to a credit relationship with them that was unfair for the purposes of Section 140A of the CCA.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs N to accept or reject my decision before 27 June 2025.

Niall Taylor
Ombudsman