DRN-5636312

The complaint

Mr and Mrs M's complaint is, in essence, that First Holiday Finance Ltd ('the Lender') acted unfairly and unreasonably by (1) declining to meet their claim of 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. Mr and Mrs M bring this complaint with the assistance of a third-party professional representative (the 'PR').

What happened

In late 2011, Mr and Mrs M owned a timeshare 'trial' membership, purchased from a supplier (the "Supplier"). In January 2012 (the "Time of Sale") Mr and Mrs M attended a further sales meeting with the Supplier, as a result of which Mr and Mrs M upgraded their membership to the Supplier's Fractional Club (the "Fractional Club") membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property (the "Allocated Property") named on Mr and Mrs M's agreement with the Supplier (the "Purchase Agreement") after the membership term ended.

The Purchase Agreement (in both Mr and Mrs M names) bought Mr and Mrs M 1050 fractional points at a cost of £15,613. This purchase was funded by trading in their trial membership, paying a £500 deposit and taking credit of £11,118 (in Mr and Mrs M's names), provided by The Lender (the "Credit Agreement"). (They settled this lending in February 2024.)

In the summer of 2020, they appointed the PR to act on their behalf in pursuing a complaint about their financial arrangements. With the PR's assistance Mr and Mrs M complained to The Lender on 18 September 2020 (the "Letter of Complaint") to complain about:

- Misrepresentations under Section 75 of the CCA which led to Mr and Mrs M losing out and which also led to an unfair relationship under section 140A of the CCA.
- They were misrepresented to when they were told they were making an investment which would make them a profit.
- That they were misrepresented to on the availability of the holidays.
- That they were pressured into purchasing the membership
- That the Supplier breached the Purchase Agreement by ceasing to trade.
- That the presence of commission being paid between Supplier and Lender made the relationship between Mr M, Mrs M and the Lender unfair.
- That no affordability checks were done during the sale and thus there was irresponsible lending in the arrangement of the finance for the purchase of this membership.
- The Letter of Complaint makes the argument that The Lender is, as deemed principal of the Supplier, liable to Mr and Mrs M for the above and sets out a claim in damages.

The Lender issued its response to the letter of claim on 12 October 2020 (apparently wrongly dated '*12 September 2020*') rejecting the complaint in every regard. So, the PR brought the complaint to this service.

Mr and Mrs M's complaint was assessed by an investigator and having considered the information on file, our investigator proposed that the complaint should be not upheld on its merits. But the PR disagreed with the investigator's assessment and asked for an ombudsman to review and determine matters.

I issued a provisional decision dated 23 May 2025 which did not uphold Mr M and Mrs M's complaint. The Lender has responded to say it agreed with my provisional position. Mr M and Mrs M's PR has responded at length with its thoughts on the matter.

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 times. 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 Limitation Act 1980 ("the LA")
- The law on misrepresentation.
- The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations").
- The Unfair Terms in Consumer Contracts Regulations 1999 ("the UTCCR's")
- 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 ("").
    - 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 I'm also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant times – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the "RDO Code").

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 done that, I have decided not to uphold this complaint. Before I explain why, I want to make it clear that my role as an ombudsman isn't to address every single point that has been made to date. Rather, it is to decide what is 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. Where necessary, I've reached my conclusions on the balance of probabilities; in other words, based on what I think is more likely than not to have happened given the available evidence and the wider circumstances. I shall address some of the PR's comments in the paragraph 'further arguments' towards the end of this decision, but suffice it to say here they fall short of persuading me to deviate from those set out in my provisional decision which I repeat now, italicised for clarity.

Section 75: The Supplier's alleged misrepresentations at the Time of Sale and alleged breaches of contract

Within the letter of complaint, the PR made a claim on Mr and Mrs M's behalf under S75 of the CCA. It included allegations of misrepresentation during the sales process and submissions in support of those allegations. This membership was purchased on 05 January 2012 by Mr and Mrs M but they didn't make their claim to the Lender until 18 September 2020.

Under Section 9 LA Mr and Mrs M had to make their claim within six years of when they entered into the timeshare and credit agreements – which was in January 2012 because that is when they say they lost out having relied on false statements of fact. As Mr and Mrs M first made a claim to the Lender in September 2020, that fell outside of the time limit set out in the LA. And so, on the face of it, I don't think Mr and Mrs M have lost out due to the Lender deciding not to uphold their complaint or do any more in relation to their S75 claim for misrepresentation.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr and Mrs M a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Here Mr and Mrs M seem to have still held their membership when they made their claim to the Lender. So, in relation to any breaches of contract by the Supplier before September 2014 the Lender wouldn't have any liability to them under the defence of the LA as I've described. However, in relation to any alleged breaches that occurred within six years of their claim the Lender wouldn't be able to apply such a defence under the LA. The PR's claim letter isn't specific as to when the breaches it alleges were made, so I'll now consider the allegations of breach made on the basis that they are alleged to have happened within six years of the Letter of claim.

Mr and Mrs M say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that they consider that the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork signed by Mr and Mrs M states that the availability of holidays was/is subject to demand. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

Mr and Mrs M also say that the Supplier breached the Purchase Agreement because there is no guarantee that they will receive their share of the net sale proceeds of the Allocated

Property or that it will have no value. I understand that they are saying that they fear that, when the time comes for the Allocated Property to be sold, they will not receive their share of the sales proceeds. However, it would seem that any breach of contract (if that occurs) lies in the future and is currently uncertain.

Mr M and Mrs M also say that the Supplier breached the Purchase Agreement because it became insolvent. I can see that certain parts of the Supplier's business were restructured. And I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mr M and Mrs M nor the PR have said, suggested or provided evidence to demonstrate that they are no longer:

1. *Members of the Fractional Club;*
2. *able to use their Fractional Club membership to holiday in the same way they could initially; and*
3. *entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.*

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr M and Mrs M any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 140A: did The Lender participate in an unfair credit relationship?

Mr and Mrs M make arguments that either say or infer 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 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 have considered it when determining what is fair and reasonable in all the circumstances of the case. That means considering whether the credit relationship between Mr and Mrs M and The Lender 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), (Section 140A(1) of the CCA).

Such a finding 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.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator." As a result, it provides a foundation for a number of provisions that follow it. It also creates a statutory agency in particular circumstances. The most relevant to this complaint is negotiations "conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or (c)" (Section 56(1)(c) of the CCA).

The arrangements between Mr and Mrs M, the Supplier, and The Lender were such that the negotiations conducted by the Supplier during its sale of this Fractional Club membership to Mr and Mrs M were antecedent negotiations under section 56(1)(c) – which, in turn, meant that 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 section 140A(1)(c).

Antecedent negotiations under Section 56 cover both the acts and omissions of C, based on my understanding of relevant law (See, for example Plevin, at paragraph 31, and Shawbrook & BPF v FOS at paragraph 135). I note that in the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law" before going on to say, in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair." (The Court of Appeal's decision in Scotland was recently followed in Smith.)

It follows that I see no great difficulty with Mr and Mrs M's position that the supplier is deemed agent of the Lender for the purpose of the pre-contractual negotiations. I recognise that 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. The High Court held in Patel (which was approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

Despite the breadth of the unfair relationship test under section 140A, it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. 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."

Instead, the Supreme Court said in Plevin that the protection afforded to debtors by section 140A is the consequence of all of the relevant facts.

I've considered the entirety of the credit relationship between Mr and Mrs M and the Lender 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. In coming to that conclusion, and in carrying out my analysis, I've looked at:

> *1. the Supplier's sales and marketing practices at the Time of Sale – which includes any material provided that I think is likely to be relevant to the sale; and*
> *2. the Supplier's provision of information at the Time of Sale, including the contractual documentation and disclaimers made by C;*
> *3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
> *4. The inherent probabilities of the sale given its circumstances.*

I've considered the impact of these on the fairness of the credit relationship between Mr and Mrs M and The Lender.

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

Mr and Mrs M 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 suggestion that Fractional Club membership had been misrepresented by the Supplier because Mr and Mrs M were told that they were buying an interest in a specific piece of "real property" when that was not true and it had no value. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr and Mrs M's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest. And the value of that interest once it is sold at the end of the term is yet to be ascertained.

The PR also said that the membership was misrepresented as an investment when it wasn't an investment. However, as I describe later in this decision, I'm satisfied that there is no misrepresentation on that point. The PR also suggests that the membership didn't have an end date but clearly the agreement sets out when and how the membership would come to an end. So, I don't think this is a misrepresentation either.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr and Mrs M have concerns about the way in which their Fractional Club membership was sold, they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons they allege. Accordingly, I'm not persuaded there was such a misrepresentation which would render the credit relationship unfair.

The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs M. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs M 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. Again, from the very limited information provided by Mr M and Mrs M, I am not satisfied that the lending was unaffordable for Mr and Mrs M. If there is any further information on this (or any other points raised in this provisional decision) that the Mr and Mrs M wish to provide, I would invite them to do so in response to this provisional decision.

Mr and Mrs M say (in their Complaint Form to this service) that they were pressured by the Supplier 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. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. Moreover, they did go on to upgrade their Fractional Club membership (with another lender but the same supplier) – which I find difficult to understand if the reason they went ahead with the purchase in question was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs M made

the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr and Mrs M's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, 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 in breach of 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, and if so, was this aspect material to Mr and Mrs M's decision to purchase membership?

The Lender does not dispute, and I am satisfied, that Mr J and Mrs J'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 PR says that the Supplier did exactly 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 M'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.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier 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." And Mr and Mrs M's PR has argued that this is what happened in this case, albeit more so latterly.

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 in itself. 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 that Fractional Club membership was marketed or sold to Mr and Mrs M 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; that is, told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (a profit) given the facts and circumstances of this complaint.

Not only that but, as the Supreme Court's judgment in Plevin makes clear, it does not

automatically follow that any such regulatory breach would create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. That includes taking into account the material impact of any breach on the customer's decision whether to enter into the Purchase Agreement.

So, I also must be satisfied that it was more likely than not that the prospect of a financial gain was a material factor in Mr and Mrs M's purchasing decisions. I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation. In Carney, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:

*"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs M and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with Mr and Mrs M, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

There is evidence in this case that 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 M 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 wasn't sold to Mr and Mrs M as an investment. It is nonetheless possible that the Supplier marketed and sold Fractional Club membership to Mr and Mrs M as an investment, and so I've thought about their evidence in this respect, and what prompted them to enter into the Purchase Agreement.

In the letter of claim to the Lender the issue of whether it was sold as an investment was raised by the PR but no persuasive (to my mind) description of how this was done or what

was said was given. I've seen a statement from Mr and Mrs M which was supplied to this service in January 2024. It is undated and is unclear when it was drafted. The PR has said:

"Please find attached a statement from Our Clients confirming what they were advised of. Whilst the statement is not signed or dated, we have provided the bundle of documents sent to us, some of which are dated. We are of the view that the evidence of Our Clients is indisputable and this claim will be upheld by the FOS."

I note that this purchase is referred to in this statement by Mr and Mrs M as being "promoted as an investment" for them to make. However, I also note that Mr and Mrs M make clear their motivation in this purchase to my mind. They note in relation to their trial membership that the points they received under that trial membership "would not actually cover any form of a decent holiday based on the amount of the cost to cover a normal holiday abroad, outside of a Timeshare." They go on to say in relation to the purchase here in this case:

"Moving forward to January 2012 we went back to (the Supplier) to try and upgrade the 'point system' that we had."

This makes clear to me that their primary motivation at the Time of Sale was to purchase a superior membership which would entitle them to better holiday entitlements. In fact, this indicates that they were the parties to approach the Supplier, which goes some way to make me question their allegation that the sale was pressured.

I also note that this witness statement doesn't describe what they were told or anticipated in relation to any returns from the sale of the property or any other form of return. This is noticeably different from the claim letter of September 2020 which refers to receiving the "In addition, it was represented to Our Clients that the purchase would be an investment. The product would increase in value and, after a period of a few years, they would be able to sell the product at a considerable profit."

And while I've noted Mr and Mrs M's witness statement, I must note that it differs significantly in some regards from the arguments raised in the letter of claim. For example, the letter of claim points to issues such as the Supplier was insolvent, causing a breach of contract, but I simply do not see those arguments as being a part of Mr and Mrs M's witness statement. And where there is contradiction, I think I can rely more on the witness statement of Mr and Mrs M more than the letter of claim.

So, I'm not persuaded that the investment element of this membership was a motivating factor in this purchase. It seems likely to me from what they've said here they'd have gone ahead with this purchase whether or not there had been a breach of Regulation 14.3 as their primary interest in the purchase appears to be around enhanced holiday benefits.

Had Fractional Club membership been marketed and sold as an investment by the Supplier at the Time of Sale and that had been a key factor in Mr and Mrs M's purchasing decision, it is difficult to understand why Mr and Mrs M statement and their PR's original letter of claim on the matter did not persuasively argue this point. I say this particularly in light of the lengths to which the PR went in the letter of claim in seeking to demonstrate the other arguments that were made about what was wrong with this purchase. Additionally, there's nothing in the way of any specific detail about what they were told about it being an investment and, in my mind, the statement is directed to the holidays they could have taken.

On balance, therefore, even if the Supplier 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 M's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (a profit).

On the contrary, I think the evidence suggests Mr and Mrs M purchasing decision was founded on their strong attraction to the improved holiday arrangements this Fractional Club membership provided as they make clear in their statement. So, I'm minded that they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I'm not currently inclined to think the credit relationship between Mr and Mrs M and The Lender was unfair to them whether or not the Supplier breached Regulation 14(3).

Commission

The PR, in the letter of claim, and in Mr and Mrs M's complaint form, there have been repeated claims that the payment of commissions between the Lender and the Supplier made the relationship unfair. However, the PR hasn't pointed to any evidence of any such commission being paid. The Lender has answered this point in its correspondence with this service and has stated that no commissions were paid in such transactions as the purchase here. I do not find that surprising as the Lender and the Supplier were linked, both being part of the same group of companies, so I find it plausible that no commission would have been paid in that situation. With no persuasive evidence to the contrary I'm not persuaded that the Lender has considered this element of the claim unfairly.

In summary, given all of the facts and circumstances of this complaint, I don't think the credit relationship between The Lender and Mr and Mrs M 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.

Further arguments

In response to my provisional position the PR has provided response made up of 110 paragraphs of points and arguments covering many pages. Many of these points to my mind are either known facts or law or repetition of what my decision said or broad statements or opinions of the PR. As I see nothing material to be gained by repeating what the parties know already, so I shall only address the key aspects of this matter as I see them (and as I've explained in my provisional decision).

Firstly there is no persuasive evidence provided to counter my findings about how the membership was sold to Mr M and Mrs M and those on their recollections and representations on the matter. For example, there is no further testimony regarding their recollections and representations from Mr M and Mrs M provided in an attempt to explain the issues I highlighted in my provisional decision and which were important to my overall conclusion. The PR's submissions here do not engage with these issues I've raised (or conclusions I reached on the basis of those issues) to any meaningful degree to my mind.

Similarly, and by way of example, although Mr M and Mrs M originally pointed to what they say was irresponsible lending by the Lender at the time of sale, there has been no persuasive evidence put forward to show it was that, such as Mr M and Mrs M's income and expenditure from the time. So although there is no shortage of commentary here from the PR on many issues there is no persuasive evidence (contemporaneous or otherwise) showing that my findings should be changed.

The PR argues that the length of time taken to issue a decision on this matter has unfairly prejudiced its clients (namely Mr M and Mrs M) but hasn't sought to show this by explaining how this has prejudice has happened or the material difference it makes in this case. Ultimately this decision is to how the Lender considered the claims they made to it and whether that was done fairly. The Lender didn't uphold their complaint originally, the

Investigator here didn't uphold the complaint and my provisional decision didn't uphold their complaint. Throughout this process and over a number of years Mr M and Mrs M have had the opportunity to bring new persuasive evidence or new persuasive arguments but haven't done that, so although necessary delays have occurred, I'm not persuaded that Mr M and Mrs M have lost out as result of such delays.

The PR makes many arguments and allegations about and around the Allocated Property. Clearly the Supplier has identified that Allocated Property in the documentation from the time of sale. And although the PR has made many assertions on this matter it hasn't shown or evidenced how the Lender's position or my provisional position are unfair. And as it is for the claimants (and their PR) to make out their claim then I see no persuasive reason to deviate from my findings for the reasons given. Similarly, they've alleged there was fraud by the supplier here, but I've seen no persuasive evidence of this, so I'm not persuaded that my approach to the LA here or on the matter holistically was erroneous.

The PR says the Fractional Club membership terms and the consequences of those were unfair contract terms under the UTCCR's. One of the main aims of the Timeshare Regulations was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, as I've said before, the Supreme Court made it clear in Plevin that it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I note that neither the PR or Mr M and Mrs M have described how the operation of the terms the PR has pointed to has led to unfairness in the particular circumstances of Mr M and Mrs M. And referring to what I've said before regarding any "*such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way,*" it's difficult to say that there was any impact on Mr M and Mrs M. So even if I was persuaded the terms referred to were unfair contract terms (which I'm not) I've not seen enough to persuade me that any such term was operated unfairly to Mr M and Mrs M or caused an unfairness in the credit relationship.

In conclusion and given the facts and circumstances of the complaint and having considered the positions of the parties in response to my provisional position it is my conclusion that I do not think the Lender has acted unfairly or unreasonably when it considered Mr and Mrs M's Section 75 claim. Furthermore, I'm not persuaded the Lender was party to an unfair credit relationship with Mr and Mrs M under the Credit Agreement that was unfair to them under Section 140A of the CCA. Having considered everything in this matter I see no persuasive reason that the Lender should compensate Mr and Mrs M or do anymore.

My final decision

It is my final decision that Mr M and Mrs M's complaint about First Holiday Finance Ltd is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 17 July 2025.

Rod Glyn-Thomas
Ombudsman