DRN-5637893

The complaint

Mr C and Ms F'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 C and Ms F bring this complaint with the assistance of a third-party professional representative (the 'PR').

What happened

In early 2017, Mr C and Ms F owned a timeshare membership, purchased from a supplier (the "Supplier"). While on a holiday (provided by the Supplier) in August 2017 (the "Time of Sale") Mr C and Ms F attended a further sales meeting with the Supplier, as a result of which Mr C and Ms F upgraded their membership to the Supplier's Signature Collection (which is part of its "Fractional Club") membership.

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

The Purchase Agreement (in both Mr C and Ms F names) bought Mr C and Ms F 1420 fractional points at a cost of £39,670. This purchase was funded by trading in their current membership (valued at £10,400), paying a £1000 deposit and taking credit of £28,270 (in Mr C and Ms F's names), provided by The Lender (the "Credit Agreement").

In August 2022 they appointed the PR to act on their behalf in pursuing complaints about their financial arrangements. With the PR's assistance Mr C and Ms F complained to The Lender on 23 August 2022 (the "Letter of Complaint") to complain about:

- Misrepresentations under Section 75 of the CCA which led to Mr C and Ms F 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. This was a direct breach of 14.3 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.
- They were misrepresented to when they were told they could easily sell the membership back to the Supplier.
- That they were misrepresented to on the availability of the holidays.
- That the membership contract included unfair contract terms including that if they didn't pay the annual fees the Supplier could rescind the contract.
- That the Supplier had breached the contract by going into administration.
- That the sales agents selling the memberships were unauthorised credit intermediaries and this makes the contract unenforceable and Mr C and Ms F could recover what they paid under the Credit Agreement.
- 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 C and Ms F for the above and sets out a claim in damages.

The Lender issued its response to the letter of claim on 23 August 2022 rejecting the complaint in every regard. So, the PR brought the complaint to this service.

Mr C and Ms F'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 on the matter dated 16 May 2025. The Lender confirmed receipt and accepted my position. The PR on behalf of Mr C and Ms F responded with further arguments and comments from Mr C and Ms F and others.

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 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 ("").
    • 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, it is my decision not to uphold this complaint. I shall deal the responses I've received to my provisional decision under the heading of 'additional arguments.' But first I'll repeat my provisional position-in italics for ease of reading.

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.

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

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 C and Ms F's could make against the Supplier.

Certain conditions must be met for section 75 to apply including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Section 75(3)(b) says this protection does not apply if:

"the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000."

In this case we have the pricing sheet from this purchase which clearly shows the purchase price of the membership is £39,670. Accordingly, this claim under section 75 of the CCA isn't within the financial limits set by the CCA. And so, any section 75 claim made to the Lender cannot be successful as liability does not attach to the Lender for any misrepresentations or breaches of contract by the Supplier under this provision.

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 C and Ms F a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, here a claim has been made under Section 75A (which has different requirements, including financial limits) and that if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr C and Ms F also say that the Supplier breached the Purchase Agreement because it went into liquidation. 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 C and Ms F 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 C and Ms F 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 C and Ms F 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 Times 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 C and Ms F 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 C and Ms F, the Supplier, and The Lender were such that the negotiations conducted by the Supplier during its sale of this Fractional Club membership to Mr C and Ms F 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 C and Ms F'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 C and Ms F 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 Times 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 Times 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 Times 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 C and Ms F and The Lender.

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

Mr C and Ms F complained about The Lender being party to an unfair credit relationship for several reasons, which I've set out in this decision. This includes the suggestion that Mr C and Ms F purchased Fractional Club membership because the Supplier marketed and sold it to them as an investment in breach of prohibition against selling timeshares in that way.

The Lender does not dispute, and I am satisfied, that Mr C and Ms F'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 C and Ms F'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 C and Ms F's PR has argued that this is what happened in this case, albeit more vociferously 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 C and Ms F 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 C and Ms F'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 C and Ms F 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 C and Ms F, 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 C and Ms F 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 suggested that Fractional Club membership wasn't sold to Mr C and Ms F as an investment. It is nonetheless possible that the Supplier marketed and sold Fractional Club membership to Mr C and Ms F 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 C and Ms F which was supplied to this service in August 2023 and the accompanying email from the PR says that this undated and unsigned statement was drafted on 28 March 2022. I note that within this statement there is reference to a number of purchases of timeshare memberships. I also note that in reference to the Time of Sale in this complaint the statement by Mr C and Ms F makes no reference to it being sold or marketed as an investment, instead all of the evidence is about the better holidays they could take by upgrading their membership. It makes clear that the motivation for this purchase was that the "number of points would at least let us have 1 holiday per years when traded in." So, it's clear to me that the motivation Mr C and Ms F point to for this purchase wasn't due to it being marketed as an investment.

And while I've noted Mr C and Ms F's witness statement, I must note that it differs significantly from the arguments raised in the letter of claim. For example, the original complaint was that this was sold as an investment that could be sold back to the Supplier at

any time, but I simply do not see that as being a part of Mr C and Ms F's statement. And there are complaint points raised in the Letter of claim which aren't made in the witness statement. So, where there is any discrepancy, I have preferred Mr C and Mrs F's evidence of what happened and, therefore, what their complaint is about.

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 enhanced holiday options.

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 C and Ms F's purchasing decision, it is difficult to understand why Mr C and Ms F statement did not persuasively argue this point (or mention it at all). Additionally, 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 provided in any of these written comments on the matter.

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 C and Ms F's decision to purchase Fractional Club membership at the Times of Sale were motivated by the prospect of a financial gain (a profit).

On the contrary, I think the evidence suggests Mr C and Ms F purchasing decision was founded on their strong attraction to the improved holiday arrangements this Fractional Club membership provided. 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 C and Ms F and The Lender was unfair to them whether or not the Supplier breached Regulation 14(3).

Unfair Contract Terms

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 C and Ms F when they purchased membership of the Fractional Club at the Time of Sale. The PR says that the contractual terms governing the ongoing costs of Fractional Club membership and the consequences of not meeting those costs were unfair contract terms under the CRA.

One of the main aims of the Timeshare Regulations and the CRA 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 and the CRA 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 C and Ms F have described how the operation of the terms the PR has pointed to has led to unfairness in the particular circumstances of Mr C and Ms F. 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 C and Ms F. 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 C and Ms F or caused an unfairness in the credit relationship.

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

Is the loan agreement voidable?

I have seen the PR referencing the findings of Spanish courts on similar cases and suggesting that the membership here was illegal. I have seen no persuasive reason why the timeshare agreement would be voidable under English law (the law that applies in this case). It therefore follows that I do not think the associated credit agreement is voidable.

Was the timeshare provider an authorised broker?

At the time of sale, the regulation of consumer credit was performed by the FCA and I have seen that the timeshare provider had the requisite authority. But the actual complaint made by the PR here is that the sales staff were not employees of the supplier. However, the Lender has confirmed to this Service that the sales representatives used and that dealt with Mr C and Ms F's purchases were employed by the Supplier and had undertaken training in brokering sales. I have no reason to doubt this, so I do not think the brokering of the credit in this sale was unauthorised.

Were the right affordability checks carried out at the time of sale?

Originally Mr C and Ms F have said that they do not recall any checks being carried out at the time of sale and the PR says this means the lending was irresponsible. Our investigator said that she could not see any evidence that this was a case of irresponsible lending. When considering a complaint about unaffordable lending, a large consideration is whether the complainant has actually lost out due to any failings on the part of the lender. So, if the Lender did not do appropriate checks (and I make no such finding), for me to say it needed to do something to put things right, I would need to see that Mr C and Ms F lost out as a result of its failings. Neither Mr C and Ms F nor their PR has provided any evidence that they, at the times of sale, would have found it difficult to repay the loan. And whether they had later difficulty in paying the loan is not persuasive evidence that they could not afford the lending at the times it was taken. I also note that the PR here on receipt of the Investigators findings on this matter chose to neither contend them nor provide any further evidence on this point and it is not mentioned in the evidence from Mr C and Ms F. So, I see no persuasive reason to uphold this element of their complaint.

Additional arguments

I've considered the comments of the PR here and additional comments from Mr C and Ms F. A significant part of these representations relates to what is already agreed or already known to the parties (for example the relevant law). So, I see no need to comment on those particular representations as they're not contested.

I should start by saying that gaps and inconsistencies in evidence are a normal part of someone trying to remember what happened in the past. So, I'm not surprised that there are some inconsistencies between the submissions made here by Mr C and Ms F. But the question to consider is whether there is a core of acceptable evidence from what Mr C and

Ms F say that means the inconsistencies have little to no bearing on whether their testimony can be relied on, or whether such inconsistencies are fundamental enough to undermine, if not contradict, what they say about what happened at the time of sale.

I should next address an issue with the PR's representations in response to my provisional decision. The PR has repeatedly 'respectfully disagreed' with my findings by pointing to comments by Mr C and Ms F gathered after my decision was issued. The question at the centre of this whole matter is whether the Lender considered the claims made to it in 2022 fairly. It, nor this service, can consider evidence in a claim which hasn't been supplied to it at the time of consideration.

Similarly, I should note that it is my view that recollections more contemporaneous to events are *broadly* (my emphasis) more reliable than those that are less contemporaneous to the events in question. So, it is disappointing that the PR appears to have not provided the fullest representation of their clients recollections at the time of making the claim in 2022.

The PR has supplied an email they sent to Mr C and Ms F dated 29 May 2025 stating "*I would like to ask you a couple of more questions (highlighted in red, so that you do not miss any) regarding your previous email with your witness statement. Note: I am not sending you the decision itself because I do not want it to influence your response."* This email leads to a response from Mr C and Ms F dated 29 May 2025. And although there are questions which are broad open questions set by the PR, I also consider some of the questions (to varying degrees) to be leading to Mr C and Ms F and potentially do influence their responses. For example:

- In reference to a different timeshare sale (not part of this complaint) where an allegation of it being sold as an investment had been made "*Do you remember if you have been told something similar at the sales presentation when you upgraded your existing ownership in 2017 or it was only enhanced holidays? Could you please explain a little bit more about this?"*
- *"I understand that the holidays were quite important for your family because you explain in length about them in your witness statement. Was the fact that it sounded like a good investment, an important part that influenced your decision to purchase? Was that also important for your further purchases? Would you have purchased if there was only the holidays benefit?"*

In Mr C and Ms F's response to these questions they essentially agree with the PR that this is what happened. However, their response provides no persuasive description of what was actually said at the time of sale or that was important to them or what happened when and where. In short it is my assessment that we have the original letters of claim and a post provisional decision statement from them, neither of which give a persuasive or detailed description of how the membership was sold to them in this case. Simply repeating in other words that it was sold in contravention of 14(3) is not persuasive in itself or persuasive of the Lender treating the claim unfairly by declining it. Or indeed sufficient for me to be persuaded to alter my position on the matter.

I also note that considering the evidence of Mr C and Ms F in the round there is a distinct and noticeable evolution of that. For example, in the letters of claim there are numerous issues raised including being able to sell back the allocated property, availability of the property, whether the broker was an unauthorised intermediary, that the Supplier was in liquidation and that the contract included unfair terms. By the latest statement of Mr C and Ms F it is my position that the focus is around the issues of investment and profit and the holidays aspect of this membership is not as important to them as before. And I do think evidence which is more contemporaneous is more reliable, broadly, than that which is less contemporaneous.

The PR has said in their submissions in response to my provisional decision that the investigator's assessment was not shown to her clients. It is unclear to me to what they would have objected to if they were unaware of the reasoning to the investigators assessment. It would seem to me that the focus of Mr C and Ms F's statements has noticeably changed and when paired with some of the questions the PR put to them and the because of the lack of explanation as to what was purportedly said to them during the sale in question (or details of those events more broadly), I'm not persuaded that I can place substantial weight on what they have said in this claim.

I also remain unpersuaded that any breach of Regulation 14(3) was material to Mr C and Ms F's purchasing decision. I have thought about this purchase in the round. Ultimately Mr C and Ms F's original statement on the matter made no allegation of this purchase of timeshare membership being predicated in anyway on it being marketed to them as an investment. If this had happened and had been important in their decision making, I would have expected them to do so. Accordingly, I can't say that the Lender treated them unfairly in relation to this aspect of their claim when making its decision originally. And turning to the latter comments of Mr C and Ms F which come some years later, the manner in which they've been led to make them and their noticeable change in emphasis, I'm not persuaded I can place any significant weight on them for the reasons given.

The PR has also provided comments from other parties who say they were present at the time. Both of these are brief in nature and neither give any real detail of what these witnesses witnessed during the sales process. In essence both comment on what Mr C and Ms F told them as witnesses rather than their own witnessing of what happened during the sales process. And even in that context these statements are very thin on detail or context. And they are not first-hand detailed explanations of what the Supplier said or did during the sales process. Bearing in mind the lack of detail in these as to what actually happened during the sales process I can't give these any significant weighting in my decision making.

And as I said in my provisional position, and I maintain now, although Mr C and Ms F have said in their more recent answers that in relation to this purchase the Supplier led them to believe that the Fractional Club membership was an investment from which they would make a financial gain, I don't feel I can place much, if any, weight on this in my determination of this case for the variety of reasons I've given including that they didn't mention this in their original statement regarding this sale. For this reason, and from all of the circumstances, I am simply not persuaded that this was the case. So, it follows that I am not persuaded that the credit relationship between Mr C and Ms F and the Lender was unfair to them.

Conclusion

In conclusion and given the facts and circumstances of the complaint I do not think the Lender has acted unfairly or unreasonably when it considered Mr C and Ms F's Section 75 claim. Furthermore, I'm not persuaded the Lender was party to an unfair credit relationship with Mr C and Ms F 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 C and Ms F or do anymore.

My final decision

It is my final decision that Mr C and Ms F's complaint about First Holiday Finance Ltd is not upheld. First Holiday Finance doesn't have to do any more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms F to accept or reject my decision before 22 July 2025.

Rod Glyn-Thomas
Ombudsman