DRN-5664631

The complaint

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

What happened

In early 2013, Mr D and Mrs D owned a timeshare membership, purchased from a supplier (the "Supplier"). While on a holiday in August 2013 (the "Time of Sale") Mr D and Mrs D attended a further sales meeting with the Supplier, as a result of which Mr D and Mrs D upgraded their membership (which is part of its "Fractional Club Membership").

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

The Purchase Agreement (in both Mr D and Mrs D names) bought Mr D and Mrs D 1420 fractional points at a cost of £30,817. This purchase was funded by trading in their current membership (valued at £12,100) and taking credit of £18,717 (in Mr D and Mrs D's names), provided by The Lender (the "Credit Agreement").

In September 2022 they appointed the PR to act on their behalf in pursuing complaints about their financial arrangements. With the PR's assistance Mr D and Mrs D complained to The Lender on 22 September 2022 (the "Letter of Complaint") to complain about:

- Misrepresentations under Section 75 of the CCA which led to Mr D and Mrs D losing out and which also led to an unfair relationship under section 140A of the CCA.
- That they were misrepresented to on the availability of the holidays.
- That they were pressured into purchasing the membership
- That the presence of commission being paid between Supplier and Lender made the relationship between Mr M, Mrs M and the Lender unfair.
- That the membership contract included unfair contract terms
- 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 D and Mrs D for the above and sets out a claim in damages.

The Lender issued its response to the letter of claim on 11 October 2022 rejecting the complaint in every regard. So, the PR brought the complaint to this service.

Mr D and Mrs D'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 16 June 2025 which didn't uphold Mr D and Mrs D's complaint. Both the Lender and Mr D and Mrs D's PR have responded with their positions on my provisional decision. The Lender agreed with my position. The PR made further arguments contrary to my position.

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 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 (including the positions of the parties in response to my provisional decisions) I do not uphold this complaint. I shall address the further arguments of the PR in the section of this decision called 'further arguments.' But first I'll reiterate my thinking in my provisional decision-in italics for ease of reading.

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 D and Mrs D'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 £30,817. Accordingly, the misrepresentation 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 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 D and Mrs D 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 D and Mrs D say in their handwritten submission 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 D and Mrs D states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on occasions between the date of sale and when they complained to the Lender. 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.*

Other than the above, although in the Letter of claim the PR says "The contract between Our Clients and the Seller was breached" there is no explanation of what term of the contract was breached by the Supplier. Nor is there any persuasive argument or persuasive evidence provided to support this allegation.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr D and Mrs D 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 breach and misrepresentation claim in question.

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

Mr D and Mrs D 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 D and Mrs D 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 D and Mrs D, the Supplier, and The Lender were such that the negotiations conducted by the Supplier during its sale of this Fractional Club membership to Mr D and Mrs D 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 D and Mrs D'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 D and Mrs D 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 D and Mrs D and The Lender.

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

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

They include the allegation that the Supplier misled Mr D and Mrs D and carried on unfair commercial practices (including concealing information) which were prohibited under the CPUT Regulations for the same reasons they gave for their Section 75 claim for misrepresentation. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr D and Mrs D have concerns about the way in which their Fractional Club

membership was sold, they have not persuaded me that there was a misrepresentation by the Supplier at the Time of Sale that gave rise to an unfair credit relationship for the other reasons they allege. I say this because in relation to the allegation that the membership was an "opportunity to make savings on holiday accommodation and to gain access to exclusive accommodation" I note that this is not persuasively argued in Mr D and Mrs D's witness statement. Nor is it actually clear what statement of fact was made which wasn't true and that was a material factor in their decision to purchase. Similarly with regard to the allegation that the sale date of the allocated property was misrepresented to Mr D and Mrs D I note that doesn't appear in their statement on the matter so although I'm not persuaded it was misrepresented it also is clear it wasn't an important factor in their decision making.

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

The PR says that the right checks weren't carried out before the Lender lent to Mr D and Mrs D. 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 D and Mrs D 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 D and Mrs D, I am not satisfied that the lending was unaffordable for Mr D and Mrs D. If there is any further information on this (or any other points raised in this provisional decision) that the Mr D and Mrs D wish to provide, I would invite them to do so in response to this provisional decision.

Mr D and Mrs D say (in their handwritten submissions 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mr D and Mrs D 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 D and Mrs D'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 (made latterly), 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 D and Mrs D's decision to purchase membership?

The Lender does not dispute, and I am satisfied, that Mr D and Mrs D'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."

In the letter of claim sent to the Lender by the PR in September 2022 there is no allegation of a breach of regulation 14(3) either overtly or implied. In November 2023 this service received arguments from Mr D and Mrs D which say 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 D and Mrs D'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 D and Mrs D's PR has argued that this is what happened in this case, albeit more 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 D and Mrs D 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 D and Mrs D'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 D and Mrs D 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 D and Mrs D, 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 D and Mrs D 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 D and Mrs D as an investment. It is nonetheless possible that the Supplier marketed and sold Fractional Club membership to Mr D and Mrs D 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 not raised by the PR at all. I've seen a statement from Mr D and Mrs D which was supplied to this service in November 2023 and the accompanying email from the PR says that this undated and unsigned statement was with its bundle of documents. However, I note that this written statement wasn't provided to this service in the original bundle submitted by the PR in November 2022 (just after it issued its letter of claim to the Lender in September 2022) and the Lender notes it didn't receive a statement from Mr D and Mrs D in the original claim. So I cannot discount the possibility that these written submissions were made after the judgment in Shawbrook & BPF v FOS was handed down and have been influenced by the publicity of that judgment. I also note that within this statement there is reference to three purchases of timeshare memberships. But it only makes the allegation of a membership being sold to them as an investment in relation to the second timeshare purchase that they

made, which was not the purchase made at the Time of Sale and which forms the subject matter of this complaint.

In relation to the purchase that Mr D and Mrs D have made a claim about to the Lender this handwritten statement is silent on how that particular membership was sold to them. They do say in their handwritten statement that this purchase followed them ringing the resort to 'complain bitterly' about availability. So, it seems that the 1420 points that they gained in this purchase which would have provided holiday benefits could have been a significant motivation for them. And although Mr D and Mrs D refer to this as their 'final investment to fractional' I'm not persuaded that this necessarily means this particular membership was purchased by them as an investment, i.e. with the hope or expectation of financial gain.

While I've noted Mr D and Mrs D's witness statement, I must note that it differs significantly from the arguments raised in the letter of claim. For example, the letter of claim focusses on issues such as commission and that the lending was unaffordable at the time of purchase. but I simply do not see those arguments as being a part of Mr D and Mrs D's statement. And the Letter of Claim makes no allegation of a breach of regulation 14(3) overtly or implied at all. Which I would expect considering the PR has argued more recently that they would not have bought the membership but for it being sold to them as an investment. So, I'd have expected that to be a main if not the primary argument in their letter of claim but it isn't.

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 D and Mrs D's purchasing decision, it is difficult to understand why Mr D and Mrs D statement did not persuasively argue this point. 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 D and Mrs D'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 D and Mrs D 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 D and Mrs D 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 D and Mrs D 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 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 and the UTCCR's 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 D and Mrs D have described how the operation of the terms the PR has pointed to has led to unfairness in the particular circumstances of Mr D and Mrs D. 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 D and Mrs D. 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 D and Mrs D or caused an unfairness in the credit relationship.

Commission

The PR in their letter of claim made repeated claims that the payment of commissions between the Lender and the Supplier made the relationship unfair. The Lender has answered this point in its correspondence with this service and has stated that no commissions were paid in transactions such 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 D and Mrs D 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

I've considered the PR's comments in response to my provisional decision. A significant part of these representations relates to what is already agreed or already known to the parties (for example the relevant law and relevant arguments around the relevant case law). So, I see no need to comment on those particular representations as they're not contested. Accordingly I'll only comment on those arguments that I consider need addressing.

I should also note that rather than dealing directly with my findings regarding what happened in the sales process at the time of sale in Mr D and Mrs D's purchase (for example with regard to pressure) the PR, for reasons unclear, has simply regurgitated what it said originally. It has chosen not to provide further evidence or further argument. So broadly speaking it hasn't given any reasons for me to change my positions on such matters.

To elucidate on the pressure point I said in my provisional decision:
"Mr D and Mrs D say (in their handwritten submissions 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mr D and Mrs D made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier."

The PR has responded by saying:
Paragraph 9 "*During the lengthy presentation, our clients were subjected to a highly persuasive and high-pressure sales pitch*."
Paragraph 40 "*To disregard their direct testimony in favour of the Supplier's self-serving contractual disclaimers is to ignore the reality of the high-pressure sales presentations that are endemic to this industry*."
Paragraph 95 "*Fourthly, the sales process was procedurally unfair. Our clients were subjected to a lengthy, high-pressure sales presentation and then provided with voluminous and incomprehensible documents with little time to read or consider them."*

However none of what the PR has said in response to my provisional decision gives any persuasive argument to the point I made on this point, namely:
"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."

Had Mr D and Mrs D felt they didn't have a real choice in taking this membership then, on seeing my provisional position, I'm sure they could have said what happened and given more details of this pressure they felt. But that hasn't been forthcoming so I see no reason to change my position on that matter for the reasons already given.

Similarly the PR repeats its comments about the membership being sold as an investment. However it doesn't engage with what I've said on the matter, specifically:
"In the letter of claim to the Lender the issue of whether it was sold as an investment was not raised by the PR at all. I've seen a statement from Mr D and Mrs D which was supplied to this service in November 2023 and the accompanying email from the PR says that this undated and unsigned statement was with its bundle of documents. However, I note that this written statement wasn't provided to this service in the original bundle submitted by the PR in November 2022 (just after it issued its letter of claim to the Lender in September 2022) and the Lender notes it didn't receive a statement from Mr D and Mrs D in the original claim. So I cannot discount the possibility that these written submissions were made after the judgment in Shawbrook & BPF v FOS was handed down and have been influenced by the publicity of that judgment. I also note that within this statement there is reference to three purchases of timeshare memberships. But it only makes the allegation of a membership being sold to them as an investment in relation to the second timeshare purchase that they made, which was not the purchase made at the Time of Sale and which forms the subject matter of this complaint.

In relation to the purchase that Mr D and Mrs D have made a claim about to the Lender this handwritten statement is silent on how that particular membership was sold to them. They do say in their handwritten statement that this purchase followed them ringing the resort to 'complain bitterly' about availability. So, it seems that the 1420 points that they gained in this purchase which would have provided holiday benefits could have been a significant motivation for them. And although Mr D and Mrs D refer to this as their 'final investment to fractional' I'm not persuaded that this necessarily means this particular membership was purchased by them as an investment, i.e. with the hope or expectation of financial gain.

While I've noted Mr D and Mrs D's witness statement, I must note that it differs significantly from the arguments raised in the letter of claim. For example, the letter of claim focusses on issues such as commission and that the lending was unaffordable at the time of purchase. but I simply do not see those arguments as being a part of Mr D and Mrs D's statement. And the Letter of Claim makes no allegation of a breach of regulation 14(3) overtly or implied at all. Which I would expect considering the PR has argued more recently that they would not have bought the membership but for it being sold to them as an investment. So, I'd have expected that to be a main if not the primary argument in their letter of claim but it isn't.

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 D and Mrs D's purchasing decision, it is difficult to understand why Mr D and Mrs D statement did not persuasively argue this point. 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 D and Mrs D's decision to purchase Fractional Club membership at the Times of Sale were motivated by the prospect of a financial gain (a profit)."

The PR doesn't engage with these issues I've raised in my provisional decision in its response to any meaningful or persuasive manner. It simply reiterates that it feels that it was sold as an investment and as such Mr D and Mrs D have lost out. However it doesn't address the issues of Mr D and Mrs D not saying this when referring to this specific sale as I pointed out. Nor does it explain why when Mr D and Mrs D say this now this wasn't in their original letter of claim. The PR's position on this point is far from persuasive to me.

The PR has argued that it is important to actually consider whether the timeshare was actually capable of being an investment because it says Mr D and Mrs D were told that they were buying an interest in a specific piece of 'real property, when it says that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr D and Mrs D share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property. 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 as such memberships of timeshares could be either not investments or investments without breaking regulation 14.3 (it is the manner of their sale that is the key question as to whether the regulation is breached as I've described), and considering the lack of persuasive evidence here I'm not persuaded that Mr D and Mrs D have demonstrated that they do not have such an interest and consequently I'm not persuaded that they're in an unfair relationship. Similarly the PR has made allegations that this sale was indeed a fraud but it must be remembered that Mr D and Mrs D in making their claim to the Lender need to make out their claim to the Lender. And although the PR has made numerous allegations in its claims and indeed its representations to this service it has failed to make out these allegations or indeed show that the Lender treated the claim unfairly.

The PR has argued that the Supplier breached some of the CPUT regulations. I repeat what I said in my provisional decision:

“They include the allegation that the Supplier misled Mr D and Mrs D and carried on unfair commercial practices (including concealing information) which were prohibited under the CPUT Regulations for the same reasons they gave for their Section 75 claim for misrepresentation. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.”
The PR has not provided any persuasive evidence on this point in response to my provisional decision nor shown how they’ve lost out as a result. So I see no persuasive reason to change my position on this point.

So having considered the positions of the parties in response to my provisional decision I see no persuasive reason to deviate from the stance and reasoning that I set out in that provisional decision.

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 D and Mrs D’s Section 75 claim. Furthermore, I’m not persuaded the Lender was party to an unfair credit relationship with Mr D and Mrs D 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 D and Mrs D or do anymore.

My final decision

It is my decision to not uphold Mr D and Mrs D’s complaint about First Holiday Finance Ltd. It has nothing further to do in this matter.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs D and Mr D to accept or reject my decision before 30 July 2025.

Rod Glyn-Thomas
Ombudsman