

The complaint

Mr and Mrs O complain that First Holiday Finance Ltd (“FHF”) acted unfairly and unreasonably by participating in an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (“CCA”), and by deciding against paying a claim under Section 140A of the CCA.

What happened

I issued a provisional decision on Mr and Mrs O’s case on 27 June 2025, in which I set out the background to the complaint, along with my provisional findings on it. A copy of my provisional decision is appended to, and forms part of, this final decision. For that reason, it’s not necessary to go over all the details again because these can be found in the appended document, but to summarise briefly:

- Mr and Mrs O purchased a membership of a kind of asset-backed timeshare product (the “Fractional Club”), in May 2014, from a timeshare provider (the “Supplier”). The membership was paid for by a loan arranged by the Supplier with FHF (the “Credit Agreement”). The Credit Agreement was repaid in late November 2015.
- Using a professional representative (“PR”), Mr and Mrs O complained to FHF on 13 July 2022 that the timeshare had been mis-sold. The complaint was about breaches of contract and misrepresentations by the Supplier, which it was argued gave Mr and Mrs O a claim against FHF under Section 75 of the CCA; FHF’s alleged participation in an unfair credit relationship with Mr and Mrs O, and the arrangement of the Credit Agreement by what was said to have been an unauthorised credit broker.

In my provisional decision, I said that I considered parts of the complaint were outside of the Financial Ombudsman Service’s jurisdiction to consider, and the rest of the complaint ought not to be upheld. Again, the reasons for these conclusions can be found in the appended provisional decision, but briefly:

- The Financial Ombudsman Service did not have the jurisdiction to consider Mr and Mrs O’s complaint that the credit relationship between them and FHF was unfair to them under Section 140A of the CCA, because the complaint had been brought more than six years after the end of the credit relationship in question, and more than three years after Mr and Mrs O ought reasonably to have known they had cause to complain.
- FHF had not acted unfairly or unreasonably in declining Mr and Mrs O’s Section 75 claim, because their claim for misrepresentation was time barred under the Limitation Act 1980 and, while any alleged breaches of contract occurring from 13 July 2016 onwards were not time barred, there was insufficient evidence to be able to conclude the Supplier had been in breach of contract concerning matters such as accommodation availability or standards, or the way in which it had calculated annual management fees.
- While it seemed the Credit Agreement had been arranged by an unauthorised credit

broker, this did not entitle Mr and Mrs O to redress from FHF, because the relevant section of the Financial Services and Markets Act (“FSMA”) wasn’t engaged, due to all the relevant activities having been carried on from outside of the United Kingdom.

I asked the parties to the complaint to let me have any further submissions they wanted me to consider. FHF responded to say it agreed with the decision overall, but it didn’t agree that the credit broker had lacked the necessary authorisations to arrange the Credit Agreement. It supplied a copy of an authorisation record from the Financial Conduct Authority (“FCA”) which it said proved the broker had held an interim permission for the activity of credit broking at the relevant time.

Neither Mr and Mrs O, nor PR, have responded to the provisional decision, and the deadline to reply has now passed.

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.

Because I have received no submissions from either party on the majority of the findings I made in my appended provisional decision, I see no reason to depart from those findings and the conclusions I reached as a result. It follows that my conclusions remain the same as set out in my appended provisional decision, and for the same reasons. For clarity, those conclusions are:

1. The Financial Ombudsman Service doesn’t have the jurisdiction to consider Mr and Mrs O’s complaint about FHF participating in a credit relationship with them that was unfair.¹
2. FHF did not act unfairly or unreasonably in declining Mr and Mrs O’s Section 75 claim.

The only point on which I have received further submissions is the matter of whether or not the Supplier held permissions from the FCA to arrange the Credit Agreement. FHF has provided a record of the authorisation. This appears to be genuine, and shows the Supplier held an interim permission for credit broking. The Supplier had previously been licenced by the Office of Fair Trading, prior to the FCA taking over regulation of the consumer credit sector on 1 April 2014.

I have also obtained further historic records of entities which held interim permissions from the FCA, and have been able to verify from these that the Supplier did hold interim permissions. For the reasons I explained in the provisional decision, in this specific case the Supplier’s permissions or authorisation status didn’t make a difference to the outcome, but based on this new information my conclusion is that the Supplier most likely was an authorised credit broker at the time it arranged the Credit Agreement.

My final decision

For the reasons explained above, and in the appended provisional decision, I do not uphold Mr and Mrs O’s complaint.

¹ A finding relating to our jurisdiction is not, in a technical sense, a matter for a final decision, but it’s necessary to record and confirm my conclusion on this point, so I have done so in this document.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 13 August 2025.

A handwritten signature in blue ink, appearing to read 'Will Culley', with a horizontal line underneath.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've reached broadly the same overall conclusions as our Investigator, but not for the same reasons. I also think there is part of Mr and Mrs O's complaint that the Financial Ombudsman Service doesn't have the power to consider.

The deadline for both parties to provide any further comments or evidence for me to consider is **11 July 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr and Mrs O's complaint is that First Holiday Finance Ltd ("FHF") acted unfairly and unreasonably by participating in an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 ("CCA") and deciding against paying a claim under Section 75 of the CCA.

What happened

Mr and Mrs O purchased a number of timeshare products from a timeshare provider (the "Supplier"), between approximately 2011 and 2014. This complaint concerns a purchase they made on 14 May 2014 (the "Time of Sale").

While the information I've been provided about Mr and Mrs O's purchase history with the Supplier has been somewhat limited, I understand the May 2014 purchase was of a type of asset-backed timeshare, which I'll refer to as the "Fractional Club". This timeshare entitled Mr and Mrs O to exchange a certain number of points annually for holiday accommodation, but also entitled them to receive a portion of the net sale proceeds of a property named on their timeshare agreement, which was due to be put up for sale after a certain number of years. Mr and Mrs O purchased the timeshare using a loan (the "Credit Agreement") from FHF which was arranged by and paid to the Supplier, which acted as the credit intermediary or broker. The Credit Agreement appears to have consolidated Mr and Mrs O's indebtedness under a previous loan, most likely also with FHF.

Mr and Mrs O repaid the Credit Agreement on either 27 or 30 November 2015.

Much later, on 13 July 2022, Mr and Mrs O complained to FHF using a professional representative ("PR"). While the complaint was not very clearly particularised, I have interpreted it to have been about the following matters:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against FHF under Section 75 of the CCA.
2. Breaches of Contract by the Supplier (or associated companies) subsequent to the Time of Sale, also giving them a claim against FHF under Section 75 of the CCA.
3. FHF's participation in an unfair credit relationship under the Credit Agreement and related timeshare agreement for the purposes of Section 140A of the CCA.
4. The Credit Agreement having been arranged by an unauthorised credit broker and being unenforceable as a result, as well as entitling Mr and Mrs O to a refund of the

money they'd paid, and compensation.

Mr and Mrs O's Section 75 Complaint

PR said in its letter of complaint that the Supplier had made a number of false statements to Mr and Mrs O at the Time of Sale which amounted to actionable misrepresentations, namely:

- That they were purchasing an investment from the Supplier that would appreciate in value.
- That they could sell their timeshare back to the Supplier, or sell it on easily at a profit.
- That they would have access to "the holiday's apartment" at any time all year round.

PR also said that the Supplier had breached its contract with Mr and Mrs O because it (or associated companies) had gone into liquidation in 2020.

Mr and Mrs O's Section 140A Complaint

PR mentioned a number of things in its letter of complaint which would reasonably be described as reasons why the credit relationship between Mr and Mrs O and FHF was unfair to them. It's not necessary to go into the finer detail, but the reasons included:

- The Supplier had sold the Fractional Club product to Mr and Mrs O as an investment, in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the "Timeshare Regulations").
- The Lender (or the Supplier on its behalf) had failed to carry out any checks into whether Mr and Mrs O could afford the Credit Agreement.
- The timeshare agreement contained terms which were unfair to Mr and Mrs O.

Mr and Mrs O's own comments

As well as PR's points, I've seen a letter from Mr and Mrs O, said to have been written on 7 September 2021, in which they narrate their history with the Supplier and explain why they are complaining. I've summarised the reasons why they said they were complaining below (insofar as they are relevant to the 2014 purchase):

- They had been informed all of the Supplier's accommodation was of the same standard, however they found that the high quality accommodation they were shown on their first holiday was not available at other resorts operated by the Supplier.
- They had been informed they would have no problems accommodating their large family when booking through their Fractional Club timeshare, but they had often been unable to book accommodation of a suitable size when they wanted, where they wanted.
- They often had to book up to 2 years in advance to get suitable accommodation, which wasn't acceptable.
- The rate of interest on the loan had been high and they had needed to use their life pension to pay it off.

- They had been informed the Fractional Club product would be an investment which would make a profit in 19 years' time when the underlying property was sold. However, this wasn't true and they now understood the product had little or no value.
- They had been subjected to many hours of high-pressure sales techniques which had left them feeling as though they had to agree to buy something in order to escape the Supplier's sales process.
- The Supplier had vastly exaggerated the benefits of its products, which had represented poor value for money.
- They had never been told about the cooling off period.
- They had never been told what the cost of the finance, in terms of interest, would be, and they'd never been asked if the loan would be affordable for them. They had been told they had failed a credit check but the Supplier had said they would "get round this" by using FHF.
- They had been told the annual management fees would be a lot lower than they actually were, and they were misled about how much they would increase by over time. Fees began at 699 euros per year in 2011 and had reached 1,592 euros by 2021.
- They had been falsely told the Supplier's resorts were exclusive to members when this was not the case. The same accommodation could be booked for cheaper on online platforms.

FHF considered Mr and Mrs O's complaint and rejected it. PR subsequently referred the matter to the Financial Ombudsman Service where it was looked at by one of our Investigators. Our Investigator said he didn't think the complaint should be upheld. He reached the following conclusions:

- Mr and Mrs O's Section 75 and Section 140A claims had been time-barred under the Limitation Act 1980, giving FHF a complete defence to the claims.
- Even if it was the case that FHF had failed to carry out the checks it ought to have done, there wasn't enough evidence that the Credit Agreement had actually been unaffordable for Mr and Mrs O.
- The Credit Agreement had not been arranged by an unauthorised credit broker.
- The relevance to the complaint of some companies in the Supplier's group having gone into liquidation in 2020, hadn't been explained.

FHF accepted our Investigator's assessment. PR did not, making the following points on Mr and Mrs O's behalf:

- The limitation period for Section 140A claims could be extended in cases involving fraud or concealment. The clock would essentially not start to run until the fraud or concealment had been discovered. PR argued that the Supplier had illegally sold the Fractional Club membership to Mr and Mrs O as an investment, but had also *concealed* the fact the product was an investment (or had at least concealed the fact that it was illegal to sell the product in this way), thus giving them more time to make a claim.

- It was definitely the case that the product has been sold as an investment, a contention supported by the Supplier's training manuals.
- The investment aspect of the product was, in general, an important part of the Supplier's sales process and consumers' decision-making processes when agreeing to the buy Fractional Club membership from the Supplier.

The case has now been passed to me to decide.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide provisionally:

1. Whether (and to what extent) the complaint falls within the jurisdiction of the Financial Ombudsman Service; and (if relevant).
2. What's fair and reasonable in all the circumstances of the complaint, for any parts of the complaint our jurisdiction permits me to consider.

Having done so, my provisional conclusions are:

1. That Mr and Mrs O's complaint that the credit relationship between them and FHF was unfair to them, is not one the Financial Ombudsman Service has the jurisdiction (power) to consider.
2. That the rest of Mr and Mrs O's complaint has been brought in time, but FHF's decision not to honour the Section 75 claim was not an unfair or unreasonable one, and that although the credit broker did not hold permissions or authorisation from the relevant regulator, this does not result in Mr and Mrs O being entitled to redress.

I'll now go on to explain why.

Our jurisdiction to consider Mr and Mrs O's complaint

The rules which outline the complaints the Financial Ombudsman Service has the jurisdiction to consider are set out in the Financial Conduct Authority's Handbook, under the chapter named DISP, and these rules are therefore usually known as the "DISP" rules.

DISP 2.8.2 R contains rules about how long a complainant has to bring a complaint. The relevant part of the rules says the following:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

...

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledge or some other record of the complaint having been received; unless

(3) in the view of the Ombudsman, the failure to complain with the time limits in DISP 2.8.2 R...was as a result of exceptional circumstances; or

...

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits...have expired..."

In short, this means that in order for me to be able to consider Mr and Mrs O's complaint, they need to have made the complaint within six years of the event which the complaint relates to or, if this gives them longer, within three years of when they became aware (or ought reasonably to have been aware) of their cause to complain, unless there are exceptional circumstances which prevented the complaint from being brought earlier or FHF has consented to the complaint being brought late (which it hasn't in this case).

In order to determine whether or not a complaint has been brought inside the relevant time limits, it's necessary to define the "event" the complaint relates to. As far as Mr and Mrs O's complaint about FHF's failure to honour their Section 75 claim is concerned, the event is FHF's decision to decline the claim.

In this case, it was apparent in FHF's letter of 29 July 2022 that it was not going to honour the Section 75 claim, so this is the most reasonable date from which to start the six-year time limit in relation to this issue. Mr and Mrs O referred their complaint to the Financial Ombudsman Service shortly after this letter was sent, so I'm satisfied that this part of the complaint was made "in time" and, as I've not seen any other reason that it would fall outside of our jurisdiction, I will go on to consider its merits later in this decision.

Mr and Mrs O's complaint about FHF's participation in a credit relationship that was unfair to them under Section 140A of the CCA, requires a slightly different analysis. It's now well established in the courts that a determination of whether or not a credit relationship complained of is unfair has 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 is the date of the trial in the case of an existing credit relationship, or otherwise the date the credit relationship ended.

In practical terms, this means the event for the purposes of DISP 2.8.2 R was Mr and Mrs O's credit relationship with FHF which was alleged to have been unfair, and this event was a continuous one which came to an end on either 27 or 30 November 2015 when they settled the loan in question. The six-year time limit would therefore begin to run from that point.

It's not in dispute that the complaint was first made to FHF in July 2022. This was more than six years after the relevant credit relationship ended, and so the complaint was made too late under the six-year limb of DISP 2.8.2 R.

That leaves the three-year limb of the rule, which could, in theory, give Mr and Mrs O more time to make their complaint. The question which must be answered is whether Mr and Mrs O complained within three years of when they became aware, or ought reasonably to have been aware, that they had cause to complain about the potential unfairness of the credit relationship with FHF.

I will say here that the matters which could give rise to an unfair credit relationship are potentially very broad, and Mr and Mrs O only need to have been aware of one reason for the relationship to have potentially been unfair (or been in a position where they ought reasonably to have been aware of one reason) for the three-year clock to start. They wouldn't get a further three years if they later discovered *another* reason why the credit relationship may have been unfair.

Mr and Mrs O also don't need to have had actual, exact knowledge of their cause to complain to FHF, to start the three-year clock running. They just need to have had constructive knowledge. What this means is that they need to have been put on the path to discovering that FHF had been responsible for something that had, or might have, gone wrong and caused them a loss. Bearing this in mind, to start the three-year clock, I think Mr and Mrs O should reasonably have been aware, or been put on the path to discovering, that:

- There was a problem with the lending or the timeshare.
- The problem had caused them, or was causing them, a loss.
- Someone else may have been responsible for this loss, through their actions or failure to act.
- This someone else may have been FHF.

Having carefully read Mr and Mrs O's complaint, I think they ought reasonably to have been aware that they had cause to complain to FHF, by the latest, when they paid off the Credit Agreement (late November 2015).

In their letter in which they explain why they are complaining, Mr and Mrs O explain they were "*never explicitly informed what the cost would be in interest [of the loan], nor were we asked whether this would be affordable for us*". They went on to explain that they had used their pension(s) to settle the loan in order to avoid the high interest they hadn't been informed of.

It's apparent that Mr and Mrs O, having not been made aware of the interest on the loan, had discovered this by late November 2015, as this is when they settled it by using their pension(s). So it seems to me that by this point they would have been aware of, or been put on the path to discovering, that FHF's actions in charging them a high rate of interest which they'd not previously known about, had caused them a loss. I think Mr and Mrs O ought reasonably to have realised that they had cause to complain that their credit relationship with FHF might have been unfair to them, long before they actually complained. And so I don't think the three-year limb of DISP 2.8.2 R gives them any longer to have made their complaint than the six-year limb.

In light of the above, I am minded to conclude that Mr and Mrs O had six years from, at the latest, 30 November 2015, to make their complaint to FHF about the alleged unfair credit relationship, for it to have been made in time for the purposes of the Financial Ombudsman Service's rules. The complaint was not made within that period, and so I must conclude that we do not have power to consider the complaint about this, unless exceptional circumstances prevented them from bringing the complaint in time.

We've not been made aware of any exceptional circumstances that prevented Mr and Mrs O from bringing their complaint sooner. PR has not mentioned any such circumstances in its response to the assessment, so I'm currently of the view that Mr and Mrs O were not prevented from making their complaint in time as a result of exceptional circumstances. I'm willing to consider any further information Mr and Mrs O can provide on this point.

It follows that I am minded to decide that Mr and Mrs O's complaint that their credit relationship with FHF was unfair to them, is not a complaint the Financial Ombudsman Service has the power to consider.

Regarding the complaint that the Credit Agreement was arranged by an unauthorised credit broker, while the event in question clearly took place more than six years prior to the complaint being made, I've seen no evidence that Mr and Mrs O would have been aware either that the credit intermediary *needed* specific authorisation to arrange the Credit Agreement, or that it may not have had this. It appears unlikely to me that they were aware, or ought reasonably to have been aware, that they may have had cause to complain about this, at any point up to when the complaint was made. It follows that I consider this part of the complaint to have been brought within the period of time allowed under our rules.

Mr and Mrs O's Section 75 Complaint - Misrepresentation

As I've observed already, this part of the complaint falls within the jurisdiction of the Financial Ombudsman Service so I am able to consider it.

Section 75 of the CCA gives a borrower who has paid for goods or services with certain kinds of credit (such as the loan with FHF), the right to make a "like claim" against the creditor in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

As a general rule, I think it's reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 ("LA"), as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would have been available in court. So, it is relevant to consider whether Mr and Mrs O's Section 75 claim was time-barred under the LA *before* PR put the claim to FHF on their behalf.

As I mentioned above, a claim under Section 75 is a "like claim". This means it mirrors the claim Mr and Mrs O could have made against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. A claim for breach of contract against the Supplier would also be subject to a limitation period of six years from the date on which the cause of action accrued.

Any claim against a lender under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. Such claims *also* have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr and Mrs O's case, that's when they entered the agreement to purchase the timeshare, and the related Credit Agreement, on 14 May 2014. This would be mirrored in the claim against FHF.

Mr and Mrs O first notified FHF of their Section 75 claim in July 2022, more than six years after the cause of action accrued in relation to their claims for misrepresentation. So I don't think it was unfair or unreasonable of FHF to decline the part of their claim relating to the Supplier's alleged misrepresentations.

As I observed earlier, PR has argued that the limitation period can be extended in the case of concealment or fraud. There are provisions within the LA to extend limitation periods in

such circumstances, however PR's arguments on this point focus on the Section 140A part of the complaint, and this part of the complaint falls outside our jurisdiction for the reasons already explained. And I don't PR's arguments assist the claim in relation to misrepresentation, because the *concealment* of the product being an investment would be inconsistent with the allegation that the Supplier had falsely told Mr and Mrs O the product was an investment.

Mr and Mrs O's Section 75 Complaint - Breach of Contract

In claims for breach of contract, the cause of action accrues at the point the contract is breached. So, in practical terms, any alleged breach which occurred from 13 July 2016 (six years before the claim was made) onwards will not be time-barred under the LA. I consider these alleged breaches below.

Mr and Mrs O's allegations in relation to the poor availability of holidays in destinations they wanted to visit, and at times of year they wanted to go, I think are allegations that the Supplier was in breach of contract. Mr and Mrs O have not been mentioned any particular occasions on which they tried to book holidays but were unable to do so, so it's difficult to identify any specific alleged breaches of the timeshare agreement by the Supplier. However, I note the documents Mr and Mrs O would have signed at the Time of Sale, stated that holidays would be subject to availability, bookings were on a "first-come, first-served" basis, and that accommodation during school holidays in particular, would need to be booked as far in advance as possible. So even if Mr and Mrs O could point to specific occasions where they were unable to book certain holidays, it might be challenging to conclude that this represented a breach of contract by the Supplier, given the terms of their agreement.

The same difficulties apply to Mr and Mrs O's complaint that some of the Supplier's accommodation was of a lower standard. No examples have been provided, and the contractual documentation I've seen, either linked to Mr and Mrs O's purchase specifically, or the Fractional Club product in general, doesn't seem to promise any specific, verifiable standard. It is apparent however, from the resort catalogue relating to the product, that a variety of different types of accommodation existed within the Supplier's portfolio.

Finally, I've thought about whether Mr and Mrs O's complaint about rising management fees could represent a complaint that the Supplier was in breach of contract. While Mr and Mrs O have said the fees rose from 699 euros to 1,592 euros over a period of ten years, they've not been able to point specifically to anything that would represent a breach of contract by the Supplier, for example that any of the increases were calculated in a way which was contrary to the terms of their agreement. Based on the relevant documents relating to the Fractional Club which explain how the management fees would be calculated, and the limited evidence supplied in this complaint, I'm unable to identify any breach of contract by the Supplier in relation to the management fees.

In light of this, I don't think FHF was unfair or unreasonable to decline the breach of contract element of Mr and Mrs O's Section 75 claim.

Unauthorised Credit Broker

PR says that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement as a result, and Mr and Mrs O could claim a refund of all the money they've paid along with additional compensation.

I'll say firstly that it doesn't appear to be the case that FHF have ever tried to enforce the Credit Agreement, which has long since been paid off, so the question of whether or not the

agreement can be enforced is somewhat academic. However, PR says Mr and Mrs O are entitled to further redress, so I've investigated this point further.

Section 27 of the Financial Services and Markets Act 2000 ("FSMA") states that where that section applies:

"...

- (2) *The other party is entitled to recover—*
- (a) *any money or other property paid or transferred by him under the agreement; and*
- (b) *compensation for any loss sustained by him as a result of having parted with it.*

..."

The "other party" is Mr and Mrs O, and the "agreement" is the Credit Agreement.

Subsection (1) of Section 27 of FSMA lists the conditions under which Section 27 will apply, as follows:

- "(1) This section applies to an agreement that—*
- (a) is made by an authorised person ("the provider") in the course of carrying on a regulated activity,*
- (b) is not made in contravention of the general prohibition,*
- (c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and*
- (d) is made in consequence of something said or done by another person ("the third party") in the course of—*
- (i) a regulated activity carried on by the third party in contravention of the general prohibition,*
- or*
- (ii) a credit-related regulated activity carried on by the third party in contravention of section 20."*

The "general prohibition" is an important concept in this scenario. It can be found in Section 19 of FSMA and reads as follows:

- "(1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—*
- (a) an authorised person; or*
- (b) an exempt person.*
- (2) The prohibition is referred to in this Act as the general prohibition."*

Section 27 also refers back to Section 20, which prohibits authorised persons (i.e. entities holding a set of permissions from the Financial Conduct Authority) from acting in a way which exceeds the extent of their permissions. For example, by carrying on regulated activities other than ones which they have permission to carry on.

All of subsections (a), (b), (c) and (d) need to be applicable for Section 27 to apply and for Mr and Mrs O to be able to claim a return of money paid under the agreement, or further compensation. Having carefully considered the facts of this case, I think all of these subsections *apart from* subsection (d) are applicable. I'll explain why.

Subsection (d) requires that the agreement was made because of something said or done by another person. In this case the other person is the credit intermediary named on the Credit Agreement. It also requires that the other person was either carrying on a regulated activity in breach of the general prohibition, or that it was an authorised person acting in a way which exceeded the scope of its permissions to carry on credit-related regulated activities.

Having examined the Financial Ombudsman Service's internal records and the Financial Conduct Authority's register, I can see the credit intermediary named on the Credit Agreement (i.e. the entity which arranged the Credit Agreement) was not authorised by the Financial Conduct Authority to carry on regulated activities of any kind. FHF says the credit intermediary had interim permissions from the Financial Conduct Authority at the Time of Sale, but that appears to be factually inaccurate.

That said, it does not appear that the credit intermediary was in breach of the general prohibition. A key limitation to the application of the general prohibition is that it only applies where regulated activities are carried on in the United Kingdom. Section 418 of FSMA extends the meaning of "United Kingdom" in certain circumstances, with each set of circumstances dependent on the entity carrying on the activity having either its registered office, head office, or an "establishment" in the United Kingdom.

In this case, the regulated activity of arranging (broking) the loan took place in Tenerife and the credit intermediary itself had its registered office in the Isle of Man. I'm not aware of the credit intermediary having a separate head office in the United Kingdom, nor any establishment there. Having considered the various scenarios in the version of Section 418 of FSMA which applied at the Time of Sale, the one which seems to be most relevant is the following:

*"(5) The fourth case is where—
(a) his head office is not in the United Kingdom; but
(b) the activity is carried on from an establishment maintained by him in the United Kingdom."*

FHF says the individual who brokered the loan – "MW" – was an employee of the credit intermediary and was the same person who went through the paperwork with Mr and Mrs O after their purchase had been agreed. So, if the credit intermediary was carrying on the regulated activity of credit broking from an establishment which was separate to its registered office in the Isle of Man, this seems more likely to me to have been in Tenerife in this case, rather than the United Kingdom.

In light of this, I have to conclude that (d)(i) doesn't apply to Mr and Mrs O's situation. Because the credit intermediary was not an authorised person, (d)(ii) does not apply either.

Given Section 27 (1)(d) does not apply to Mr and Mrs O's case, the fact that the broker which arranged the Credit Agreement was not authorised by the Financial Conduct Authority does not, in my view, entitle Mr and Mrs O to redress from FHF.

My provisional decision

For the reasons explained above, I am currently minded to decide that:

1. The Financial Ombudsman Service does not have the jurisdiction (power) to consider Mr and Mrs O's complaint that the credit relationship between them and First Holiday Finance Ltd was unfair to them under Section 140A of the CCA.
2. First Holiday Finance Ltd did not act unfairly or unreasonably by declining Mr and Mrs O's claim brought under Section 75 of the CCA.
3. While the Credit Agreement was arranged by an unauthorised credit broker, this does not, in this case, cause Section 27 of FSMA to apply, meaning Mr and Mrs O are not entitled to the redress set out within.

I now invite the parties to the case to let me have any further submissions they would like me to consider, by **11 July 2025**. I will then review the case again.

Will Culley
Ombudsman