

The complaint

Mr and Mrs P 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 deciding against paying a claim under Section 75 of the CCA.

What happened

I issued a provisional decision on this complaint on 1 July 2025, in which I set out the background to the case and my provisional findings. A copy of that provisional decision is appended to, and forms part of, this final decision, so it's not necessary for me to go over all the details again. However, in very brief summary:

- Mr and Mrs P bought a timeshare from a timeshare provider (the ‘Supplier’) on 24 March 2014, having had a number of previous products from the same company. Their purchase on this date involved increasing their points in the Supplier’s “Fractional Club” to 4,250 points, for £8,133. Most of this price was financed by a 2 year interest-free loan from the Lender, arranged by the Supplier.
- Fractional Club timeshares were asset-backed, meaning they gave Mr and Mrs P a share in the net sale proceeds of a specific property, when their membership was due to come to an end. This was in addition to the holiday-related benefits of the timeshare.
- Mr and Mrs P, via a professional representative (‘PR’) complained to FHF about the timeshare having been mis-sold, in July 2022. They sought redress from FHF due to:
 - Misrepresentations and breaches of contract by the Supplier in relation to the timeshare, giving them a claim against FHF under Section 75 of the CCA.
 - FHF having participated in an unfair credit relationship with them, giving them a claim against FHF under Section 140A of the CCA.
 - The loan having been arranged by an unauthorised credit broker, meaning it was unenforceable and entitled them to a full refund and additional compensation.

The complaint wasn’t upheld by FHF, and was subsequently referred to the Financial Ombudsman Service for an independent assessment. Our Investigator didn’t uphold the complaint either, and PR appealed on Mr and Mrs P behalf, resulting in the case being passed to me to decide.

In my provisional decision, I said I was not minded to uphold the complaint. The full reasons for this can be found in the appended provisional decision, but again to summarise briefly:

- The Financial Ombudsman Service didn’t have jurisdiction to consider Mr and Mrs P’s complaint that FHF had participated in an unfair credit relationship with them,

because they had brought their complaint about this too late under our rules.

- It wouldn't be fair or reasonable to direct FHF to pay redress to Mr and Mrs P in relation to a Section 75 claim, because
 - Their claims in respect of misrepresentations were time-barred under the Limitation Act 1980.
 - There was insufficient evidence of any breach of contract by the Supplier within the relevant limitation period.
- The credit broker which had arranged the loan was in fact authorised and so the loan had not been arranged by an unauthorised credit broker.

I asked the parties to the complaint to make any further submissions they wanted me to consider, by 15 July 2025. FHF responded to say it accepted the provisional decision. PR said it was not challenging the provisional decision.

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.

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Because I have received no further submissions from either party, I see no reason to depart from the findings I made in my appended provisional decision.

While a decision about our jurisdiction is not properly a matter for a final decision, I'll record here that I have not considered the merits of Mr and Mrs P's complaint relating to the alleged unfairness of their credit relationship with FHF, because (as explained in the appended provisional decision), it's not within my power to do so.

As for the rest of the complaint, my findings on the merits are the same as those I made in the provisional decision, and for the same reasons. It follows that I conclude FHF did not act unfairly or unreasonably by declining Mr and Mrs P's Section 75 claim, nor do I find it ought to provide redress to Mr and Mrs P due to the status of the credit broker who arranged the loan.

My final decision

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

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



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 conclusions as our Investigator, and for the same reasons. However, I've decided to issue a provisional decision in order to give the parties to the complaint a further opportunity to make more submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **15 July 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr and Mrs P 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 deciding against paying a claim under Section 75 of the CCA.

What happened

Mr and Mrs P have a long history of purchasing timeshares from a particular timeshare supplier (the "Supplier"). This complaint concerns a purchase they made on 24 March 2014 (the "Time of Sale"). However, for the purposes of context I'll provide a brief outline of what is known about their purchase history. It appears Mr and Mrs P's first purchase took place in 1998, and was paid for in pesetas, the currency of Spain at that time. While I have not been provided with much in the way of paperwork relating to Mr and Mrs P's purchases, based on their description of the product they purchased in 1998, it appears to have been a kind of trial membership that entitled them to take a fixed number of weeks of holiday over a certain period.

It seems that Mr and Mrs P then bought a membership in the Supplier's "Vacation Club" in 2001, which was a kind of points-based timeshare, where Mr and Mrs P were granted an annual allocation of points they could use to book accommodation within the Supplier's portfolio of resorts. Mr and Mrs P went on to buy more points in the Vacation Club on several occasions between 2001 and 2013. Early in 2013, they traded in their Vacation Club membership for a membership in what I will call the Supplier's "Fractional Club". This was similar to Vacation Club membership, but was asset-backed: it entitled Mr and Mrs P to a share of the net sale proceeds of a named property (the "Allocated Property"), which was to be put up for sale after a certain number of years.

On 24 March 2014 (the "Time of Sale"), Mr and Mrs P made a further purchase in the Fractional Club. While again the details are somewhat lacking, it's known that this purchase involved increasing their points in the Fractional Club to 4,250 points. The cash price on their contract (the "Purchase Agreement") listed a price, including "dues" of £8,133. The Supplier arranged a loan with FHF to pay £7,633 of this amount, with Mr and Mrs P paying the remaining £500 by other means. The loan was at 0% interest and repayable over 24 months. I understand the loan was settled on 18 April 2016.

Much later, on 15 July 2022, Mr and Mrs P complained to FHF via a professional representative ("PR"), about alleged mis-selling of the Fractional Club membership in 2014. PR's reasons for the complaint could be summarised as follows:

1. Mr and Mrs P had a claim against FHF under Section 75 of the CCA because of misrepresentations and breaches of contract by the Supplier or associated companies.
2. FHF had participated in an unfair credit relationship with Mr and Mrs P under the Credit Agreement and related Purchase Agreement, giving them a claim under Section 140A of the CCA.
3. The Credit Agreement had been arranged by an unauthorised credit broker, meaning it had been unenforceable, and Mr and Mrs P were entitled to a full refund and additional compensation.

Mr and Mrs P'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 P 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 would own a share in a property.
- That they could sell the timeshare back to the resort, or sell it for a profit.
- That they were led to believe they could use "the holiday's apartment at any time all around the year."

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

Mr and Mrs P's Section 140A Complaint

PR mentioned a number of matters in its letter of complaint which would reasonably be described as reasons why the credit relationship between Mr and Mrs P, and FHF, was unfair to them. I could summarise these matters as follows:

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

Mr and Mrs P's own comments

As well as the points made in PR's letter of complaint, I've also seen a letter or statement from Mr and Mrs P, which, while undated, is said to have been written in October 2021. This document narrates their history of purchases with the Supplier and also explains why they became dissatisfied. Based on what they've said, I think it would be fair to summarise the reasons for their dissatisfaction as follows:

- They were "always under considerable pressure to invest more and more with [the Supplier] each year".

- Any legal cooling off periods they were entitled to were not explained to them.
- Each time they purchased they were promised they were making good investments and they could resell what they had bought via the Supplier for a reasonable price.
- They had later learned that, in many respects, the transactions they'd entered into had not been legal.
- It had been difficult to follow increases in the management fees (a kind of annual fee paid by timeshare owners) but they had always seemed unreasonable. The Supplier had promised switching to the Fractional Club product would reduce their fees, but this hadn't been the case.

Towards the end of their statement, Mr and Mrs P concluded that, although the quality of the accommodation they'd had through the Supplier had been good, they felt they'd been pressured into buying more product than they'd needed, for a high price and with excessive annual management fees, and via contracts and agreements they now knew in many cases had either been illegal or sold in an illegal way.

FHF considered Mr and Mrs P's complaint and rejected it. PR subsequently referred the matter to the Financial Ombudsman Service where it was looked into by an Investigator. Our Investigator said she didn't think the complaint should be upheld, reaching the following conclusions:

- Mr and Mrs P's complaint about FHF having participated in an unfair credit relationship with them, had been brought too late for the Financial Ombudsman Service to look into.
- Mr and Mrs P's misrepresentation claim under Section 75 of the CCA had been time-barred under the Limitation Act 1980 ("LA"), meaning FHF had a complete defence to this claim.
- The Supplier having gone into liquidation wasn't a reason to uphold the complaint.
- The Credit Agreement had not been arranged by an unauthorised credit broker.

FHF accepted our Investigator's assessment. PR disagreed, making the following points on behalf of Mr and Mrs P:

- The limitation period for Section 140A claims could be extended in cases involving fraud or concealment. The clock would 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 P as an investment, but had also *concealed* the fact the product was an investment (or had concealed the illegality of selling the product in that way), meaning they had more time to make a claim.
- It was quite sure that the Supplier had marketed and sold the Fractional Club product to Mr and Mrs P as an investment, and this was supported by the Supplier's training manuals it had in its possession.
- It was this illegal selling of the product as an investment that had caused Mr and Mrs P to make their purchase in March 2014.

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 Financial Ombudsman Service has the jurisdiction (power) to consider the complaint; 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 P's complaint that the credit relationship between them and FHF was unfair to them, is not one the Financial Ombudsman Service has the jurisdiction to consider.
2. That the rest of Mr and Mrs P'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.
3. That the credit broker who arranged the Credit Agreement was not an unauthorised credit broker.

I'll explain why.

Our jurisdiction to consider Mr and Mrs P'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 P’s complaint, they need to have made the complaint within six years of the event which the complaint relates to or, if this gives 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 P’s complaint about FHF’s failure to honour their Section 75 claim is concerned, the event is FHF’s failure to honour the claim. FHF wrote to PR to explain it was rejecting Mr and Mrs P’s complaint on 29 July 2022, so that would be the relevant event date in this case.

Given the matter was referred to the Financial Ombudsman Service three months later, 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 P’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 P’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 18 April 2016 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 P more time to make their complaint. The question which must be answered is whether Mr and Mrs P 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 P 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 P 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 P 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 P's complaint, I think they should be considered to have been put on the path to discovering they may have had cause to complain to FHF within a couple of years of having made their purchase in March 2014.

I say this because of the combination of two matters mentioned by Mr and Mrs P in their statement. Mr and Mrs P complained the Supplier put them under pressure to make their purchase (and take the associated Credit Agreement). This perception of being put under pressure was something they were aware of at the Time of Sale. Mr and Mrs P also reported having problems with the Fractional Club membership, in the sense that the management fees were not lower than they'd experienced previously under the Vacation Club, when they had been advised they would be. While Mr and Mrs P don't say when it was that they made this discovery, the management fees were due on an annual basis, so I think it's fair to conclude that Mr and Mrs P discovered this within a couple of years of the Time of Sale.

So Mr and Mrs P allege they were put under pressure during the sales process, and they'd had problems with the membership they'd ended up buying as a result. The credit commitment they found themselves with, while interest free, was not insignificant and involved making repayments of over £300 per month. And on top of that there were the other financial commitments which came with the Fractional Club membership, which were considerably longer-term. The contract was also a complicated one which included an interest in overseas property. In the circumstances I think it would have been reasonable to have expected Mr and Mrs P to carry out enquiries and seek advice when their concerns about the membership and how it had been sold first arose, in order to establish what their rights were. Had they done so, I think this would have led them to discover that FHF, as the connected lender that financed their purchase, may have borne responsibility for the Supplier's alleged failings.

With all that being the case, I think Mr and Mrs P ought reasonably to have been aware that they had cause to complain about FHF participating in a potentially unfair credit relationship with them within the first few years of the Time of Sale, and undoubtedly more than three years before they complained in July 2022. And so I don't think the three-year limb of DISP 2.8.2 R gives Mr and Mrs P any longer to have made the complaint than the six-year limb.

In light of the above, I am minded to conclude that Mr and Mrs P had six years from 18 April 2016 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 of time, 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.

Our Investigator noted that they couldn't see that there were any exceptional circumstances which might have caused Mr and Mrs P to have referred their complaint late. I agree with that observation. And PR has not mentioned any such circumstances in its response to her

assessment, so I'm currently of the view that Mr and Mrs P were not prevented from making their complaint in time as a result of exceptional circumstances.

It follows that I am minded to decide that Mr and Mrs P'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.

I take a different view regarding the allegation that the Credit Agreement was brokered by an unauthorised credit broker. While this part of the complaint was made more than six years after the event complained of (the entry into the Credit Agreement), it seems unlikely to me that Mr and Mrs P would have appreciated this might give them a cause to complain to FHF, nor even that anything was wrong. I say this because the issue: whether or not the Supplier had the regulatory permissions to arrange the Credit Agreement at the Time of Sale, is a dry technical one, and not something I think Mr and Mrs P would have given any thought to, seeing as it had no impact on their experience of the agreement. They've not mentioned having ever been aware that the Supplier did not hold the relevant permissions, nor even that they were required to hold them. It appears it was PR that identified this as a potential issue at some point between October 2021 (when Mr and Mrs P's statement is said to have been prepared) and July 2022. So I think this part of the complaint was made within three years of when Mr and Mrs P became aware, or ought reasonably to have been aware, of their cause to complain, and I'm minded to find that the Financial Ombudsman Service has the jurisdiction to consider this part of the complaint.

In the next part of this decision, I'll go on to consider the merits of the parts of Mr and Mrs P's complaint I think the Financial Ombudsman Service is able to look into.

Mr and Mrs P's Section 75 Complaint – Misrepresentation

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 P'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 P 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 P's case, that's when they entered the agreement to purchase the timeshare,

and the related Credit Agreement, on 24 March 2014. This would be mirrored in the claim against FHF.

Mr and Mrs P 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 the claim relating to the Supplier's alleged misrepresentations.

As I mentioned earlier, PR has argued that the limitation period can be extended in cases 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 explained earlier. And I don't think PR's arguments assist the claim in relation to misrepresentation, because the *concealment* of the product being an investment is inconsistent with PR's allegation that the Supplier falsely told Mr and Mrs P, at the Time of Sale, that the product *was* an investment.

Mr and Mrs P'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. In this case, this means that any alleged breach which occurred from 22 July 2016 (six years before the claim was made) onwards will not be time-barred under the LA. I've gone on to consider the alleged breaches below.

PR has suggested (though not specifically argued) that the Supplier, or companies within its group, going into liquidation in 2020, means the Purchase Agreement has been breached. I can see that certain parts of the Supplier's business became insolvent in later 2020. And I can understand why PR would allege that there was a breach of the Purchase Agreement as a result. However, neither Mr and Mrs P nor 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; or
3. Entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.

So, I don't think this represents a breach of contract by the Supplier.

I've identified one other matter from Mr and Mrs P's October 2021 statement that could be an allegation that the Supplier was in breach of the Purchase Agreement, and that is where they say the management fees levied by the Supplier "always seemed unreasonable", and that the fees under the Fractional Club had not been lower than the Vacation Club as they'd believed would be the case.

However, neither Mr and Mrs P nor PR have been able to point to any specific incidences of where fees were charged which were, for example, not calculated in accordance with their contract with the Supplier, or which were higher than the equivalent Vacation Club fees. It follows that I'm unable to conclude there was a breach of contract by the Supplier for which FHF would be liable under Section 75 of the CCA.

Mr and Mrs M's complaint that the Credit Agreement was arranged by an unauthorised credit broker

PR says that the Credit Agreement was arranged by an unauthorised credit broker, the

upshot of which is to suggest that FHF wasn't permitted to enforce the Credit Agreement as a result, and that Mr and Mrs P are entitled to a refund of what they've paid along with additional compensation.

The Time of Sale in this case was shortly before the Financial Conduct Authority took over the regulation of consumer credit from the former Office of Fair Trading ("OFT"). Under the OFT regulatory regime, entities wishing to broker consumer credit agreements would normally hold a consumer credit licence from the OFT. Having looked at the Financial Ombudsman Service's internal records, I can see that the company named on the Credit Agreement as the credit intermediary held, at the Time of Sale, such a licence. And in the absence of any evidence to suggest that its licence did not cover credit broking, I am not persuaded that the Credit Agreement was arranged by an unauthorised credit broker.

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 P'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 P's claim brought under Section 75 of the CCA.
3. The Credit Agreement was not arranged by an unauthorised credit broker.

I now invite the parties to the case to let me have any further submissions they would like me to consider, by **15 July 2025**. I will then review the case again.

Will Culley
Ombudsman