DRN-5762625

The complaint

Mr C and Ms S' complaint is, in essence, that First Holiday Finance Ltd (the "Lender") acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the "CCA") and (2) deciding against paying claims under Section 75 of the CCA.

What happened

In April 2010, Mr C and Ms S entered a purchase agreement to buy 1,501 Vacation Club membership points from a timeshare company (the "Supplier") for a price of £18,697. They received a trade-in value of £3,495 for the trial timeshare membership they purchased a year earlier, leaving £15,202 to pay. Mr C and Ms S paid for this by entering into a fixed sum loan agreement (Loan 1) and they agreed to repay in 144 monthly instalments of £217. Mr C and Ms S repaid this loan in January 2011.

In October 2010, Mr C and Ms S then entered into a purchase agreement to buy a further 1,000 vacation club membership points for a price of £24,650, taking their total number of points to 2,501. After paying a £1,000 deposit by bank transfer, it left £23,650 to pay. Mr C and Ms S paid for this again by entering into a fixed sum loan agreement (Loan 2), agreeing to repay in 144 monthly instalments of £337. Mr C and Ms S repaid this loan in August 2023.

In August 2013, Mr C and Ms S upgraded to the Supplier's Fractional Club and entered into a purchase agreement to buy 2720 fractional points. As part of the deal, they traded-in and relinquished their Vacation Club membership leaving an additional £6,050 to pay. This they paid via a bank transfer and without further borrowing from First Holiday Finance.

In October 2018, Mr C and Ms S used a professional representative ("PR") to make a claim against First Holiday Finance on their behalf under the CCA. The claim was based on several issues and they included, amongst other things:

- First Holiday Finance paid a commission to the Supplier which wasn't declared to Mr C and Ms S.
- The Supplier failed to conduct a proper assessment of Mr C and Ms S's ability to repay the loans.
- There was a pressured sale and the Supplier misrepresented the nature of membership.
- The membership was marketed and sold as an investment, in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations").

PR said that all of that meant Mr C and Ms S had valid claims against First Holiday Finance under S.75 CCA and that First Holiday Finance was a party to an unfair debtor-creditor relationship, as defined in S.140A CCA.

First Holiday Finance dealt with Mr C and Ms S' concerns as a complaint and issued its final response letter on 18 April 2019 rejecting it.

The complaint was referred to the Financial Ombudsman Service in February 2019 after First Holiday Finance failed to issue its final response letter within the eight-week time limit.

The complaint was then looked at by an investigator who looked at each loan separately. He noted that Mr C and Ms S had repaid Loan 1 in January 2011 and so he thought the complaint of First Holiday Finance being party to an unfair debtor-creditor relationship had been made too late under Financial Ombudsman Service time limits. He also thought the claim that there was a misrepresentation under S.75 CCA had been made too late under provisions of the Limitation Act 1980.

The Investigator then considered Loan 2 and noting it was not repaid until September 2023, he thought the complaint of First Holiday Finance being party to an unfair debtor-creditor relationship on this occasion had been made in time. The Investigator also concluded that the strength of the evidence didn't suggest that there were any acts and/or omissions by the Supplier or First Holiday Finance that might have meant the relationship between Mr C and Ms S and First Holiday Finance was unfair. He also thought First Holiday Finance fairly declined the claim that there was a misrepresentation under S.75 CCA because it had been made too late under the provisions of the Limitation Act 1980.

PR disagreed with the Investigator's assessment but explained Mr C and Ms S accepted the position on time limits in respect of Loan 1 and would withdraw their complaint about that loan. PR asked for an Ombudsman's decision in respect of Loan 2. In doing so, PR made further submissions about the sale of the timeshare company's Fractional Club membership, referring extensively to the judgment in 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").

As the parties couldn't come to an informal agreement, the complaint was passed to me for a decision. I issued a provisional decision, setting out my thoughts and invited both parties to respond with anything further they wished me to consider before I issue my final decision. An extract of that provisional decision reads:

"*After careful consideration, I'm currently minded not to uphold Mr C and Ms S' complaint. Before I explain why, I want to make it clear that my role as an ombudsman doesn't mean I need to address every single point that has been made to date. Rather, it is to decide what's 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.*

There are various aspects to Mr C and Ms S' complaint. These include the allegations of misrepresentation (and possibly of breach of contract) in respect of the Vacation Club membership, and the suggestion that First Holiday Finance ought to have accepted and met their claims under S.75 CCA. I'll deal with those concerns first.

Section 75: How First Holiday Finance dealt with Mr C and Ms S' claims about the Supplier's alleged misrepresentations at the Time of Sale and possible breach of contract[1]

Certain conditions must be met for S.75 CCA to apply including, but not limited to, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Because of the way in which S.75 CCA operates, if the Supplier is liable for having misrepresented something to Mr C and Ms S at the Time of Sale or has breached its contract with them, that might give rise to a potential joint and several liability on the part of

[1] Mr C and Ms S' Witness Statement contains some comments that are capable of interpretation as allegations of a breach of contract in relation to the availability of properties under their Vacation Club and/or Fractional Club membership – it is unclear to which membership they refer to.

First Holiday Finance. Equally, of course, if the Supplier has a defence to such a claim, that defence is also available to First Holiday Finance.

Our investigator noted that the Limitation Act 1980 might afford a complete defence to the S.75 CCA claim made by Mr C and Ms S. PR takes a different view. However, I've not found it necessary to reach a conclusion on that line of argument, because I'm not inclined to find that the conditions necessary to bring a S.75 CCA claim are met in this case.

I say this because it's my understanding that when Mr C and Ms S entered into the Credit Agreement in October 2010, they did so with First Holiday Finance Ltd based in the British Virgin Islands ("FHFBVI") and operating from the Isle of Man, rather than the UK entity of the same name. The UK entity has provided us with evidence that shows it wasn't engaged in regulated lending activity until it applied for permission from the Financial Conduct Authority ("FCA") in 2015. On 1 August 2015, FHFBVI assigned its loan book (including Mr C and Ms S' loan) to the UK entity First Holiday Finance.

S.75 CCA enables a claim to be brought against the creditor. At the time the Credit Agreement was made, the creditor was FHFBVI. While FHFBVI assigned its loan book to First Holiday Finance, it didn't necessarily follow that its duties or other obligations – such as any potential liability for a S.75 CCA claim – were similarly assigned. Although the CCA section 189(1) definition of creditor includes an assignee, Goode[2] indicates that this shouldn't be interpreted as creating a positive liability on the assignee for a monetary claim under (among other things) S.75 CCA.

That's not to say that a claim can't be made along the lines outlined by Mr C and Ms S. Rather, it highlights the inherent difficulty they might face in succeeding with that claim. And with this in mind, I can't say that First Holiday Finance acted unfairly or unreasonably towards Mr C and Ms S when it declined to pay them compensation for the claims they said it was liable for under S.75 CCA.

Section 140A: did First Holiday Finance participate in an unfair credit relationship?

I've explained why I'm not persuaded Mr C and Ms S' relationship with First Holiday Finance could lead to a successful S.75 CCA claim and outcome in this complaint. But Mr C and Ms S also make arguments that either say or infer that the credit relationship between them and First Holiday Finance was unfair under S.140A CCA, when looking at all the circumstances of the case, including the Supplier's representations and parts of its sales process at the Time of Sale they've mentioned.

Mr C and Ms S' loan from FHFBVI was written under English law and regulated under the CCA. First Holiday Finance acquired and continued to administer the loan when Mr C and Ms S made their complaint, so S.140A CCA is relevant law. It is not subject to the same difficulty as their S.75 CCA claim. So determining what's fair and reasonable in all the circumstances of the complaint includes considering whether the credit relationship between Mr C and Ms S and First Holiday Finance was unfair.

Under S.140A CCA, 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).

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[2] Goode: Consumer Credit Law and Practice – Division I Commentary – Part IC Consumer Credit Legislation – 45A Assignment – III Assignment and the CCA 1974: the assignee as creditor/lender or owner – 1 The basic rule – Pre-assignment breaches (para 45A.62)

Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement Mr C and Ms S entered to acquire an extra 1,000 Vacation Club membership points) and 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..
I see no great difficulty with the position that the Supplier is deemed agent of FHFBVI for the purpose of the pre-contractual negotiations, nor with the possibility referenced in Goode that the operation of Ss.140A-C CCA effectively extend the deemed agent provision to First Holiday Finance after the loan was assigned to it.

With this in mind, I've considered the entirety of the credit relationship between Mr C and Ms S and First Holiday Finance along with all 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 S.140A CCA purposes.

Mr C and Ms S' complaint about First Holiday Finance being party to an unfair credit relationship was 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 C and Ms S and carried on unfair commercial practices which were prohibited under the CPUT Regulations for the same reasons they gave for their S.75 CCA 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.

PR says that the right checks weren't carried out before First Holiday Finance lent to Mr C and Ms S. 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 First Holiday Finance 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 C and Ms S 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 information provided, I am not satisfied that the lending was unaffordable for Mr C and Ms S. If there is any further information on this (or any other points raised in this provisional decision) that Mr C and Ms S wishes to provide, I would invite them to do so in response to this provisional decision.

Mr C and Ms S also say that they were pressured by the Supplier into purchasing more Vacation Club points at the Time of Sale. They've indicated the sales process lasted a whole day. But across their complaint correspondence, Mr C and Ms S have said little about what the Supplier actually said and/or did during the October 2010 sales presentation that made them feel as if they had no choice other than to purchase the extra Vacation Club points when they didn't want to. The overall time Mr C and Ms S spent with the Supplier during the sales process doesn't appear to me to be particularly excessive, given the nature of the purchase they were making.

Mr C and Ms S were given a 14-day cooling off period. I've seen no indication that they attempted to cancel their purchase during that time, or anything else that suggests that they felt pressured or that they didn't have time to think about their decision.

Moreover, they did later go on to upgrade to Fractional Club membership – which I find difficult to understand if the reason they went ahead with the purchase in question was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr C and Ms S made the decision to purchase the extra Vacation Club points because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

It has been alleged that First Holiday Finance paid the Supplier a commission that was not disclosed to Mr C and Ms S. However, the lender is part of the same group of companies as the Supplier and the only lending it undertook was to prospective clients of the Supplier. First Holiday Finance has said that it never paid a commission to the Supplier, which to me makes sense given the close connection between the businesses. So I do not think any commission was paid in this case.

I'm not persuaded, therefore, that Mr C and Ms S' credit relationship with First Holiday Finance was rendered unfair to them under S.140A CCA for any of the reasons above.

The allegation that the timeshare was marketed to Mr C and Ms S as an investment.

When PR responded to the Investigator's assessment of the complaint, it argued more weight should be given to the relevance of the judgment on Shawbrook & BPF v. FOS, and why the Investigator had been wrong in not finding Mr C and Ms S having entered the purchase agreement because it had been marketed as an investment to them.

I fear that over the course of the complaint, PR may have conflated the October 2010 purchase of 1,000 extra Vacation Club points with Mr C and Ms S' upgrade to Fractional Club membership in August 2013. Fractional Club membership was asset backed – which meant it gave members more than just holiday rights. It also included a share in the net sale proceeds of a property named on the purchase agreement after the membership term ends.

Mr C and Ms S upgraded to Fractional Club membership in August 2013. Although Mr C and Ms S retained Loan 2, they relinquished their Vacation Club membership – the related agreement for S.140A CCA purposes – as part of the upgrade. The balance to pay was funded via a bank transfer. So, I cannot consider Mr C and Ms S' upgrade to Fractional Club membership because that purchase agreement isn't a related agreement to Loan 2 for S.140A CCA purposes.

For completeness, I have also considered the information made available about the Vacation Club membership itself. I find the purchase agreement makes it very clear that Mr C and Ms S were only purchasing (1) a membership with the Supplier and (2) point rights, which were to be used each year in exchange for holiday accommodation. The purchase agreement does not suggest that they were also acquiring a tangible asset, such as a property, and in the absence of any compelling evidence to the contrary, I am not persuaded that the Supplier said or implied that the membership and/or the points were an investment."

Responses to my provisional decision

First Holiday Finance replied to confirm it accepts my provisional decision and did not make any further submissions.

PR has not replied.

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.

As part of my provisional decision, I set out the relevant law and regulations, regulators' rules, guidance and standards and codes of practice, and (where appropriate), what I consider having been good industry practice at the relevant time. I've taken these into account once again and I would also add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

I set out in my provisional decision, the various points of complaint the PR originally raised, all of which I addressed at that time. But it hasn't made any further comments in relation to those nor said it disagrees with any of my provisional conclusions. And since I haven't been provided with anything more to consider by either party, I see no reason to change my conclusions.

As both sides already know, since I issued my provisional decision, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr C and Ms S in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

Based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr C and Ms S but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

I recognise that the Lender was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between Mr C and Ms S and the Lender unfair to them – such that I should uphold the complaint. I say that because First Holiday Finance has explained that the Supplier would share finance proposals among its approved external finance partners; the Supplier couldn't write all its finance business "in-house" [through First Holiday Finance]; and First Holiday Finance largely provided loans to customers whose circumstances fell outside of its external finance partners' lending terms. Indeed, in this case Mr C and Ms S say the Supplier had tried without success to find a loan with at least one other lender, before the First Holiday Finance agreed the loan in question. So, I'm not persuaded that Mr C and Ms S were led into a credit agreement with the Lender because it was tied in some way to the Supplier.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not persuaded that the arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr C and Ms S.

Conclusion

In conclusion, I am not persuaded that First Holiday Finance was party to a credit relationship with Mr C and Ms S under a credit agreement that was unfair to them for the purposes of S.140A CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct First Holiday Finance to compensate them.

My final decision

For the reasons given in the above, my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms S to accept or reject my decision before 20 February 2026.

Stefan Riedel
Ombudsman