

The Complaint

Ms G's complaint is, in essence, that First Holiday Finance Ltd (the 'Lender') acted unfairly and unreasonably by (1) being party to unfair credit relationships with her 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.

Background to the Complaint

Ms G purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 3 October 2017. She entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £12,530 (the 'Purchase Agreement 1').

Ms G traded her membership in when she purchased another Fractional Club agreement with the Supplier on 31 January 2018. She entered into an agreement with the Supplier to buy 1,600 fractional points at a cost of £21,801, which included the first year's management charge of £699 (the 'Purchase Agreement 2'). But after trading in her existing Fractional Club timeshare, she ended up paying £8,271 for her membership.

As this complaint concerns both purchases on 3 October 2017 and 31 January 2018, those are the 'Times of Sale' for the purposes of my decision and I will simply refer to both of these transactions as the 'Purchase Agreements'.

Fractional Club membership was asset backed – which meant it gave Ms G more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I will refer to as the 'Allocated Property 1 and 2' or, when appropriate, the 'Allocated Properties') after their membership terms end.

Ms G paid for her fractional points by taking the following amounts of finance from the Lender:

- £12,030 in October 2017 - 'Credit Agreement 1'
- £19,844 in January 2018 - 'Credit Agreement 2' (This finance also included an amount to settle Credit Agreement 1)

(I will simply refer to these as the 'Credit Agreements')

Ms G – using a professional representative (the 'PR') – wrote to the Lender on 15 February 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it is not necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Ms G's concerns as a complaint and issued its final response letter on 28 February 2023, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Ms G disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. At this point a statement setting out Ms G's recollections of her entire relationship with the Supplier was submitted by the PR '(witness statement)'.

I issued a provisional decision ('PD') dated 7 August 2025, concluding the complaint should not be upheld. The findings from my PD are set out below.

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Times of Sale

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Fractional Club memberships had been misrepresented by the Supplier at the Times of Sale because Ms G was:

- 1. Told that she had purchased an investment that would "considerably appreciate in value".*
- 2. Promised a considerable return on her investment because she was told that she would own a share in a property that would considerably increase in value.*
- 3. Told that she could sell her Fractional Club memberships to the Supplier or easily to third parties at a profit.*
- 4. Made to believe that they would have access to "the holiday apartment" at any time all year round.*

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's possible that Fractional Club memberships were misrepresented at the Time of Sale for one or both of those reasons, I don't think it's

probable. They're given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club memberships were misrepresented for these reasons, I don't think they were.

So, while I recognise that Ms G and the PR have concerns about the way in which Fractional Club memberships were sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

Section 140A of the CCA: did the Lender participate in one or more unfair credit relationships?

I've already explained why I'm not persuaded that Fractional Club memberships were actionably misrepresented by the Supplier at the Times of Sale. But there are other aspects of the sales processes that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationships between Ms G and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Times of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Times of Sale;*
- 4. The inherent probabilities of the sale given its circumstances; and, when relevant*
- 5. Any existing unfairness from a related credit agreement.*

I have then considered the impact of these on the fairness of the relevant credit relationships between Ms G and the Lender.

The Supplier's sales & marketing practices at the Times of Sale

Ms G's complaint about the Lender being party to unfair credit relationships was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Ms G. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Ms G was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationships with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Ms G.

Connected to this is the suggestion by the PR that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Ms G knew,

amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club memberships. And as none of the lending looks like it was unaffordable for her, even if the one or more of the Credit Agreements were arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to a financial loss for Ms G – such that I can say that the credit relationships in question were unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate her, even if the loans weren't arranged properly.

The PR also says that there was one or more unfair contract terms in the Purchase Agreements. But as I can't see that any such terms were operated unfairly against Ms G in practice, nor that any such terms led her to behave in a certain way to her detriment, I'm not persuaded that any of the terms governing Fractional Club memberships are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Ms G may have felt weary after sales processes that went on for a long time. But she says little about what was said and/or done by the Supplier during the sales presentations that made her feel as if she had no choice but to purchase Fractional Club memberships when she simply did not want to. She was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel her memberships during that time. And with that being the case, there is insufficient evidence to demonstrate that Ms G made the decisions to purchase Fractional Club memberships because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Ms G credit relationships with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationships with the Lender was unfair to her. And that's the suggestion that Fractional Club memberships were marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations

The Lender does not dispute, and I am satisfied, that Ms G's Fractional Club memberships met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Times of Sale – saying, in summary, that Ms G was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

Shares in the Allocated Properties clearly constituted investments as they offered Ms G the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club memberships included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club memberships were marketed or sold to Ms G as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold memberships to her as an investment, i.e. told her or led her to believe that Fractional Club memberships offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club memberships were marketed and/or sold by the Supplier at the Times of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing memberships of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Ms G, the financial value of her share in the net sales proceeds of the Allocated Properties along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club memberships as an investment. So, I accept that it's equally possible that Fractional Club memberships were marketed and sold to Ms G as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Were the credit relationships between the Lender and the Consumer rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact such breaches had on the fairness of the credit relationships between Ms G and the Lender under the Credit Agreements and related Purchase Agreements as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to credit relationships between Ms G and the Lender that were unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreements and the Credit Agreements is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from

Fractional Club memberships were not an important and motivating factor when Ms G decided to go ahead with her purchases. It's of course possible that Ms G was interested in both holidays and the investment element of the memberships – and this wouldn't be surprising given the nature of the products at the centre of this complaint. I say this after careful consideration of the testimony provided by Ms G.

When the complaint was referred to our service, PR didn't provide any direct testimony from Ms G – in her own words which is very important in a case like this. It allows the decision-maker to assess credibility and consistency, to know precisely what was supposedly said, and to understand the context in which it was supposedly said.

In February 2024, in response to the Investigator's view, the PR provided some testimony from Ms G. I've included the most relevant extracts below. Ms said, in relation to Purchase Agreement 1:

"...we were finally leaving the hard sell absolutely shattered. We showed signs that we were not interested We felt we couldn't get away.

We were told that after 19 years the property would be sold and all the owners would receive their monies back plus a bonus due to inflation, so this would make a really good investment on our behalf.

We finally agreed to go with a full membership thinking we would be able to take the holidays we wanted to go too any country we wanted to travel too.

We did have some doubts the day after signing the agreement but had convinced ourselves that we had made the right decision given the holidays we wanted to take in the future."

Ms G then went on to provide her recollections in relation to Purchase Agreement 2, saying:

"We were told if we upgraded we would become Fractional owners..... this would mean we would be able to book more holidays and that upgrading to a better property, it would bring a better return at the end."

[my emphasis added]

In her testimony, Ms G suggests that the Supplier sold her these memberships as an investment at the Times of Sale. However, her recollections surrounding how and what the Supplier told her about the investment element and supposed profit is extremely brief and is lacking any real detail. From my reading, much of her submitted witness testimony suggests that holidays were the primary motivations for her making her purchases.

So, I'm reasonably satisfied on balance of the evidence available to me that Ms G wasn't primarily motivated by the prospect of financial gain when she made her decisions to purchase. In my view, her purchases were motivated by the prospect of holidays, rather than any investment element. The Supplier has said Ms G booked multiple holidays after entering Purchase Agreement 2.

That said, I don't think that means she wasn't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Ms G herself doesn't persuade me that her purchases were motivated by her shares in the Allocated Properties and the possibility of a profit, I don't think breaches of Regulation 14(3) by the Supplier were likely to have been material

to the decisions Ms G ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club memberships as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Ms G's decisions to purchase Fractional Club memberships at the Times of Sale were motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests she would have pressed ahead with her purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Ms G and the Lender were unfair to her even if the Supplier had breached Regulation 14(3).

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and I am not persuaded that the Lender was party to credit relationships with Ms G under the Credit Agreements that were unfair to her for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate her.”

I gave both parties the opportunity of responding and providing any further information or argument before I made my final decision. The Lender responded and said it agreed with my PD and had nothing further to add. The PR also responded on behalf of Ms G and did not accept the PD, providing some further comments and arguments they wish to be considered.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

CONC 3.7.3 [R]
CONC 4.5.3 [R]
CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

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.

Following the responses from both parties, I have considered the case afresh and having done so, I have reached the same decision as that which I outlined in my PD, for broadly the same reasons.

Again, my role as an Ombudsman is not to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I have not commented on, or referred to, something that either party has said, this does not mean I have not considered it.

Rather, I have focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationships between Ms G and the Lender were unfair. In particular, the PR has provided further comments in relation to whether the memberships were sold to Ms G as an investment at the Times of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they did not make any further comments in relation to those in their response to my PD. Indeed, they have not said they disagree with any of my provisional conclusions in relation to those other points. And since I have not been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I will focus here on the PR's points raised in response.

Section 140A of the CCA: *did the Lender participate in one or more unfair credit relationships?*

Having considered the entirety of the credit relationships between Mr G and the Lender along with all of the circumstances of the complaint, I do not think the credit relationships between them were likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Times of Sale in relation to Fractional Club memberships, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Times of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Times of Sale;
5. The inherent probabilities of the sales given its circumstances; and, when relevant
6. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationships between Ms G and the Lender given their circumstances at the Times of Sale.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare regulations

The PR explained in their response to my PD that they had not shared the Investigator's view on this complaint with Ms G, saying "*this was done in order not to influence their recollections*".

The PR said this means Ms G's recollections have not been influenced by either the Investigator's view or the outcome in *Shawbrook & BPF v FOS*¹.

I had not said that Ms G's testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*.

I have read the PR's submissions in response to my PD. Having done so, I do not consider the PR has said anything that I did not take into account or explain in my PD.

Ms G's Fractional Club memberships did include an investment (a profit) element, and as I stated in my PD, it was possible that both memberships were marketed and sold to her in that way in breach of Regulation 14(3). But I also explained that there was no persuasive evidence that the investment element of her memberships had been a material factor in her decisions to purchase them. As I said, much of Ms G's submitted witness testimony suggests that holidays were the primary motivation for her making her purchases.

So, I am not persuaded that the evidence suggests that Ms G purchased Fractional Club memberships in whole or in part down to any breach of Regulation 14(3). That said, I accept that Ms H was interested in the investment element of the memberships but for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Ms G's purchasing decisions.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the products in question were marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

The PR says that as the Supplier's pricing sheet set out the "Unit share" Ms G acquired under her Fractional Club memberships, this shows the investment element played "quite an important role" in convincing her to purchase them. I do not agree with that analysis. The pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. The fact the unit share acquired was recorded indicates the purchases included an investment element. But it follows that the Supplier would have recorded that information irrespective of the customer's motivations for making their purchase. So I do not consider this document offers an insight into Ms G's motivations for making her purchases.

¹ *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*').

So, as I said before, even if the Supplier had marketed or sold the memberships as an investment in breach of Regulation 14(3) (which I still make no finding on here), I am not persuaded Ms G's decisions to make the purchases were motivated by the prospect of a financial gain. So, I still do not think the credit relationships between Ms G and the Lender were unfair to her for this reason.

Conclusion

To conclude, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with Ms G under the Credit Agreements that were unfair to her for the purposes of Section 140A of the CCA. So, I see no reason why it would be fair or reasonable to direct the Lender to compensate her.

My final decision

I do not uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms G to accept or reject my decision before 5 February 2026.

Sameena Ali
Ombudsman