

The complaint

Mr and Mrs W's complaint is, in essence, that First Holiday Finance Ltd (the 'Lender') acted unfairly and unreasonably by being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Mr and Mrs W purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 30 September 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,050 fractional points at a final cost (after the trade-in value attributed to their trial membership and holiday vouchers) of £13,685 (the 'Purchase Agreement').

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

Mr and Mrs W paid for their Fractional Club membership by making a £500 payment on a card and then taking finance for the remaining balance of £13,185 from the Lender (the 'Credit Agreement').

Mr and Mrs W – using a professional representative (the 'PR') – wrote to the Lender on 21 November 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs W's concerns as a complaint and issued its final response letter on 6 May 2024, 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.

Mr and Mrs W disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

While the complaint was waiting for allocation to an Ombudsman, it was reviewed by a second Investigator. And having looked at everything that had been submitted, the second Investigator also rejected the complaint on its merits, but also considered whether there had been a material breach of Regulation 14(3) of the Timeshare Regulations¹ by the Supplier at the Time of Sale.

¹ The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

In this second assessment the Investigator said:

“Did the Supplier breach Regulation 14(3) of the Timeshare Regulations?”

There is competing evidence in this complaint as to whether the Membership was marketed and/or sold by the Supplier to [Mr and Mrs W] as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it’s clear that the Supplier made efforts to avoid specifically describing membership of the [Fractional Club] as an ‘investment’ or giving details of the amount a prospective purchaser, such as [Mr and Mrs W], might expect to get back at the end of their membership term. There were also disclaimers in the sales documents that went some way to saying that the [Fractional Club] wasn’t to be seen by [Mr and Mrs W] as an investment. So, it’s possible that the [Fractional Club] wasn’t marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the sales documentation left open the possibility that the sales representative may have positioned the [Fractional Club] as an investment. But I don’t think whether Regulation 14(3) was actually breached is, for the reasons I’ll explain, the ultimate question in this case. So, I don’t need to form a firm view on whether the Supplier breached Regulation 14(3) in [Mr and Mrs W]’s particular sale.

Did any breach of the Timeshare Regulations mean the credit relationship was unfair?”

I think that for me to conclude that a breach of Regulation 14(3) led to a credit relationship between [Mr and Mrs W] and the Business that was unfair to them and warranted relief as a result, whether the Supplier’s breach of Regulation 14(3) led them to enter into the Membership and the Credit Agreement is an important consideration.

[Mr and Mrs W]’s representative asked them to complete a questionnaire. Below the question, ‘Did [the Supplier] say that the ownership would increase in value, be an investment, or be easy to sell, even back to the resort?’, [Mr and Mrs W] have written:

‘Yes, they did say it would increase in value it was equivalent to bricks and mortar and the value would only go up.’

Below the question, ‘Did the representative inform you that the ownership was valuable or had monetary value?’, [Mr and Mrs W] have written:

‘Yes, it was sold to us as an investment like buying property + had monetary value.’

Finally, below the question, ‘Lastly, was your decision to make the purchase based on verbal statements made by the [Supplier’s] representative which did not match with/were not referenced in the contents of the purchase contract?’, [Mr and Mrs W] have written:

‘Yes, all mis-selling of their product was the opinion of the representative. We were mis-sold as we were made to believe that [the resorts] [were] for members only and not available on other holiday platforms...’

Regrettably, [Mr and Mrs W]’s answers to the questions – which are clearly leading – are limited. I wouldn’t expect [Mr and Mrs W] to remember exactly what was said, but they don’t provide any detail at all about what was supposedly said or the context in which it was said. And it’s not really possible, based on what they’ve said, to ascertain why they made the decision to purchase the membership. It’s worth noting that when asked if their decision to purchase membership was based on any misrepresentation, they only cited the exclusivity of

the resorts. This would indicate that the holiday rights they acquired as members were important to them.

I'd add that [Mr and Mrs W] have contacted the Supplier and the Business several times over the years – either directly or via a third party – to complain about the [Fractional Club] (and to try to relinquish it). The letters I've seen don't mention anything about [Fractional Club] being sold as an 'investment' at the time, that this was important to them or that they were misled in this regard.

All things considered, I've simply seen insufficient evidence to conclude that even if there was a breach of Regulation 14(3), the possibility of making a profit was such an important and motivating factor in their purchasing decision that it led to an unfair credit relationship.

Conclusion

Given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Business and [Mr and Mrs W] was unfair to them for the purposes of Section 140A. And as I've not seen any other reason to hold the Business responsible for anything that might have gone wrong, I don't think this complaint ought to be upheld."

The PR, on Mr and Mrs W's behalf, did not accept this outcome. As no agreement could be reached the matter has come to me for a decision.

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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

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.

And having done that, I do not think this complaint should be upheld, for broadly the same reasons as given by the Investigators.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

Having considered the entirety of the credit relationship between Mr and Mrs W and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was 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 Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time 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 Time of Sale; and

4. The inherent probabilities of the sale given its circumstances.

I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs W and the Lender.

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

Mr and Mrs W's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance that:

1. Mr and Mrs W were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.
2. Mr and Mrs W were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.
3. There were one or more unfair contract terms in the Purchase Agreement.

However, none of these strike me as a reason why this complaint should succeed.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it is possible that the Supplier did not give Mr and Mrs W sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr and Mrs W nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

And as regards the allegation that Mr and Mrs W were put under undue pressure at the Time of Sale, I acknowledge that they may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during the sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs W made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs W in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, like the Investigators, I don't think that Mr and Mrs W's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above.

But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to Mr and Mrs W as an investment in breach of prohibition against selling timeshares in that way. This was dealt with in some detail by the second investigator, and I broadly agree with what he has said in this regard.

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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs W 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 membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *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 membership was marketed or sold to Mr and Mrs W as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

And as the Investigator said, there is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time 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 membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs W, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

But 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 membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs W 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.

Would the credit relationship between the Lender and Mr and Mrs W have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Mr and Mrs W and the Lender under the Credit Agreement and related Purchase Agreement, 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 a credit relationship between Mr and Mrs W and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But I am not persuaded, on my reading of the evidence before me, that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs W decided to go ahead with their purchase. I'll explain.

The only direct testimony from Mr and Mrs W in this case is in the form of answers to questions posed by the PR. And the questions and answers that are relevant to the investment element of the membership were as follows:

7. Did they say that the ownership would increase in value, be an investment, or be easy to sell, even back to the resort?

Yes they did say it would increase in value
It was equivalent to bricks & mortar and the
value would only go up.

And:

8. Did the representatives inform you that the ownership was valuable or had monetary value?

yes it was sold to as an investment like
buying the property & had monetary value.

These questions are, in my view, leading, and suggestive of possible reasons for Mr and Mrs W to complain. So I, like the second Investigator, do not feel able to place much, if any weight on what is said here when trying to establish *why* Mr and Mrs W bought the Fractional Club membership. And in any case, what has been written down is just a description of what they were told – it doesn't describe that this was the reason they made the purchase.

That doesn't mean I've concluded that Mr and Mrs W weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint.

But, on my reading of the evidence presented, I am not persuaded that the prospect of a financial gain from the Fractional Club membership was an important and motivating factor when Mr and Mrs W decided to go ahead with their purchase, so I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they

ultimately made. I think it is more likely that they bought the membership for the holidays it could provide. They had, after all, previously purchased a trial membership from the Supplier, so they were clearly interested in holidays, and specifically the type of holidays that the Supplier could provide.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs W's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs W and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Conclusion

In conclusion, I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs W under the Credit Agreement that was unfair to them 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 them.

My final decision

I do not uphold this complaint against First Holiday Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 23 December 2025.

Chris Riggs
Ombudsman