DRN-5830018

The complaint

Mr M's and Ms M's complaint is, in essence, that First Holiday Finance Ltd (the "Lender") acted unfairly and unreasonably in turning down their claim under section 75 of the Consumer Credit Act 1974 ("CCA") and in being party to an unfair credit relationship with them under section 140A of the CCA.

What happened

In 2016 Mr M and Ms M purchased a timeshare - Fractional Points Club Membership ("FPOC2"). In January 2017 whilst on holiday they upgraded to the Supplier's 'Signature Collection' membership. The date of the agreement (the "Purchase Agreement") with the Supplier was 22 January 2017 (the "Time of Sale").

The Signature Collection membership was asset backed (as was FPOC2) in that it gave Mr M and Ms M more than just holiday rights. It also included a share in the sale proceeds of a property named on the Purchase Agreement ("the Allocated Property") at the end of the membership term.

The total cost of the Signature Collection membership was £22,255 but credit was given for Mr M's and Ms M's FPOC2 membership and a trade in value of £10,530 was deducted from the overall cost, leaving £11,725 payable. Mr M and Ms M paid a deposit of £500 with the balance being paid by them taking finance of £11,225 from the Lender (the "Credit Agreement").

Mr M and Ms M - using a Professional Representative ("PR") – wrote to the Lender on 4 August 2022 (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 M's and Ms M's concerns as a complaint and issued its final response letter dated 22 August 2022, rejecting it on very 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 M and Ms M disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it passed to me. I issued a provisional decision ('PD') dated 21 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 so I currently think this complaint shouldn't be upheld.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is

more likely than not.

The PR has gone into great detail in setting out Mr M's and Ms M's concerns, and while in keeping with my remit to resolve cases with minimum formality I might not address each aspect individually, I'd like to assure them that I've carefully read and considered all that they've said. Where I haven't directly addressed a complaint point individually, it's because I'm satisfied doing so would have no material impact on the overall outcome.

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

A claim against the Lender under Section 75 CCA mirrors the claim that Mr M and Ms M could make against the Supplier. The CCA sets out the conditions that must be satisfied for the protection afforded by the section to be engaged. The Lender has not raised any argument that those conditions have not been met in this case and I am in any event satisfied that those conditions have been met.

I set out above the alleged misrepresentations that the PR set out in the letter of complaint. They include that Mr M and Ms M would have a 'share in property' However, telling prospective members that they were buying a share in one of the Supplier's properties was not untrue. Mr M's and Ms M's share in the Allocated Property was clearly the purchase of a share in that specific property in a specific resort.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr M and Ms M have concerns about the way in which their Signature Collection membership was sold, they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons they allege. I explain why below.

The allegation that the Supplier misrepresented that the property was an investment 'that would appreciate greatly'.

This isn't supported by what Mr M and Ms M said happened in the handwritten statement provided by the PR following the investigator's opinion. I note this is undated but the PR has provided an email from Mr M dated 23 January 2024 in which he states the date of the statement was 8 February 2022, so it appears that this was provided before the investigator's opinion.

In the statement Mr M and Ms M state:

"We were told that if we upgraded the resale of the fractional would be much higher therefore we would have a better lump sum at the end of the 15 year period."

It isn't in issue that the Signature Collection membership entitled Mr M and Ms M to a share in the sale proceeds of the Allocated Property nor that FPOC2 membership did the same in respect of the property identified in that agreement. But whereas FPOC2 gave Mr M and Ms M 810 fractional points and entitlement to reserve a one bedroom property, the Signature Collection membership gave them 1100 points and entitlement to a two bedroom property.

Given this, suggesting that when the Allocated Property was sold the fractional would be higher and the lump sum would be more (which in my view can only be by reference to a comparison with their entitlement to a part of the sale proceeds of the allocated property under their FPOC2 membership) wasn't necessarily a misrepresentation. In short, pointing out that they were likely to get more for a bigger property wasn't necessarily inaccurate.

The allegation that Mr M and Ms M could sell Signature Collection membership back to the

resort or at a profit.

Mr M and Ms M made no mention of this in their handwritten statement. This was provided some time after the letter of complaint was sent to the Lender but Mr M has said it was dated 8 February 2022 and the PR said it was received on that date. So it predated the letter of complaint. The statement makes no mention of Mr M and Ms M being told they could sell their Signature Collection membership back to the resort or that they could do so at a profit. There is therefore no evidence to support the assertion made in the letter of complaint about this. Based on what they have said I am not satisfied this is what they were told or that if they were told this it induced them into the Signature Collection membership.

The allegation that Mr M and Ms M were led to believe they would have access to the apartment at any time around the year

Mr M and Ms M weren't entitled to exclusive access to the apartment whenever they wanted and as that isn't how their Signature Collection membership worked it is very unlikely in the circumstances that this is something they would have been told at the Time of Sale. However, Mr M and Ms M were not limited to when they could book the apartment, so it was accessible to them all year round subject to availability. It seems to me that any reference to them having access to the apartment at any time more likely than not related to this and as such wasn't misleading.

Moreover, there is nothing in the statement from Mr M and Ms M that suggests that they were promised access to the apartment whenever they wanted it. They make no mention at all of this being misrepresented to them. In the circumstances I am not persuaded this was misrepresented to them or if it was that it induced them into the Signature Collection membership.

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

Mr M and Ms M argue that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about.

I have considered the entirety of the credit relationship between Mr M and Ms M and the Lender, along with all of the circumstances of the complaint, and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale.*

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.*

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 M and Ms M and the Lender.

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

The complaint made by the PR on behalf of Mr M and Ms M R about the Lender raised several issues relevant to there being an unfair credit relationship, which I will address.

The PR said in the letter of complaint that the Lender failed to carry out an affordability assessment. But even if no assessment was carried out (and I make no finding on that) this of itself wouldn't establish that there was an unfair credit relationship. To come to that conclusion I would need to be satisfied that not only did the Supplier fail to carry out an affordability assessment but also that at the time the money was lent to Mr M and Ms M in 2017 it was unaffordable and they had lost out as a result.

I have been provided with no evidence which would support a conclusion that the Credit Agreement was unaffordable to them at the Time of Sale or that the credit relationship was unfair because of any affordability issues. To the contrary, the statement from Mr M and Ms M states that "at this time our finances were good so we thought we could pay the loans off inside 4 years so we agreed to upgrade." So, their own evidence doesn't support a finding that the Credit Agreement wasn't affordable.

Another issue that was raised by the PR in the complaint letter is that the terms of the Purchase Agreement were unfair because they allowed the Supplier to rescind the agreement for non-payment of monies due. The Lender has explained that this clause covers the position when someone doesn't use finance in which the case the Supplier can rescind the agreement if any part of the purchase price wasn't paid within 14 days of a request for payment. I am not persuaded that such a term rendered the credit relationship unfair.

I now turn to what is arguably the main issue raised by the PR as to there being an unfair credit relationship – namely that Signature Collection membership was sold as an investment in breach of the Timeshare Regulations. The PR referred to this as being 'totally illegal' – a reference presumably to this being an offence under the regulations.

<u>Was Signature Collection membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?</u>

The Lender does not dispute, and I am satisfied that, Mr M's and Ms M's Signature Collection membership 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 membership of the Signature Collection 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."

The letter of complaint alleges this is what the Supplier did at the Time of Sale. So, I have considered this.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, 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" at [56]. I will use the same definition.

Mr M's and Ms M's share in the Allocated Property, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments that was more than what they first put into it. But the fact that Signature Collection 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 Signature Collection membership, they just regulated how such products were marketed and sold.

This means that for me to conclude that Signature Collection membership was marketed or sold to Mr M and Ms M 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 Signature Collection membership offered them the prospect of a financial gain (i.e. a profit) given the facts and circumstances of this complaint.

It is clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection membership as an 'investment' or quantifying to prospective purchasers, such as Mr M and Ms M, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Signature Collection membership was not sold to Mr M and Ms M as an investment.

Moreover, although the letter of complaint from the PR made reference to them being told they were purchasing a share of a property and its value would increase significantly this isn't what Mr M and Ms M said in their statement. As I said above, what they said was that if they upgraded the resale of the fractional would be higher and they would have a better lump sum at the end of the membership. And, again as I explained above, this is by reference to a comparison with what they would have got at the end of their FPOC2 membership. This isn't in my view evidence that the Signature Collection membership was sold as an investment but simply pointing out that on sale they would get more than they would have done for the property they were allocated under FPOC2.

If there was evidence that FPOC2 had itself been sold as an investment then this may have changed my view. But the statement that Mr M and Ms M have provided in this complaint makes no reference at all to purchasing FPOC2 because it was sold to them as an investment through which they could make a profit or gain on sale of the allocated property in that agreement.

So, based on what Mr M and Ms M have said I am not satisfied that Signature Collection membership was sold as an investment in breach of Regulation 14(3).

Moreover, even if I had been persuaded that it had been and that there was therefore a breach of the relevant prohibition by the Supplier, I am not satisfied that this would be ultimately determinative of the outcome in this complaint, for reasons I set out below.

Was the credit relationship between the Lender and the Mr M and Ms M rendered unfair to them?

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

And in light of what the courts had to say in Carney and Kerrigan, it seems to me that, if I am

to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr M and Ms M and the Lender that was unfair to them and warranted relief as a result, whether any breach of Regulation 14(3) by the Supplier led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

I have already said that Mr M's and Ms M's statement about what happened at the Time of Sale doesn't support a finding that they were led to believe that the Signature Collection membership was an investment from which they would make a financial gain.

But even I had been satisfied that the Supplier did market and sell the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr M's and Ms M's explanation of what happened at the Time of Sale supports a finding that they were induced into the purchase on that basis. In short, there is nothing in what they have said that suggests that their motivation on entering into the Signature Collection membership was the prospect of a gain or profit on sale of the property when their membership came to an end.

So, I am therefore not persuaded that Mr M's and Ms M's decision to purchase Signature Collection membership at the Time of Sale was motivated by the prospect of financial gain (i.e. a profit). On the contrary, I think the evidence suggests they would have pressed ahead with the 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 M and Ms M and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

The PR raised another argument in support of the argument that there was an unfair credit relationship, namely that the credit agreement is unenforceable because it was arranged by a credit broker that was not regulated by the FCA to carry out that activity.

The Supplier itself was an authorised credit broker, as the letter of complaint concedes. However, it is argued that the individual Mr M and Ms M dealt with at the Time of Sale was self-employed and wasn't authorised and that this means there was a breach of the general prohibition in section 27 of FSMA and because of this the Credit Agreement is unenforceable as against Mr M and Ms M.

No evidence has been provided to support this assertion and the Lender has said that the individual Mr M and Ms M discussed the Credit Agreement with was an employee of the Supplier. I have been provided with no evidence that suggests this wasn't the case and in the circumstances I am not persuaded that the Credit Agreement was arranged by an unauthorised credit broker.

Moreover, even if I had concluded that the Credit Agreement had been arranged by an unauthorised credit broker it doesn't follow that this rendered the relationship between Mr M and Ms M and the Ledner unfair such that this complaint should be upheld. I have no reason to think that Mr M and Ms M didn't know that the purpose of the borrowing was to purchase Signature Collection membership nor the amount they were borrowing or what the monthly repayments were. In the circumstances there is no reasonable basis for me to find that the credit relationship was rendered unfair even if the loan wasn't arranged properly.

<u>Section 140A: Conclusion</u>

In conclusion, therefore, give all the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr M and Ms M was unfair to them for the purposes of Section 140 A CCA. And taking everything into account, I think it is fair and reasonable to reject this aspect of the complaint on that basis.

The liquidation of the Supplier

Mr M and Ms M argue that the liquidation of the Supplier's sales company in Spain means that they wouldn't be able to recover any amounts awarded by the Spanish Courts against the Supplier. They haven't explained why this is relevant to the complaint they have made against the Lender and I am not satisfied that it is.

Mr M and Ms M have not argued that this means the Supplier is in breach of the Signature Collection membership because it cannot fulfil its obligations rendering the Credit Agreement unfair. And for the avoidance of doubt I have been provided with no evidence suggesting this is the case.

Conclusion

In conclusion, given the facts and circumstances of this complaint I am not satisfied that it should be upheld for the following reasons:

- *The Lender didn't act unfairly or unreasonably in rejecting the complaint under Section 75 CCA about the Supplier's alleged misrepresentations.*
- *The Lender wasn't party to a credit relationship under the Credit Agreement that was unfair to Mr M and Ms M under Section 140A CCA.*
- *The credit broker wasn't unauthorised as alleged.*
- *The liquidations of the Supplier's sales companies in Spain isn't relevant to the complaint against the Lender.*
- *There is no other reason why it would be fair or reasonable to uphold this complaint."*

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 Mr R and didn't 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've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my PD, for the same reasons. For the avoidance of doubt the findings in my PD form part of the findings in this final decision unless I state to the contrary.

Again, my role as an Ombudsman isn't 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 haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've 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 relate only to the issue of whether the credit relationship between Mr M and Ms M and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr M and Ms M as an investment at the Time 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 didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't 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'll focus here on the PR's points raised in response.

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

Having considered the entirety of the credit relationship between Mr M and Ms M 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 in relation to Fractional Club membership, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time 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 Time of Sale;
5. The inherent probabilities of the sale 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 relationship between Mr M and Ms M and the Lender given their circumstances at the Time of Sale.

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

I explained in my PD why I wasn't persuaded the Supplier had marketed Signature Collection membership as an investment based on what Mr M and Ms M had said. The PR has provided no new evidence in response to what I have said about this. They simply disagree with my reasons for finding that what Mr M and Ms M said about being told they would get a 'greater lump sum' wasn't persuasive evidence that Signature Collection membership was sold as an investment. I can see no reason that I should change the conclusion I reached about this based on what the PR has said in response to my PD.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, 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.

Moreover, I also found that even if the Supplier had marketed or sold membership as an investment in breach of Regulation 14(3), what Mr M and Ms M said about getting a greater lump sum didn't provide persuasive evidence their decision to make the purchase was motivated by the prospect of a financial gain. And again, the fact the PR doesn't agree with me about that doesn't then mean I should change the conclusion I reached about this. So, I still don't think the credit relationship between Mr M and Ms M and the Lender was unfair to them for this reason.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr M's and Ms M's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr M to accept or reject my decision before 16 January 2026.

Philip Gibbons
Ombudsman