

The complaint

Mr and Mrs A'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 a claim under Section 75 of the CCA.

What happened

Mr and Mrs A purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 24 August 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,300 fractional points at a cost of £12,350 (the 'Purchase Agreement').

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

Mr and Mrs A paid for their Fractional Club membership by taking finance of £11,850 from the Lender in both their names (the 'Credit Agreement'), paying a deposit of £500 separately.

Mr and Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 18 August 2021 (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 A's concerns as a complaint and issued its final response letter on 16 September 2021, 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 A disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD') dated 4 November 2025. In that decision, I said:

"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 currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr and Mrs A as an investment, which, in the circumstances of this complaint, rendered the credit relationship between them and the Lender unfair to them for the purposes of Section 140A of the CCA.

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, while I recognise that there are a number of aspects to Mr and Mrs A's complaint, it isn't necessary to make formal findings on all of them. That's because, even if one or more of those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Mr and Mrs A in the same or a better position than they would otherwise be in.

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 A and the Lender along with all the circumstances of the complaint, I 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; and
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 and Mrs A and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs A's Fractional Club 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 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 Mr and Mrs A say that the Supplier did exactly that at the Time of Sale. In a document headed "Statement of Misrepresentation", which the PR says was taken on 12 October 2018 but was not sent to us until 22 August 2023, they said:

"[The Supplier] emphasised that our ownership would increase in value and that it would be an investment that can even be inherited by our children. They went further by stating that if we decide to sell or cancel, they would connect us with prospective buyers from their huge database, as they always have a waiting list of people ready to buy. We were informed that the

ownership is valuable and that we would get [a] substantial profit after selling.”

And in a later statement sent by email to the PR by Mr and Mrs A on 20 March 2024, they said:

“We were also deceived into believing that the fractional ownership was an asset and that the share of the property would be a great investment which would yield a profit and could even be inherited my [*sic*] our children.

[The Supplier] assured us that when we want to sell or give it up, that they had a list of people that would be willing to purchase it.”

Mr and Mrs A allege, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because:

1. They were told by the Supplier that they would get their money back or more during the sale of Fractional Club membership.
2. They were 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. 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 and Mrs A’s share in the Allocated Property clearly 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 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 A 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.

We haven’t been provided with all the documentation Mr and Mrs A completed at the Time of Sale, such as the Member Declaration and Information Statement. But based on what we’ve seen in other complaints with similar circumstances, it’s likely that within this documentation, the Supplier will have made efforts to avoid specifically describing membership of the Fractional Club as an “investment” or quantifying to prospective purchasers, such as Mr and Mrs A, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it. And there were likely disclaimers in the contemporaneous paperwork which stated that Fractional Club membership was not sold to Mr and Mrs A as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And there are a number of strands to Mr and Mrs A's allegation that the Supplier breached Regulation 14(3) at the Time of Sale, including (1) that membership of the Fractional Club was expressly described as an "investment" and (2) that membership of the Fractional Club could make them a financial gain and/or would retain or increase in value.

So, I have considered:

1. Whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Fractional Club as an investment, i.e. told Mr and Mrs A or led them to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered them the prospect of a financial gain (i.e. a profit); and, in turn
2. Whether the Supplier's actions constitute a breach of Regulation 14(3).

And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

How the Supplier marketed and sold the Fractional Club membership

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material used to prepare its sales representatives – including:

1. A document called the 2013/2014 Sales Induction Training (the '2013/2014 Induction Training');
2. Screenshots of an Electronic Sales Aid (the 'ESA'); and
3. A document called the "FPOC2 Fly Buy Induction Training Manual" (the 'Fractional Club Training Manual')

Neither the 2013/2014 Induction Training nor the ESA I've seen included notes of any kind. However, the Fractional Club Training Manual includes very similar slides to those used in the ESA. And according to the Supplier, the Fractional Club Training Manual (or something similar) was used by it to train its sales representatives at the Time of Sale. So, it seems to me that the Training Manual is reasonably indicative of:

1. The training the Supplier's sales representatives would have got before selling Fractional Club membership; and
2. How the sales representatives would have framed the Supplier's multimedia presentation (i.e. the ESA) during the sale of Fractional Club membership to prospective members – including Mr and Mrs A.

The "Game Plan" on page 23 of the Fractional Club Training Manual indicates that, of the first 12 to 25 minutes, most of that time would have been spent taking prospective members through a comparison between "renting" and "owning" along with how membership of the Fractional Club worked and what it was intended to achieve.

Page 32 of the Fractional Club Training Manual covered how the Supplier's sales representatives should address that comparison in more detail – indicating that they would have tried to demonstrate that there were financial advantages to owning property, over 10 years for example, rather than renting:

- Re-visit the idea of renting a house and talk them through the example of renting a home for £500 highlighting the fact of no return
- Refer to their decision to purchase a property as it made more financial sense to own than rent because, not only are they are building equity in their property, they can also continue to enjoy living in their home once it is paid for
- Ask: "if it cost a little more to own rather than rent would they be happy to pay the extra to own?" *(Increase amount of owning and continue to do this for a couple of times until they don't agree.*

CLOSE: So what you are telling me is that, as long as it's comfortably affordable, you would always choose to own rather than rent, is that correct?

LINK: Now let me show you the relevance this has when it comes to your holidays because what you are currently doing is ...

CLOSE:

Indeed, one of the advantages of ownership referred to in the slide above is that it makes more financial sense than renting because owners "are building equity in their property". And as an owner's equity in their property is built over time as the value of the asset increases relative to the size of the mortgage secured against it, one of the advantages of ownership over renting was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth over time.

I acknowledge that the slides don't include express reference to the "investment" benefit of ownership. But the description alludes to much the same concept. It was simply rephrased in the language of "building equity". And with that being the case, it seems to me that the approach to marketing Fractional Club membership was to strongly imply that "owning" fractional points was a way of building wealth over time, similar to home ownership.

Page 33 of the Fractional Club Training Manual then moved the Supplier's sales representatives on to a cost comparison between "renting" holidays and "owning" them. Sales representatives were told to ask prospective members to tell them what they'd own if they just paid for holidays every year in contrast to spending the same amount of money to "own" their holidays – thus laying the groundwork necessary to demonstrating the advantages of Fractional Club membership:

- You are currently spending £xxxx on your holidays each year... (taken from survey)
- Confirm exactly what clients get for that money in terms of quality, people travelling and weeks
- Confirm the client will holiday for the next 10 years
- Explain total cost, with no inflation over a ten year period and ask what they own at the end of that period
- Compare spending the same money to own your holidays with better benefits, so that at the end of the ten years they would have received better value

§ **CLOSE:** So, looking at the two options which way makes more sense, to own or rent your holidays? (Get the answer "Owning") This is why so many people choose to holiday with ~~Clubhouse~~.

§ **LINK:** Before I show you how the product works, I am just going to tell you how ~~Clubhouse~~ started and where we are today.

CLOSE:

With the groundwork laid, sales representatives were then taken to the part of the ESA that explained how Fractional Club membership worked. And, on pages 41 and 42 of the Fractional Club Training Manual, this is what sales representatives were told to say to prospective members when explaining what a 'fraction' was:

"FPOC = small piece of...World apartment which equals **ownership of bricks and mortar**

[...]

Major benefit is the property is sold in nineteen years (**optimum period to cover peaks and troughs in the market**) when sold you will get your share of the proceeds of the sale

SUMMARISE LAST SLIDE:

FPOC equals a passport to fantastic holidays for 19 years **with a return at the end of that period**. When was the last time you went on holiday and **got some money back? How would you feel if there was an opportunity of doing that?**

[...]

LINK: Many people join us every day and one of the main questions they have is **"how can we be sure our interests are taken care of for the full 19 years?"** As it is very important you understand how we ensure that, I am going

to ask Paul to come over and explain this in more details for you.

[...]

“Handover: (Manager’s name) John and Mary love FPOC and have told me the best for them is.....**Would you mind explaining to them how their interest will be protected over the next 19 year[s]?”**

[my emphasis]

The Fractional Club Training Manual doesn’t give any immediate context to what the manager would have said to prospective members in answer to the question posed by the sales representative at the handover. Page 43 of the Manual has the word “script” on it but otherwise it’s blank. However, after the Manual covered areas like the types of holiday and accommodation on offer to members, it went onto “resort management”, at which point page 61 said this:

“T/O will explain slides emphasising that they only pay a fraction of maintaining the entire property. It also ensures property is kept in peak condition to maximise the return in 19 years['] time.

[...]

CLOSE: I am sure you will agree with us that this management fee is an extremely important part of the equation as it ensures the property is maintained in pristine condition so at the end of the 19 year period, when the property is sold, you can get the maximum return. So I take it, like our owners, there is nothing about the management fee that would stop you taking you holidays with us in the future?...”

[my emphasis]

By page 68 of the Fractional Training Manual, sales representatives were moved on to the holiday budget of prospective members. Included in the ESA were a number of holiday comparisons. It isn’t entirely clear to me what the relevant parts of the ESA were designed to show prospective members. But it seems that prospective members would have been shown that there was the prospect of a “return”.

For example, on page 69 of the Fractional Club Induction Training Manual, it included the following screenshots of the ESA along with the context the Supplier’s sales representatives were told to give to them:



[...]

“We also agreed that you would get nothing back from the travel agent at the end of this holiday period. Remember with your fraction at the end of the 19 year period, you will get some money back from the sale, so even if you only got a small part of your initial outlay, say £5,000 it would still be more than you would get renting your holidays from a travel agent, wouldn't it?”

I acknowledge that the slides above set out a “return” that is less than the total cost of the holidays and the “initial outlay”. But that was just an example and, given the way in which it was positioned in the Training Manual, the language did leave open the possibility that the return could be equal to if not more than the initial outlay.

Furthermore, the slides above represent Fractional Club membership as:

1. The right to receive holiday rights for 19 years whose market value significantly exceeds the costs to a Fractional Club member; plus
2. A significant financial return at the end of the membership term.

And to consumers (like Mr and Mrs A) who were looking to buy holidays anyway, the comparison the slides make between the costs of Fractional Club membership and the higher cost of buying holidays on the open market was likely to have suggested to them that the financial return was in fact an overall profit.

I also acknowledge that there was no comparison between the expected level of financial return and the purchase price of Fractional Club membership. However, if I were to only concern myself with express efforts to quantify to Mr and Mrs A the financial value of the proprietary interest they were offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in Regulation 14(3).

When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that “[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see Regulation 14(3)).”¹ And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.

So, if a supplier *implied* to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.

Indeed, if I’m wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 99 and 100 of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice said the following:

“[...] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3) [...] Getting the governance principles and paperwork right may not be quite enough.”

“The problem comes back to the difficulty in articulating the intrinsic benefit of fractional ownership over any other timeshare from an individual consumer perspective [...] If it is not a prospect of getting more back from the ultimate proceeds of sale than the fractional ownership cost in the first place, what exactly is the benefit? [...] What the interim use or value to a consumer is of a prospective share in the proceeds of a postponed sale of a property owned by a timeshare company – one they have no right to stay in meanwhile – is persistently elusive.”

¹ The Department for Business Innovation & Skills “*Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)*”.
<https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf>

“[...] although the point is more latent in the first decision than in the second, it is clear that both ombudsmen viewed fractional ownership timeshares – simply by virtue of the interest they confer in the sale proceeds of real property unattached to any right to stay in it, and the prospect they undoubtedly hold out of at least 'something back' – as products which are inherently dangerous for consumers. **It is a concern that, however scrupulously a fractional ownership timeshare is marketed otherwise, its offer of a 'bonus' property right and a 'return' of (if not on) cash at the end of a moderate term of years may well taste and feel like an investment to consumers who are putting money, loyalty, hope and desire into their purchase anyway.** Any timeshare contract is a promise, or at the very least a prospect, of long-term delight [...] A timeshare-plus contract suggests a prospect of happiness-plus. And a timeshare plus 'property rights' and 'money back' suggests adding the gold of solidity and lasting value to the silver of transient holiday joy.”

[my emphasis]

I think the Supplier's sales representatives were encouraged to make prospective Fractional Club members consider the advantages of owning something and view membership as an opportunity to build equity in an allocated property rather than simply paying for holidays in the usual way. That was likely to have been reinforced throughout the Supplier's sales presentations by the use of phrases such as “bricks and mortar” and notions that prospective members were building equity in something tangible that could make them some money at the end. And as the Fractional Club Training Manual suggests that much would have been made of the possibility of prospective members maximising their returns (e.g. by pointing out that one of the major benefits of a 19-year membership term was that it was an optimum period of time to see out peaks and troughs in the market), I think the language used during the Supplier's sales presentations was likely to have been consistent with the idea that Fractional Club membership was an investment.

Recalling the Time of Sale, Mr and Mrs A have said that the Supplier told them Fractional Club membership was an investment that would increase in value and would ultimately result in a profit. I acknowledge that the sales material I have seen from around the Time of Sale does not explicitly use the words “investment” or “profit”. But given the content of the sales material, which included phrases such as “building equity” and “maximum return”, I think it's likely that at the Time of Sale the Supplier's representatives framed Fractional Club membership to Mr and Mrs A in the way they have described, and they were left with the impression that it was an investment that would increase in value. I wouldn't necessarily expect Mr and Mrs A to remember the exact phrases that were used.

I have thought carefully about how much weight I can place on Mr and Mrs A's testimony, given both their statements were sent to us after the judgment in *Shawbrook & BPF v FOS* was handed down.

On balance, I am satisfied that the “Statement of Misrepresentation” was taken on 12 October 2018 as the PR has said. The PR has explained that many of the statements it holds were taken to support potential legal action. And Mr and Mrs A have taken legal action against the Supplier through the Spanish legal system.

The recollections in both the earlier “Statement of Misrepresentation” and later email statement are also consistent, including the allegations that the Supplier told Mr and Mrs A that Fractional Club membership could be inherited by their children and

should they wish to sell, it could put them in contact with potential buyers. So, I have no reason to doubt that the earlier “Statement of Misrepresentation” contains recollections that have come directly from Mr and Mrs A.

Therefore, having carefully weighed up the available evidence, I am satisfied that I can rely on the statements provided by Mr and Mrs A, even though they were sent to us following the judgment in *Shawbrook & BPF v FOS*.

Overall, therefore, as the slides I’ve referred to above seem to me to reflect the training the Supplier’s sales representatives would have got before selling Fractional Club membership and, in turn, how they would have probably framed the sale of the Fractional Club to prospective members, they indicate that the Supplier’s sales representatives were likely to have led Mr and Mrs A to believe that the Fractional Club membership was an investment that may lead to an increased financial gain (i.e. a profit) in the future. And with that being the case, I don’t find them either implausible or hard to believe when they say they were told that Fractional Club membership was an “investment” that would “increase in value” and make them a “substantial profit”. On the contrary, in the absence of evidence to persuade me otherwise, I think that’s likely to be what Mr and Mrs A were led by the Supplier to believe at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations².

Was the credit relationship between the Lender and Mr and Mrs A rendered unfair?

Having found 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 had on the fairness of the credit relationship between Mr and Mrs A and the Lender under the Credit Agreement and related Purchase Agreement.

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.

It also it seems to me in light of *Carney* and *Kerrigan* that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs A 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.

On my reading of Mr and Mrs A’s testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase. In the “Statement of Misrepresentation”, they’ve explained that “the decision to make the purchase was ultimately based on verbal statements made by the representatives”. And the verbal statements set out in the “Statement of Misrepresentation” relate almost entirely to the investment potential of Fractional Club membership.

That doesn’t mean Mr and Mrs A weren’t interested in holidays. Their own testimony demonstrates that they quite clearly were. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs A say (plausibly in

² Mr and Mrs A have said the Supplier told them that they would profit from their Fractional Club membership. In my view the expectation of a profit fits with the definition of investment I set out above from *Shawbrook & BPF v FOS*.

my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from the more 'standard' type of timeshare available to them. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Mr and Mrs A have not said or suggested, for example, that they would have pressed ahead with the purchase in question had the Supplier not led them to believe that Fractional Club membership was an appealing investment opportunity. And as they faced the prospect of borrowing and repaying a substantial sum of money while subjecting themselves to long-term financial commitments, had they not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that they would have pressed ahead with their purchase regardless."

In conclusion, given the facts and circumstances of Mr and Mrs A's complaint, I thought the Lender participated in and perpetuated an unfair credit relationship with them under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, I thought it was fair and reasonable that I upheld the complaint. I proceeded to set out what I considered to be fair compensation.

The PR, on behalf of Mr and Mrs A, accepted my provisional conclusions. The Lender did not and provided further comments and evidence for me to consider. In summary, the Lender responded as follows:

- It has never received a direct complaint about a fractional timeshare that suggested the purchaser "would get all of their money and more back". The Supplier's training material makes clear this is not the case. Only professionally represented consumers make such an allegation.
- No member has questioned the amount of profit on receipt of their Fractional Rights Certificate. These certificates clearly state what percentage will be distributed to the member and leave no room for misinterpretation.
- The Supplier's Legal Department has confirmed it has never seen the "Statement of Misrepresentation" which is neither signed, dated nor named, and does not explain what led Mr and Mrs A to believe that their membership "would increase in value and that it would be an investment that can even be inherited by [their] children."
- The Supplier's sales notes say that Mr and Mrs A thought the Supplier's accommodation "will suit them as a family" and they were "very impressed with the high standards".
- Mr and Mrs A's comment that "the decision to make the purchase was ultimately based on verbal statements made by the representatives" appears frequently in statements submitted by the PR. They also say they "were pressured into signing the agreement" so their motivation can't safely be inferred.
- Mr and Mrs A did take advantage of the Supplier's referral programme, referring a number of friends and family.
- In the "Statement of Misrepresentation", Mr and Mrs A say they "have not had the opportunity to use the accommodation since [they] signed the agreement." This is not true as when they contacted the Supplier to enquire about availability, they were offered a booking. They also made a reservation on another occasion.
- In the later statement provided after the Investigator's view, Mr and Mrs A say they enquired about reselling their membership, but in reality, they asked the Supplier how to opt out or cancel. The desire to opt out or cancel seems to have coincided with a

change in circumstances and not from a desire to make a financial gain from membership. It's difficult to understand why Mr and Mrs A would want to opt out of their membership so soon after their purchase if they had bought it as an investment.

- Given that many of the comments in Mr and Mrs A's testimony are disproven by the contemporaneous evidence, it does not consider this can be relied upon.

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 the parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but 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, 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.

I've carefully considered the Lender's response. Having done so, I remain of the view that Mr and Mrs A's complaint should be upheld. I'll explain why.

Even though the Supplier's Legal Department had not previously seen the "Statement of Misrepresentation" and it's not signed or dated, I don't think this means I can't place weight on it. In similar complaints, the PR has told us such statements were used to determine whether there were grounds for legal proceedings. So, that would not necessarily mean they were shared with the Supplier on all occasions.

The role of this service is to resolve disputes quickly and with minimum formality. Therefore, I don't think I should dismiss Mr and Mrs A's testimony simply because it's unsigned and undated. For the reasons provided in my PD, and further reasons which I shall go on to explain, I'm satisfied it can be relied upon.

I acknowledge that any investment motivation is absent from the sales notes. But that is not material as I would not expect the Supplier to have recorded this, given that selling and marketing the membership as an investment was prohibited.

While similar comments to "the decision to make the purchase was ultimately based on verbal statements made by the representatives" may appear in other statements provided by the PR, having considered many complaints brought by this particular representative, by no means does it appear in all statements. And for that reason, I'm not persuaded I should disregard the comment on the basis similar comments appear in other statements provided by the PR.

Although in the "Statement of Misrepresentation" Mr and Mrs A do say they "were pressured into signing the agreement", they do not say it was this pressure that led them to agree to the purchase, but the "verbal statements made by the representatives". And as I explained in my PD, the statements described by Mr and Mrs A largely relate to the investment potential of Fractional Club membership.

The fact Mr and Mrs A did make use of the Supplier's referral programme on several

occasions strengthens my belief that I can rely on their testimony, given they explicitly mention in the "Statement of Misrepresentation" that the sales representatives stressed that this was available.

Mr and Mrs A did say in the "Statement of Misrepresentation" that "have not had the opportunity to use the accommodation since [they] signed the agreement." I don't consider this statement to be untrue as Fractional Club membership did not give them the right to stay in their Allocated Property, like one of the other memberships the Supplier offered.

As the Lender says, while Mr and Mrs A enquired about opting out from or cancelling their membership, this may have been brought about by a change of circumstances and does not lead me to conclude, in itself, that the motivation for their purchase at the Time of Sale could not have been the investment element of Fractional Club membership.

Therefore, for the above reasons, along with those explained in my PD, I disagree that Mr and Mrs A's testimony should be discounted in light of the other available evidence and I'm satisfied I can rely on it. And my view remains that their complaint should be upheld.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs A under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Fair Compensation

I received no comments in response to the PD in relation to the redress I proposed so see no reason to depart from it.

Having found that Mr and Mrs A would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and them was unfair under section 140A of the CCA, I think it would be fair and reasonable to put them back in the position they would have been in had they not purchased the Fractional Club membership (i.e. not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided they agree to assign to the Lender their fractional points or hold them on trust for the Lender if that can be achieved.

Here's what I think needs to be done to compensate Mr and Mrs A with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr and Mrs A's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the annual management charges Mr and Mrs A paid as a result of Fractional Club membership.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr and Mrs A used or took advantage of; and
 - ii. The market value of the holidays* Mr and Mrs A took using their fractional points.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) If Mr and Mrs A's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs A took using their fractional points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

My final decision is to uphold Mr and Mrs A's complaint about First Holiday Finance Ltd and to direct it to pay compensation to them as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 19 February 2026.

Alex Salton
Ombudsman