

The complaint

Mr R and Ms K's complaint is, in essence, that First Holiday Finance Ltd ('FHF') 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 R and Ms K were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 19 April 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,540 fractional points at a cost of £11,400 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave 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.

To help pay for their Signature Collection membership, Mr R and Ms K took a loan of £10,000 from FHF (the 'Credit Agreement').

Mr R and Ms K – using a professional representative (the 'PR') – wrote to FHF on 19 April 2024 (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.

FHF dealt with Mr R and Ms K's concerns as a complaint and issued its final response letter on 9 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 R and Ms K 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'). In that decision, I said:

Section 75 of the CCA: the Supplier's misrepresentations at the Time 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. FHF 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 Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr R and Ms K were:

1. Told that they had purchased an investment that would "considerably appreciate in value" when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Made to believe that they would have access to "the holiday apartment" at any time all year round when that was not true.

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 enough 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 point 3, while it's *possible* that Signature Collection membership was misrepresented at the Time of Sale for that reason, I don't think it's *probable*. Mr R and Ms K *did* acquire a preferential right to use the Allocated Property through their membership. The Purchase Agreement clearly set this out – and that such right existed only for a specific week on a bi-annual basis. I find it highly unlikely that the Supplier would have led Mr R and Ms K to believe something so starkly different from this, and the suggestion that it did is given none of the colour or context necessary to demonstrating that any such false statement was made.

So, while I recognise that Mr R and Ms K and the PR have concerns about the way in which Signature Collection membership was 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 FHF acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, FHF is also liable.

The PR says that Mr R and Ms K could not access the holidays that the Supplier led them to believe the membership would entitle them to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr R and Ms K stated that the availability of holidays was subject to demand. It also looks like they made use of their fractional points to holiday, and within their own statement they have not mentioned being unable to book what they wanted. So I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think FHF is liable to pay Mr R and Ms K any compensation for a breach of contract by the Supplier. And with that being the case, I do not think FHF acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Signature Collection membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process 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 relationship between Mr R and Ms K and FHF 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;
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 credit relationship between Mr R and Ms K and FHF.

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

Mr R and Ms K's complaint about FHF being party to an unfair credit relationship was made for several reasons.

The PR says, for instance, that Mr R and Ms K were rushed into signing the contractual paperwork at the end of a long sales meeting, without having sufficient time to properly consider the implications of the agreement into which they were entering. I acknowledge and appreciate that Mr R and Ms K 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 their sales presentation that made them feel as if they had no choice but to purchase Signature Collection membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel the membership during

that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr R and Ms K made the decision to purchase Signature Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR also says that the right checks weren't carried out before FHF lent to Mr R and Ms K. 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 FHF failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr R and Ms K was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with FHF was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr R and Ms K.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that FHF wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr R and Ms K 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 Signature Collection membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreement was 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 Mr R and Ms K suffering a financial loss – such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell FHF to compensate them, even if the loan wasn't arranged properly.

Overall, therefore, I don't think that Mr R and Ms K's credit relationship with FHF 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 FHF was unfair to them. And that's the suggestion that Signature Collection membership was marketed and sold to them 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

FHF does not dispute, and I am satisfied, that Mr R and Ms K'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 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."

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr R and Ms K were told by the Supplier that Signature Collection 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.

A share in the Allocated Property clearly constituted an investment as it offered Mr R and Ms K 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 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. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr R and Ms K 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 Signature Collection membership offered them 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 Signature Collection 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 Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr R and Ms K, 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.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr R and Ms K 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.

Was the credit relationship between FHF and Mr R and Ms K rendered unfair?

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 had on the fairness of the credit relationship between Mr R and Ms K and FHF 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 R and Ms K and FHF 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.

To help me decide this point, I've carefully considered what Mr R and Ms K have said in the course of their complaint about how the membership was sold to them and their motivation for purchasing it.

I would note first of all that the evidence in this respect is quite limited. Within the Letter of Complaint, it is said that Mr R and Ms K were told that they had purchased an investment and could expect a profit. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature. In fact, such assertions are made in an identical fashion by the PR in a number of other complaints.

When referring the complaint to us, the PR included a statement in Mr R and Ms K's own words. The PR highlights that, of relevance to the point at issue here, Mr R and Ms K say:

"We would significantly profit financially once the flat had been sold on ... The representatives were clear that the contract would increase in value and be easy to sell, hence the outcome of significant profit for us."

However, reading the statement as a whole, these comments clearly apply to a previous fractional club membership that Mr R and Ms K purchased from the Supplier some years before the Time of Sale – and not the Signature Collection membership funded by the loan from FHF that underpins this complaint. The conduct of the Supplier in this previous sale can have no bearing on the fairness of the credit relationship between Mr R and Ms K and FHF at issue here.

Mr R and Ms K's comments about their purchase of the Signature Collection are brief. They say:

"During our first week at the new flat in Tenerife, following yet another presentation we bought a second week dated 19/4/2018 — Suite 02A week 14 with 1450 points. This was again financed by FHF costing £11400."

There is no mention of the investment element being a factor in their decision. What is notable is that Mr R and Ms K highlight that the purchase was, in their mind, that of "a second week". As noted elsewhere, Mr R and Ms K already held a membership with the Supplier – entitling them to one week's holiday bi-annually. Their purchase of the Signature Collection membership at the centre of this complaint increased their holiday entitlement to two weeks. And it seems to me that this increase was what motivated their purchase.

Notable by its absence is that Mr R and Ms K do not refer to increasing their investment through the purchase. Being existing members and holding a share in the net sale proceeds of a timeshare property, they were increasing that share (and therefore the level of potential return they could expect) under the new membership. But they do not refer to this increase in their investment as a factor in their decision-making within their statement – as I might expect them to have done, if it had been.

Weighing all of this up, I do not think the prospect of a financial gain from Signature Collection membership was an important and motivating factor when they decided to go ahead with their purchase. That doesn't mean they 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 as Mr R and Ms K themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, 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.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr R and Ms K's decision to purchase Signature Collection 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 R and Ms K and FHF was unfair to them even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

The PR says that Mr R and Ms K were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Signature Collection membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the 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.

I acknowledge that it is also possible that the Supplier did not give Mr R and Ms K sufficient information, in good time, on the various charges they could have been subject to as Signature Collection members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr R and Ms K nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Signature Collection's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

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 R and Ms K 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 Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

Mr R and Ms K's commission complaint

I note that one of Mr R and Ms K's other concerns relates to alleged payments of commission by FHF to the Supplier for acting as a credit broker and arranging the Credit Agreement.

The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* ('*Johnson, Wrench and Hopcraft*') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers.

So, once the implications of that judgment become clear, I will finalise my findings on this complaint.

In conclusion, given the facts and circumstances of this complaint, I did not think that FHF acted unfairly or unreasonably when it dealt with Mr R and Ms K's Section 75 claim, and I was not persuaded that FHF 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 could see no other reason why it would be fair or reasonable to direct FHF to compensate them.

FHF responded to the PD and accepted it.

The PR also responded. It did not accept the PD and provided some further comments it wanted me to take into account.

Having received the relevant responses from both parties, I'm now finalising my 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, 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 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 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 only relate to the issue of whether the credit relationship between Mr R and Ms K and FHF was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr R and Ms K 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 it didn't make any further comments in relation to those in their response to my PD. Indeed, it hasn't said it disagrees 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 FHF participate in an unfair credit relationship?

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on FHF to disprove the allegation that its relationship with Mr R and Ms K was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that FHF – or I – should take a claim at face value. There remains an onus on Mr R and Ms K to provide some evidence for the claim they are making, despite the overall burden of proof resting with FHF, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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

In its response to my PD, the PR has reasserted its view that the Supplier marketed the Signature Collection membership to Mr R and Ms K as an investment and that this was a motivating factor in their decision.

I accepted in my PD that the membership may well have been marketed as an investment to Mr R and Ms K in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Signature Collection membership as an investment, it wasn't necessary for me to make a finding on this as it is not determinative of the outcome of the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. The PR's response to my PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mr R and Ms K to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Mr R and Ms K to proceed with their purchase. In short, I was not persuaded that their decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Mr R and Ms K in the course of their complaint.

Amongst other things, I noted that within this Mr R and Ms K made no mention of the investment element being a factor in their decision to purchase the Signature Collection membership at issue, or that they were increasing their existing investment (and therefore level of potential return) by doing so. The PR says that Mr R and Ms K's references to previous purchases serve to illustrate the "systematic marketing tactics" used by the Supplier's sales representatives. But even accepting the possibility that Signature Collection membership was marketed to Mr R and Ms K as an investment, the fact remains that this testimony did not, to my mind, suggest that this had led Mr R and Ms K to purchase the membership when they would otherwise not have done.

With its response to my PD, the PR attached some further comments from Mr R and Ms K which it believes demonstrate that the investment element was a motivating factor in their decision to purchase Signature Collection membership. I've carefully considered these additional comments and note that Mr R and Ms K have said, with limited supporting detail, that:

"... during each sale what we purchased was an investment that would be amplified by swapping for a signature flat and further by buying two weeks of a signature flat."

Ultimately, though, I do not think I can place such weight on these additional comments that would lead me to uphold the complaint. I am particularly mindful that they were only provided after our Investigator's assessment, setting out the reasons why he didn't think the complaint should be upheld. Moreover, the comments were given in response to very specific questions by the PR in light of what our Investigator had said. It seems likely to me, therefore, that these comments were heavily influenced – unknowingly or otherwise – by events that preceded it. I consider Mr R and Ms K's earlier testimony to be a more reliable account of their memories.

In any event, I note that Mr R and Ms K still state within these additional comments that:

"We were told at the presentation that it would be in our best interests to buy another week on 'odd' years to be able to go every year. We decided against that and agreed to buy another week, also on 'even' years, to enable us to stay 2 weeks every 2 years."

While the investment element may have been something that appealed to them when doing so, I still think it most likely that Mr R and Ms K would always have opted to purchase a second week given the level of interest that their testimony, across their two statements, demonstrates they had in doing so.

I note also that the PR objects to the approach I've taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*¹ and the case law that contributed to it, by requiring Mr R and Ms K to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But I did not make such a finding. I said that, in my view, Mr R and Ms K were highly motivated by the holiday options offered by the Supplier – which was a factor in my overall conclusion in light of all the available evidence that they would, on balance, have pressed ahead with their purchase of the Signature Collection membership even if there had been a breach of Regulation 14(3). That remains my view.

So for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Mr R and Ms K's decision to purchase the Signature Collection membership.

The provision of information by the Supplier at the Time of Sale

The PR says that a payment of commission from FHF to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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

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

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

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

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

¹ 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').

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

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

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

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

I recognise that FHF was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between Mr R and Ms K and FHF unfair to them – such that I should uphold the complaint. I say that because FHF has explained that the Supplier would share finance proposals among its approved external finance partners; the Supplier couldn't write all its finance business "in-house" [through FHF]; and FHF largely provided loans to customers whose circumstances fell outside of its external finance partners' lending terms. So, I'm not persuaded that Mr R and Ms K were led into a credit agreement with FHF because it was tied in some way to the Supplier.

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

Section 140A: conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr R and Ms K and FHF under the Credit Agreement and related Purchase Agreement was unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that FHF acted unfairly or unreasonably when it dealt with Mr R and Ms K's Section 75 claim, and I am not persuaded that FHF 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 FHF to compensate them.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Ms K to accept or reject my decision before 4 February 2026.

Ben Jennings
Ombudsman