DRN-5967931

The complaint

Mr and Mrs D's complaint is, in essence, that First Holiday Finance Limited (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.

Mr and Mrs D have been represented in their complaint by a professional representative ("PR").

What happened

I issued a provisional decision on this complaint on 13 August 2025, a copy of which is appended to and forms part of this final decision.

It's not necessary for me to go over the background again in detail as a result, but very briefly:

- Mr and Mrs D purchased a timeshare from a timeshare provider (the "Supplier") on 4 September 2019 (the "Time of Sale"), entering into an agreement (the "Purchase Agreement") to buy 2,600 "points rights" for £25,000. This was a points-based holiday club membership without any attached asset. PR had mistakenly considered it was a kind of timeshare known as a "fractional" timeshare, which comes with a right to a share in the net sale proceeds of a specific property.

- The timeshare was paid for by a £24,500 loan from the Lender (the "Credit Agreement") and £500 paid by other means.

- A complaint was made to the Lender, via PR, on 11 May 2022, about:

    - Misrepresentations by the Supplier giving Mr and Mrs D a claim against the Lender under Section 75 of the CCA.

    - Various wrongful acts or omissions by either the Supplier or the Lender, giving Mr and Mrs D a claim against the Lender under Section 140A of the CCA, that their credit relationship with the Lender had been rendered unfair to them.

    - Certain legal developments regarding Mr and Mrs D's Purchase Agreement in Spain, had implications for their Credit Agreement, namely that it should be treated as rescinded.

The complaint was not upheld by the Lender, nor by our Investigator once the complaint was referred to the Financial Ombudsman Service.

The case then came to me and I issued the appended provisional decision. I didn't think it should be upheld. My full reasoning can be found in the appended document, but I noted most of PR's case appeared to be based on a mistaken belief that the timeshare Mr and Mrs

D had purchased was a fractional timeshare, which was not the case. A summary of the rest of my reasons follows:

- The Lender had not been wrong to turn down Mr and Mrs D's Section 75 claim, because there was insufficient persuasive evidence that the Supplier had misrepresented the timeshare to them.

- I didn't think the credit relationship had been rendered unfair to Mr and Mrs D because:

    - The timeshare had not been improperly marketed or sold to them as an investment, in breach of the regulations on selling timeshares.

    - The regulatory status of the credit broker which had arranged the loan, had not led to Mr and Mrs D being caused any detriment.

    - The Lender's decision to lend Mr and Mrs D money had not been improper or irresponsible, according to the rules in place at the time.

    - There was a lack of evidence that terms within the Purchase Agreement which were alleged to have been unfair to Mr and Mrs D, had been operated in an unfair way in practice or would be in the future.

- Without a successful English court ruling on similar facts, I wasn't convinced that any Spanish legal developments in relation to the Purchase Agreement had any implications on the Credit Agreement.

I asked the parties to the complaint to let me have any further submissions they would like me to consider. The Lender said it accepted the provisional decision. PR, on behalf of Mr and Mrs D, did not respond.

The case has now been returned to me to decide.

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.

Having done so, and noting that neither party to the complaint has provided any further submissions for me to consider, I see no reason to depart from the findings I reached in the appended provisional decision.

It follows that I will not be upholding Mr and Mrs D's complaint, for the same reasons.

My final decision

For the reasons summarised above, and explained in the appended provisional decision below, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 19 December 2025.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at broadly the same views as our Investigator, but I've explained my reasons in more detail, so I'm giving the parties to the complaint a further opportunity to provide submissions before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **27 August 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr and Mrs D's complaint is, in essence, that First Holiday Finance Limited (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 D purchased membership of a timeshare from a timeshare provider (the 'Supplier') on 4 September 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,600 'points rights' at a cost of £25,000 (the 'Purchase Agreement').

The type of timeshare purchased in this case was a points-based holiday club membership, under which a purchaser is granted a number of points annually which they can exchange for holiday accommodation. Mr and Mrs D's professional representative (the 'PR') appeared to be under the impression it was a type of timeshare known as a fractional timeshare, which (as well as granting an allocation of points) includes a share in the net sale proceeds of a specific property at the end of the membership term.

Mr and Mrs D paid for their timeshare membership by taking finance of £24,500 from the Lender (the 'Credit Agreement'), and paying £500 by other means.

Mr and Mrs D – via the PR – wrote to the Lender on 11 May 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't substantially 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 D's concerns as a complaint and issued its final response letter on 14 June 2022, 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 D disagreed with the Investigator's assessment. Mr and Mrs D focused, in their responses to our Investigator, on the Lender's decision to lend to them.

Mr and Mrs D noted that they had both been retired at the Time of Sale. Mr D had been offered a job recently but was still considering the job offer. Two other lenders had declined to lend to them before the Supplier had put in an application with the Lender, and one of those other lenders had later explained they had needed to see a wage slip and contract of employment from Mr D. Mr and Mrs D considered the Supplier had manipulated the application to the Lender to make it look as though Mr D was employed when he was not, and this was illegal and fraudulent.

No agreement could be reached, so the case has been passed to me to decide.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

What I've provisionally decided – and why

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

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

Section 75 of the CCA: the Supplier's misrepresentations at the 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. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that the timeshare had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs D were:

1. Told that they had purchased an investment that would "considerably appreciate in value".

2. Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.

3. Told that they could sell their timeshare to the Supplier or easily to third parties at a profit.

4. Made to believe that they would have access to "the holiday apartment" at any time all year round.

I will note here that the Letter of Complaint is identical in all material respects to many others I have seen from the PR, and I think the allegations made in it assume the timeshare sold to Mr and Mrs D was of the fractional type, which does include a share in property which could be described as an investment.

As I've said above, this was not a fractional timeshare, so it's unclear if the PR and Mr and Mrs D stand by the allegations made. Mr and Mrs D haven't referred to them in their own testimony – they have focused on what they consider to be the improper way in which the loan was secured.

I've not been supplied with a full copy of the Purchase Agreement, only a copy of the front page. However, on that front page, which was signed by Mr and Mrs D, the following statement appeared:

"We understand that the purchase of our membership in vacation club is a personal right for the primary purpose of holidays and is neither specifically for direct purposes of a trade in nor as a real estate interest or an investment in real estate, and that [Supplier] makes no representation as to the future price or value of the Vacation Club Holiday product."

It seems unlikely to me that the Supplier would have described the product as a share in a property which was an investment, when there was no share because this was a different type of product. Given Mr and Mrs D appear to have signed to say they understood they were not obtaining a real estate interest or making an investment in real estate, I think it's difficult to conclude the Supplier must have misrepresented the product to them as including a share in property and investment that would "considerably appreciate in value".

As for points 3 and 4, while it's *possible* that the timeshare was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. As I've already said, Mr and Mrs D themselves haven't made these points, the Letter of Complaint appears to assume a different kind of product was sold, and there is nowhere near the colour or context to the allegations which would be necessary to demonstrate that the Supplier made false statements of existing fact to Mr and Mrs D. And as there isn't any other evidence on file to support the suggestion that the timeshare was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mr and Mrs D – and the PR - have concerns about the way in which the timeshare 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 the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I've already explained why I'm not persuaded that the timeshare 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 and Mrs D and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;

2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;

3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and

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

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

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

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

The PR says, for instance, that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr and Mrs D 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 the timeshare. So, 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 and Mrs D 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 the Lender to compensate them, even if the loan wasn't arranged properly.

Related to this is the main point of complaint advanced by Mr and Mrs D personally, which is that the decision to lend to them was improper due to irregularities in the way their ability to afford the loan was calculated. As mentioned earlier in this decision, Mr and Mrs D say the Supplier (which was acting as the Lender's agent in arranging the loan) was aware they were retired but put on the application form that Mr D was employed. This hadn't been true, as he had only received a job offer that he hadn't yet accepted. Mr D says a member of the Supplier's staff instigated this in order to secure the loan.

The regulations relevant to the loan application can be found in the Financial Conduct Authority's Handbook in the chapter named "CONC".

CONC 5.2A sets out the "creditworthiness assessment" lenders are expected to carry out when considering a loan application. CONC 5.2A.15 R (2) states that a lender must take reasonable steps to determine the amount, or make a reasonable estimate of, a customer's income. CONC 5.2A.15 R (5) states that a lender can take into account:

"…an expected future increase in the customer's income where the firm reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement…"

In this case it appears the Lender, acting via the Supplier, took into account the income Mr D would receive if he accepted the job offer. I understand from Mr D's testimony that he discussed the job offer with the Supplier and showed it a copy, which contained the proposed salary, start date and conditions of employment. I don't think there would have been anything improper, according to the rules I've just outlined, in the Lender having taken into account the anticipated increase in Mr D's income. At the time, Mr D had intended to accept the offer, and he did so. So I think the Lender would have had a reasonable belief that his income would increase in line with the job offer. As it happened, Mr D resigned a few weeks into the job because it didn't meet expectations, and this brings me to another point. Mr D says he told the Supplier's staff that he wasn't 100% sure about the job, had asked if the contract could be dated from 1 January 2020 to give him time to settle in, and that the Supplier had agreed to this. Unfortunately, this isn't reflected in the paperwork Mr D signed at the Time of Sale, which states he had a cancellation period of 14 days, starting from 4 September 2019. There's nothing in the Supplier's notes from after the sale either, to suggest that it had been agreed the withdrawal period would be any later than the date Mr D had signed to agree to. If Mr D has any evidence – such as emails – that something else was agreed with the Supplier, then I'd ask that he provide this in response to this provisional decision.

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr and Mrs D in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing the timeshare contract are likely to have led to an unfairness that warrants a remedy.

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

But there is another reason why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that the timeshare was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way. As I said earlier, it seems the PR has been mistakenly under the impression that the timeshare in this case was a kind of fractional timeshare, and it wasn't clear to me if this line of argument was still being pursued. For the sake of completeness, I've considered it below.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs D's timeshare 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 timeshares 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 originally alleged that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs D were told by the Supplier that their timeshare 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. The Timeshare Regulations did not ban timeshares which included investment features. They just regulated how such products were marketed and sold.

As already explained in this decision, unlike fractional timeshares, which generally include the right for the owner/member to receive a share of the net sale proceeds of a specific property named on their contract after a certain number of years (and which would constitute an investment feature), the timeshare Mr and Mrs D bought did not include such a feature. Indeed, it does not appear to me that their timeshare included any feature which could reasonably be described as an investment.

To conclude that the timeshare was marketed or sold to Mr and Mrs D 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 it to them as an investment, i.e. told them or led them to believe that the timeshare offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

I don’t think the Supplier marketed or sold the timeshare to Mr and Mrs D as an investment in this case, for the same reasons why I don’t think they *misrepresented* the product as having been an investment. While PR alleges the Supplier marketed the timeshare as an investment, Mr and Mrs D themselves don’t say in their own testimony that the Supplier marketed or sold the product to them in this way. There would have been no reason for the Supplier to try to explain any feature of the product which could be described as an investment (thus risking marketing it in a manner which was non-compliant with the Timeshare Regulations). And Mr and Mrs D both signed to agree to the declaration I referred to earlier, which stated that the product was *not* an investment in real estate.

Taking all of this into account, I think it’s very unlikely the Supplier marketed the timeshare to Mr and Mrs D as an investment in breach of Regulation 14(3). So I don’t think this rendered the credit relationship between them and the Lender, unfair to them.

The Supplier’s alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mr and Mrs D and award them compensation accordingly – in keeping with the judgment of the UK’s Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 (‘*Durkin*’).

However, as the Lender hasn’t been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

I also note that the Purchase Agreement is governed by English law. So, it isn’t at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it 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 and Mrs D Section 75 claim(s), 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 provisional decision

For the reasons explained above, I am not minded to uphold this complaint.

Will Culley
Ombudsman