

## **The complaint**

Mr and Mrs 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 S purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 26 August 2015 (the 'Time of Sale'), having previously held a trial membership. They entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £9,000 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs S 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 the end of their membership term.

Mr and Mrs S paid for their Fractional Club membership by taking finance of £8,500 from the Lender (the 'Credit Agreement'), paying a deposit of £500 separately.

Mr and Mrs S upgraded their Fractional Club membership on 13 April 2017, purchasing additional fractional points with finance from another lender. This later purchase is the subject of a separate complaint and has been included for background information only.

Mr and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 4 November 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 S' concerns as a complaint and issued its final response letter on 18 November 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 S 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 31 July 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 do not currently 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**

This part of Mr and Mrs S' complaint was made for several reasons, which included that the Supplier misrepresented the Fractional Club membership at the Time of Sale as it told them they had purchased an investment which would considerably increase in value and that they would have access to the Allocated Property at any time.

Creditors can generally reasonably reject Section 75 claims that they are first made aware of after the claim has become time-barred under the Limitation Act (the 'LA'), as it wouldn't be fair to expect them to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. Therefore, it is relevant to consider whether Mr and Mrs S' Section 75 claim was time-barred under the Limitation Act before they put it to the Lender.

A claim under Section 75 is a 'like' claim against the creditor. It in effect mirrors the claim the consumers could make against the Supplier.

A claim for misrepresentation against the Supplier would typically be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).

However, a claim under Section 75, like the one in question here, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. That's when Mr and Mrs S entered into the purchase of their timeshare based on the alleged misrepresentations of the Supplier – which they say they relied on. Further, as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.

Mr and Mrs S first notified the Lender of their Section 75 claim on 4 November 2021. Given more than six years had passed between the Time of Sale and when they first put their claim to the Lender, in my view it was neither unfair nor unreasonable that the Lender rejected their concerns about the Supplier's alleged misrepresentations.

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

I've already explained why I don't think the Lender acted unfairly or unreasonably when it rejected Mr and Mrs S' Section 75 claim in respect of the Supplier's alleged misrepresentations 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 S and the Lender along with all 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 S and the Lender.

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr and Mrs S. 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 the Lender 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 and Mrs S was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs S.

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 the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr and Mrs S 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 Fractional Club membership. 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 S' financial loss – such that I can say that the credit relationship in question was unfair to 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.

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 S 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 Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr and Mrs S 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 Fractional Club membership at the Time of Sale when they simply did not want to. Moreover, they went on to upgrade their Fractional Club membership –

which I find difficult to understand if the only reason they went ahead with their purchase at the Time of Sale was because they were pressured into doing so. And with that being the case, there is insufficient evidence to demonstrate that Mr and Mrs S made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs S' credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to 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**

The Lender does not dispute, and I am satisfied, that Mr and Mrs 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 the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs S 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. 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 and Mrs S the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs S 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.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs S, 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 Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs S 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 the Lender and Mr and Mrs S 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 and Mrs S and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs S and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when they decided to go ahead with their purchase.

During our investigation, the PR provided a statement from Mr and Mrs S to support their complaint. This included their recollections of the Time of Sale:

"In August 2015, we were invited to stay at [one of the Supplier's resorts] and while there had to attend a free breakfast where we met with an English represented [*sic*] who said she resided in Spain. **She spoke to us about the limitations of our current trial membership** and then passed us onto another representative. **We were taken by car to several resorts where we were shown amazing [Supplier] properties that they said we could stay at if we upgraded.** The representative took us back to the sales room where **he spoke with us for approximately 7 hours about why we should**

**upgrade. Our 2 children were restless and fed up an [sic] eventually [we agreed to purchase].”**

[my emphasis]

This extract indicates that Mr and Mrs S were impressed by the standard of holiday accommodation on offer if they purchased full membership of the Fractional Club, and it was this, coupled with weariness from the lengthy sales process, that eventually led to them to agree to their purchase at the Time of Sale.

Although Mr and Mrs S did refer to the investment element of Fractional Club membership in their statement when explaining why this was misrepresented to them, they did not describe the share in the Allocated Property as a driving factor for their purchase:

**“Misrepresentation**

[...]

4. We were led to believe that when we joined the [Supplier’s] holiday club we would have access to 5-star accommodation and discounted flights for the next 13 years. We were told that the product would increase in value and after the contract ended, we could sell it back to [the Supplier] for a profit. We were told that [Fractional Club membership] was valuable and [the Allocated Property] would be easy to sell at the end of the term.”

Indeed, the investment element of Fractional Club membership appears to have been secondary to the standard of accommodation and discounts available, given it was mentioned after this and only briefly within the statement.

That doesn’t mean Mr and Mrs S 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 and Mrs S 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 Mr and Mrs S ultimately made.

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

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

The PR responded that it did not accept the PD and provided some further comments and

evidence to be considered. The Lender accepted the PD and had no further comments.

I am now in a position to finalise my decision.

### **The legal and regulatory context**

In my provisional decision, I explained that 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 was not necessary to set out that context in detail. But, following my provisional decision, 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.

I’ve considered the case afresh following the response from the PR. I’ve also taken into account the commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements. 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 and Mrs S and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs S as an investment at the Time of Sale.

As I 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 its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions about those other points. And since I haven't been provided with anything more in respect of those other points by either party, I see no reason to change my conclusions about them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

As I explained in my PD, Mr and Mrs S' statement indicated that they were impressed by the standard of holiday accommodation on offer if they purchased full membership of the Fractional Club, and it was this, coupled with weariness from the lengthy sales process, that eventually led to them to agree to their purchase at the Time of Sale. And although they did refer to the investment element of Fractional Club membership in their statement when explaining why this was misrepresented to them, they did not describe the share in the Allocated Property as a driving factor for their purchase. So, I was not, and still am not, persuaded that the evidence suggests that Mr and Mrs S purchased Fractional Club membership because of any breach of Regulation 14(3).

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs S' decision to make the purchase was motivated by the prospect of a financial gain. And for that reason, I still don't think the credit relationship between Mr and Mrs S and the Lender was unfair to them.

#### **S140A conclusion**

Given all 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 and Mrs S and the Lender 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.

#### **Overall 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 S' Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

**My final decision**

My final decision is to not uphold Mr and Mrs S' complaint about First Holiday Finance Ltd for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 5 January 2026.

Alex Salton  
**Ombudsman**