

The complaint

Mrs C and Mr N complain First Holiday Finance Ltd (the “Lender”) has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the “CCA”) and has participated in an unfair credit relationship with them under Section 140A of the CCA.

What happened

I issued a provisional decision on this case on 2 October 2025, in which I set out the background to the complaint and my provisional findings. A copy of that provisional decision is attached to and forms part of this final decision. For that reason, it’s not necessary for me to go over all the details again, but to summarise:

- On 1 September 2015 (the “Time of Sale”) Mrs C and Mr N bought a timeshare from a timeshare provider (the “Supplier”). The timeshare was a membership of the Supplier’s “Fractional Club”. Mrs C and Mr N bought 900 points in the Fractional Club, which could be used to book holiday accommodation annually. This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mrs C and Mr N’s purchase paperwork. The purchase cost £15,065.
- The Supplier arranged a loan (the “Credit Agreement”) with the Lender for £13,565. The remaining balance was paid via other means. The loan was repayable over 144 months at £193.32 per month.
- In November 2021, through PR, Mrs C and Mr N complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Mrs C and Mr N sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between them and the Lender unfair under Section 140A of the CCA.

The Lender rejected the complaint, which was then referred to the Financial Ombudsman Service.

In my provisional decision I said I didn’t think the complaint should be upheld. The full reasons can be found in the appended document, but again to summarise:

- The Lender had not been unfair or unreasonable in declining Mrs C and Mr N’s Section 75 claim for misrepresentation because:
 - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.
 - The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier

had made false statements of specific fact to Mrs C and Mr N.

- The Lender had not participated in a credit relationship with Mrs C and Mr N that was unfair to them because:
 - Regardless of whether or not the Lender had carried out appropriate checks before lending to Mrs C and Mr N, there was a lack of evidence the loan had been unaffordable for them at the time.
 - Contrary to PR's allegations on this point, the Credit Agreement had not been arranged by an unauthorised credit broker.
 - I couldn't see that any allegedly unfair terms in the purchase agreement with the Supplier had been operated unfairly against Mrs C or Mr N.
 - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mrs C and Mr N as an investment, but I was unable to attach much weight to their testimony regarding this issue. I had concerns over how late in the process Mrs C and Mr N had been asked to record their memories, after many years and various events that could have influenced their recollections. Ultimately, this meant I was unable to conclude the credit relationship between them and the Lender had been rendered unfair to them by any improper marketing of the timeshare as an investment.

I invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision. PR didn't agree with the provisional decision. It asked me to consider a number of points relating to the matter of the Supplier having allegedly marketed the Fractional Club membership to Mrs C and Mr N as an investment.

The case has now been returned 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, 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.

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 to my provisional decision, 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.

PR's further comments in response to the provisional decision only relate to the issue of whether the credit relationship between Mrs C and Mr N and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to them as an investment at the Time of Sale, and what their motivations were at that time.

As outlined in my provisional decision, PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my provisional decision. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on 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

Part of my assessment of Mrs C and Mr N's testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.¹

At this point I need to make an important clarification. In my provisional decision, I indicated that Mrs C and Mr N's witness statement was received after our Investigator had sent their assessment on this complaint. That's not strictly correct. We *did* receive the witness statement after our Investigator had sent an unfavourable assessment, but this was on a complaint linked to this one, involving the same sequence of purchases from the Supplier and the same complainants. The witness statement arrived in response to that assessment and was copied to the present complaint.

PR, responding to my provisional decision, said it hadn't shared the Investigator's assessment on this complaint with Mrs C and Mr N, saying this was done in order not to influence their recollections. PR said Mrs C and Mr N were also unaware about the judgment handed down in *Shawbrook and BPF v FOS*. PR said this means their recollections have not been influenced by either the Investigator's assessment or the judgment.

I have thought about what PR has said, but on balance, I don't find it a credible explanation of the contents of Mrs C and Mr N's evidence. Here, PR responded to our Investigator's (other) assessment to say that Mrs C and Mr N alleged that Fractional Club membership had been sold to them as an investment and it provided evidence from them to that effect. I fail to understand how they disagreed with that assessment on the basis that the timeshare was sold as an investment if they didn't know our Investigator's conclusions. It follows, in my view, that Mrs C and Mr N did know about our Investigator's assessment on their linked case before their evidence was provided.

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)

So, I remain of the view that there is a real risk that Mrs C and Mr N's testimony was coloured by the Investigator's assessment in their linked case and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mrs C and Mr N's purchasing decision.

The discrepancies between dates on the Purchase Agreement and Mrs C and Mr N's timeshare certificate

PR has argued there is an apparent ambiguity in the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could lead to an unfairness to Mrs C and Mr N in the future, as any delay could mean a delay in the realisation of their share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2032. This date indicates that the membership has a term of 16 years. The ambiguity identified by PR is that in the Information Statement provided as part of the purchase documentation it says the following:

*"The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate."* (bold my emphasis).

I note that in this case we are missing a "Member's Declaration" document which, in my experience, confirms the date on the owners' certificate. While I can see there appears to be a contradiction within the paperwork I think it's more likely than not that the commencement date for the start of the sales process is 31 December 2032, as stated on the certificate.

So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

I'll add here that, although this was not a point taken by PR, I have considered the nature of any commission arrangements between the Lender and the Supplier and how these may have affected the fairness of the credit relationship between Mrs C and Mr N, and the Lender. My understanding is that no commission was paid in this case, and there is nothing else in the commercial arrangements between the Lender and Supplier which would lead me to believe that the credit relationship was rendered unfair to Mrs C and Mr N by virtue of these arrangements.

Ultimately, I do not think the Lender participated in an unfair credit relationship with Mrs C and Mr N, taking into account the facts and circumstances of this case.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr N to accept or reject my decision before 2 January 2026.

A handwritten signature in blue ink, appearing to read 'Will Culley', with a horizontal line underneath.

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 conclusions as our Investigator, but I've explained some of my findings in more detail. I've decided to issue this provisional decision to give the parties an opportunity to provide further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **16 October 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mrs C and Mr N, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mrs C and Mr N complain First Holiday Finance Ltd (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with them under Section 140A of the CCA.

Mrs C and Mr N are represented in their complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mrs C and Mr N from a timeshare provider (the "Supplier") on 1 September 2015. I've outlined the basic details below:

- The purchase made on 1 September 2015 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mrs C and Mr N bought 900 points in the Fractional Club, which could be used to book holiday accommodation annually. This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mrs C and Mr N's purchase paperwork. The purchase cost £15,065.
- The Supplier arranged a loan (the "Credit Agreement") with the Lender for £13,565. The remaining balance was paid via other means. The loan was repayable over 144 months at £193.32 per month.
- In November 2021, through PR, Mrs C and Mr N complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Mrs C and Mr N sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between them and the Lender unfair under Section 140A of the CCA.

The Lender rejected the complaint, which 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.

Mrs C and Mr N disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

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 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 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.

I think it's also important at this stage to outline very briefly the general grounds on which Mrs C and Mr N seek redress from the Lender in relation to what are, at least in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. The grounds are that Mrs C and Mr N have a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case. That said, Mrs C and Mr N's Section 75 claim relates to misrepresentation, and was first notified to the Lender more than six years after the Time of Sale, which is when this particular cause of action against the Supplier accrued. Due to the provisions of the Limitation Act 1980, I think the Supplier (and the Lender) would have had a defence to such a claim, and therefore it wasn't unreasonable of the Lender to decline to honour a claim brought this late.

Misrepresentation can be relevant to the question of the fairness of the credit relationship between the Lender and Mrs C and Mr N however, so I have gone on to consider the misrepresentations they allege occurred below, in the context of their Section 140A claim.

Section 140A of the CCA operates in a more complex manner than Section 75. Insofar as is relevant to Mrs C and Mr N's case, it means that the credit relationship between them and the Lender can be found unfair because of anything done (or not done) by, or on behalf of, the Lender.

An unfair credit relationship can also be based on the terms of a related agreement (such as the agreement to buy the timeshare) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the timeshare or loan agreements. The Supplier's acts or omissions during the process of negotiations leading up to the purchase are deemed to be the Lender's responsibility.

In the interests of efficiency and ease of reading, I have set out my findings in a table format. Where a particular finding requires further explanation or analysis, I have indicated this and provided the further explanation below the table.

Table of Summarised Findings

Section 140A - Misrepresentations	Reason why this complaint doesn't succeed
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient persuasive evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to show otherwise.
It was falsely represented that there would be a considerable return on investment because the purchase involved a share in a property that would increase in value.	As per the point above, there is insufficient persuasive evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion.
It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. Mrs C and Mr N would also have signed to say they understood the Supplier would not buy back the membership. ²
It was falsely represented that Mrs C and Mr N would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements.
Matters allegedly rendering the credit relationship unfair	Reason why this complaint doesn't succeed
Mrs C and Mr N were pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mrs C and Mr N felt they had no choice but to purchase. Mrs C and Mr N also did not use the cooling-off period to cancel the purchase, which I would have expected had they only purchased because they were pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mrs C and Mr N have not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.
The Credit Agreement was arranged by self-employed individuals who did not have the necessary regulatory permissions, making it unenforceable.	It appears the entity which arranged the Credit Agreement held the required regulatory permissions at the relevant time, so the agreement was not arranged by an unauthorised credit broker. The employment status of that entity's agents is not relevant.

² In this case we do not have full copies of the paperwork completed at the Time of Sale. However, it was the Supplier's standard practice to have prospective customers sign a declaration agreeing to a number of statements, including this one. I think it's more likely than not that Mrs C and Mr N would have signed such a statement.

The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mrs C and Mr N's decision to buy the Fractional Club membership, to render the credit relationship between them and the Lender unfair. **See further details below.**

I'll now set out the expanded reasons for my decision relating to the Supplier's alleged breach of Regulation 14(3) and the impact of this on the fairness of the credit relationship.

Given what is known about the way in which the Supplier sold Fractional Club memberships, I think it's *possible* the sales representatives could have said or suggested to Mrs C and Mr N that Fractional Club membership was an investment which could lead to a financial gain or profit, and therefore have acted in contravention of the relevant prohibition in the Timeshare Regulations.

However, it's necessary to show that any such breach by the Supplier had a material impact on Mrs C and Mr N's decision to go ahead with their purchase, to be able to arrive at a conclusion that the credit relationship between them and the Lender was rendered unfair to them as a result. In this case, the evidence is not persuasive, for reasons I'll explain.

Up until relatively recently, the Financial Ombudsman Service had received no evidence from Mrs C and Mr N, in their own words, in relation to any aspect of their complaint. All we had to consider was the letter of complaint from PR, which is identical in nearly all respects to other letters of complaint I have seen from PR on behalf of other complainants. In other words, it was generic in nature, and I have found it of no real assistance in establishing what happened at the Time of Sale, or Mrs C and Mr N's motivations for their purchase.

It was only after our Investigator issued an unfavourable assessment of the merits of the complaint, and after the judgment in *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'*) was handed down, that we received a witness statement from Mrs C and Mr N. In this, Mrs C and Mr N recalled that the Supplier led them to believe they would "...*get our money back once the contract is sold*" and that this was an attractive aspect of the product to them. Experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others. In light of this, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

There isn't any other evidence on file to corroborate Mrs C and Mr N's more recent evidence about what happened at the Time of Sale and what their motivations were, and there seems to me to be a very real risk that their recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I'm not persuaded that I can give these written recollections the weight necessary to conclude that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

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 Mrs C and Mr N'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 provisional decision

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

Will Culley
Ombudsman