

The Complaint

Mr M and Ms D'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.

Background to the Complaint

Mr M and Ms D purchased a trial timeshare membership with a timeshare provider (the 'Supplier') in August 2011. This purchase was funded by a different Lender, so I won't be commenting on this purchase in my decision. Mr and Mrs T upgraded their trial membership to a full membership (the 'Fractional Club') on 13 February 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 747 fractional points at a cost of £8,200 (the 'Purchase Agreement').

Mr M and Ms D paid for their Fractional Club membership by making a deposit payment of £500 and taking finance of £7,700 from the Lender in their joint names (the 'Credit Agreement').

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

Mr M and Ms D – using a professional representative (the 'PR') – wrote to the Lender on 22 December 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it is not necessary to repeat them in detail here beyond the summary above.

It does not appear that the Lender issued a response to Mr M and Ms D's complaint, so the PR referred the complaint to the Financial Ombudsman Service on 23 October 2024. As part of its submissions, it provided a statement from Mr M and Ms D.

Mr M and Ms D's complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. Mr M and Ms D disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

Having considered everything that had been submitted, I thought this complaint ought to be upheld. As I had reached a different outcome to that of our Investigator, I issued a provisional decision (the 'PD') and invited all parties to respond with any new evidence or arguments that they wished me to consider before I made my final decision.

I've reproduced my provisional findings below, which form part of this final 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 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. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional decision.

My provisional findings

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

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mr M and Ms D in the same or a better position than they would otherwise be in.

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

*Having considered the entirety of the credit relationship between Mr M and Ms D and the Lender along with all of the circumstances of the complaint, I think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and **in** carrying out my analysis, I have looked at:*

- 1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;*
- 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 M and Ms D and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr M and Ms D's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But Mr M and Ms D say that the Supplier did exactly that at the Time of Sale – saying the following within their witness statement:

"I went with my family to the resort for holidays and was introduced to perched [sic] the Fractional to use for holidays.

The Fractional contract was that we can use it for holidays as well as to acquire the property. I was not taken to the property or to view the site.

I was told that it will take up to 19years before I can sell it to get more money/profits. It was described to me as to use as holidays purpose [sic] and to sell it at the end of the period of 19years".

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.

Mr M and Ms D's share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But 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 does not 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 M and Ms 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 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 evidence in this complaint 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 M and Ms D, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr M and Ms D as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I will now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

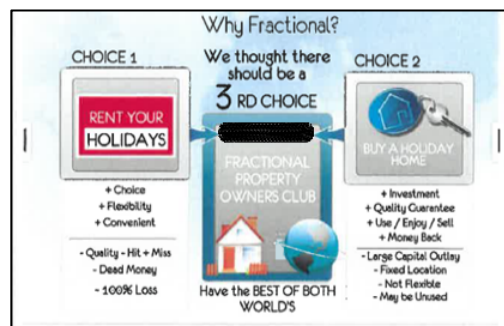
How the Supplier marketed and sold the Fractional Club membership

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material used to prepare its sales representatives – including a document called "2011 Spain PTM FPOC 1 Practice Slides Manual" (the '2011 Fractional Training Manual').

As I understand it, the 2011 Fractional Training Manual was used throughout the sale of the Supplier's first version of a product called the Fractional Property Owners Club – which I have referred to and will continue to refer to as the Fractional Club. It is not entirely clear whether Mr M and Ms D would have been shown the slides included in the Manual. But it seems to me to be reasonably indicative of:

- (1) the training the Supplier's sales representatives would have got before selling Mr M and Ms D's Fractional Club membership; and
- (2) how the sales representatives would have framed the sale of Fractional Club membership to Mr M and Ms D.

Having looked through the manual, my attention is drawn to page 6 (of 41) – which includes the following slide on it:



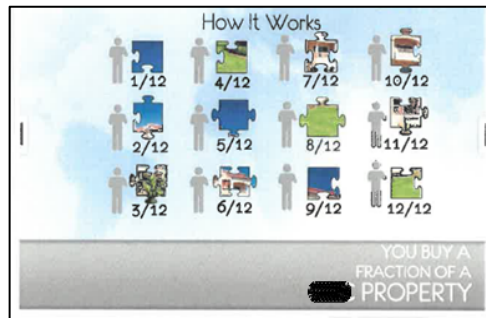
This slide titled "Why Fractional?" indicates that sales representatives would have taken Mr M and Ms D through three holidaying options along with their positives and negatives:

- (1) "Rent Your Holidays"
- (2) "Buy a Holiday Home"
- (3) The "Best of Both Worlds"

It was the first slide in the 2011 Fractional Training Manual to set out any information about Fractional Club membership and I think it suggests that sales representatives were likely to have made the point to Mr M and Ms D that membership combined the best of (1) and (2) –

which included choice, flexibility, convenience and, significantly, an investment they could use, enjoy and sell before getting money back. And this seems to be reflected in what Mr M and Ms D say within their witness statement, saying “It was described to me as to use as holidays purpose [sic] and to sell it at the end of the period of 19years”.

The manual then moved on to two slides (on pages 7 and 8) concerned with how Fractional Club membership worked:



I am aware that the Supplier says that 90-95% of its time during its sales presentations was focused on holidays rather than the sale of an allocated property. Having looked through the 2011 Fractional Training Manual, it seems to me that there were 10 slides on how Fractional Club membership worked before the slides moved onto to sections titled “Peace of Mind”, “Resort Management” and “Which Fractional”. And as 5 of the 10 slides look like they focused on holidays, there seems to me to have been a fairly even split during the Supplier’s sales presentations between marketing membership of the Fractional Club as a way of buying an interest in property and as a way of taking holidays.

However, even if more time was spent on marketing membership of Fractional Club membership as a way of taking holidays rather than buying an interest in property, as the slides above suggest, in my view, that the Supplier’s sales representatives would have probably led prospective members to believe that a share in an allocated property was an investment (after all, that is what the slide titled “Why Fractional” expressly described it as) , I cannot see why the Supplier would not have been in breach of Regulation 14(3) in those circumstances.

I acknowledge that there may not have been a comparison between the expected level of financial return and the purchase price of Fractional Club membership. However, if I were to only concern myself with express efforts to quantify to Mr M and Ms D the financial value of the proprietary interest they were offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in Regulation 14(3).

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

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

Mr M and Ms D say, in their own words, that the Supplier positioned membership of the Fractional Club as an investment to them. And as I have said before, the slides I have referred to above seem to me to reflect the training the Supplier’s sales representatives would have got before selling Fractional Club membership and, in turn, how they would have probably framed the sale of the Fractional Club to prospective members – including Mr M and Ms D. And as the slides clearly indicate that the Supplier’s sales representative was likely to have led them to believe that membership of the Fractional Club was an investment that may lead to a financial gain (i.e., a profit) in the future, I do not find them either implausible or hard to believe when they say they were told that:

“I was told that it will take up to 19years before I can sell it to get more money/profits. It was described to me as to use as holidays purpose [sic] and to sell it at the end of the period of 19years”.

On the contrary, in the absence of evidence to persuade me otherwise, I think that it is likely to be what Mr M and Ms D were led by the Supplier to believe at the relevant time.

We shared a copy of Mr M and Ms D’s witness statement with the Lender, and it raised some concerns about it. In the first instance, the Lender pointed out that the witness statement was neither signed nor dated and had been submitted in evidence after the judgement in the Judicial Review in ‘Shawbrook & BPF v FOS’² was handed down. So, it said that the testimony given by Mr M and Ms D could have been influenced by what was said in the Judicial Review.

I have thought about this, but the date the statement was submitted does not cause me to doubt what Mr M and Ms D have said here. I do not think their testimony is worded in a way that suggests it was coloured by the judgment in Shawbrook & BPF v FOS. I think it is more than likely that this was an honest account of their recollections of how the Fractional Club membership was sold to them by the Supplier.

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

² *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)

The Lender has also said their testimony does not indicate that any sales material was shown to them which would suggest the membership was sold to them as an investment. From my understanding of how the Supplier sold this particular version of the Fractional Club, the slides I have referred to are a good indication of how the sales representatives would have framed the sale of Fractional Club membership to Mr M and Ms D. And as I've said, the training included that they should expressly describe the Fractional Club membership as an investment. So, their recollections, set out in their own words, seem to reflect that their membership was sold to them as an investment.

As I have mentioned, Mr M and Ms D recall being told that they can make more money/profit upon the sale of their membership. And that, in the particular circumstances of this complaint, persuade me that the Supplier marketed and sold Fractional Club membership as an investment to Mr M and Ms D at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr M and Ms D 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 M and Ms D and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Mr M and Ms D testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase. That does not mean they were not interested in holidays and that is not surprising given the nature of the product at the centre of this complaint. But as Mr M and Ms D say (plausibly in my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from the more 'standard' type of timeshare available to them. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

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

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr M and Ms D under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the

case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Fair Compensation

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

Mr M and Ms D were trial members before purchasing Fractional Club membership. As I understand it, trial membership involved the purchase of a fixed number of week-long holidays that could be taken with the Supplier over a set period in return for a fixed price. The purpose of the trial membership was to give prospective members of the Supplier's longer-term products a short-term experience of what it would be like to be a member of, for example, the Fractional Club. According to an extract from the Supplier's business plan, roughly half of trial members went on to become timeshare members.

If, after purchasing a trial membership, a consumer went on to purchase membership of one of the Supplier's longer-term products, their trial membership was usually cancelled and traded in against the purchase price of their timeshare. I have not been provided with a copy of the pricing sheet but I assume this is what would have happened at the Time of Sale. If so, Mr M and Ms D's trial membership was a precursor to their Fractional Club membership. With that being the case, the trade-in value acted, in essence, as a deposit on this occasion and I think this ought to be reflected in my redress when remedying the unfairness I have found.

So, given all of the above, here is what I think needs to be done to compensate Mr M and Ms D – whether or not a court would award such compensation:

- (1) The Lender should refund Mr M and Ms D's repayments to it under the Credit Agreement (I understand there is not an outstanding balance as the Lender has already written off the loan balance and closed the account).*
- (2) In addition to (1), the Lender should also refund:
 - i. The annual management charges Mr M and Ms D paid as a result of Fractional Club membership.*
 - ii. If applicable, the trade-in value given to Mr M and Ms D's trial membership.**
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr M and Ms D used or took advantage of; and*
 - ii. The market value of the holidays* Mr M and Ms D took using their Fractional Points.****

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

- (4) Simple interest*** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.*

- (5) *The Lender should remove any adverse information recorded on Mr M and Ms D's credit file(s) in connection with the Credit Agreement reported within six years of this decision.*
- (6) *If Mr M and Ms D's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.*

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

***I understand Mr M and Ms D did not take any holidays after they took out their Fractional Club membership but if I am wrong about that either party can let me know in response to this provisional decision.*

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

Response to my provisional decision

The PR on behalf of Mr M and Ms D responded to say they accepted my provisional findings.

The Lender agreed with my decision to uphold Mr M and Ms D's complaint however they raised some concerns with my recommendations on how it should put things right for them specifically surrounding the reimbursement of Mr M and Ms D's trial membership.

In my provisional decision, I said if, after purchasing a trial membership, a consumer went on to purchase membership of one of the Supplier's longer-term products, their trial membership was usually cancelled and traded in against the purchase price of their timeshare. Although I did not have a copy of the pricing sheet, I assumed this is what happened when Mr M and Ms D upgraded to a Fractional Club membership on 13 February 2012. With that being the case, I recommend the trade-in value given to trial membership to be refunded as it acted, in essence, as a deposit when Mr M and Ms D's purchased their Fractional Club membership.

The Lender has disputed that it is fair that the cost of the trial membership bought by Mr M and Ms D ought to be refunded as part of the compensation calculation. It says that Mr M and Ms D could use the five remaining weeks in the period left, and this would put Mr M and Ms D back in the position they would have been in had they not purchased the Fractional Club membership.

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.

But, having considered what the Lender has said here, I don't agree. I'll explain.

The trial membership cost £3,995 and was paid for by Mr M and Ms D, albeit by a different lender. I understand this allowed them to take five weeks of accommodation from the Supplier's portfolio of resorts over the following three years. It does not appear like Mr M and Ms D used their trial membership.

Whilst the Lender says Mr M and Ms D can choose to use their remaining weeks – the period in which they were entitled to do so has passed. Also, the reason for taking a trial membership was to enable a customer to experience the type of holiday and accommodation the Supplier could provide but the Supplier is no longer open to new members. So, the reasons for taking the trial membership no longer exist.

Further, part of the basis for taking a trial membership was that any 'unused' part of the trial membership could be used to reduce the cost of a full membership. Following my provisional decision, I requested a copy of the pricing sheet which the Lender provided. Looking at this, I can see the purchase price of Mr M and Ms D's 747 fractional points was set by the Supplier as £12,195. But Mr M and Ms D traded in their unused trial membership and ended up paying £8,200 for membership of the Fractional Club. So, the trial membership acted as a deposit against their purchase, and they would likely have had to pay the full purchase price of £12,195 had they not had the trial membership to trade in. In other words, the trial membership worked exactly as designed and fulfilled its purpose. So, it is right that everything they paid, both as a deposit and the remaining balance is refunded as set out in the PD.

Putting things right

Taking into account all of the above, I'm satisfied that the redress I proposed in my provisional decision represents a fair and reasonable way for First Holiday Finance Ltd to resolve the complaint. For the avoidance of any doubt, I'll reiterate here the steps I require it to take:

1. The Lender should refund Mr M and Ms D's repayments to it under the Credit Agreement (I understand there is not an outstanding balance as the Lender has already written off the loan balance and closed the account).
2. In addition to (1), the Lender should also refund:
 - i. The annual management charges Mr M and Ms D paid as a result of Fractional Club membership.
 - ii. If applicable, the trade-in value given to Mr M and Ms D's trial membership.
3. The Lender can deduct:
 - i. The value of any promotional giveaways that Mr M and Ms D used or took advantage of; and
 - ii. The market value of the holidays* Mr M and Ms D took using their Fractional Points.**

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

4. Simple interest*** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

5. The Lender should remove any adverse information recorded on Mr M and Ms D's credit file(s) in connection with the Credit Agreement reported within six years of this decision.
6. If Mr M and Ms D's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

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

**I understand Mr M and Ms D did not take any holidays after they took out their Fractional Club membership. The Lender did not say as requested, in response to my PD, whether I was wrong about that so my direction is that the Lender should not make any deductions for holiday usage.

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

My final decision

My final decision is that I uphold Mr M and Ms D's complaint. To settle it, I require First Holiday Finance Ltd to take the steps I've set out at points 1-6 under the heading 'Putting Things Right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms D to accept or reject my decision before 7 January 2026.

Sameena Ali
Ombudsman