

## **The complaint**

Mr and Mrs C'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 C were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 15 November 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,420 Signature Collection points at a cost of £24,129 (the 'Purchase Agreement'). But after trading in their existing membership, they ended up paying £10,999 for their Signature Collection membership.

Signature Collection membership was asset backed – which meant it gave Mr and Mrs C more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends. It also offered guaranteed availability of their Allocated Property in a set week each year, or they could use their points to stay at another property from the Supplier's portfolio of resorts.

Mr and Mrs C paid for their Signature Collection membership by paying a £500 deposit and taking finance for the remaining amount of £19,878 from the Lender (the 'Credit Agreement'). This loan also consolidated the outstanding balance of another loan they'd taken out to fund their previous purchase.

Mr and Mrs C – using a professional representative (the 'PR') – wrote to the Lender on 23 March 2022 (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 C's concerns as a complaint and issued its final response letter on 21 April 2022, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service (on 18 October 2022). It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr and Mrs C disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

Another Ombudsman considered the matter and issued a provisional decision (the 'PD') dated 6 August 2025. Having considered everything, they also did not think this complaint ought to have been upheld.

The Lender responded to say it agreed with what the other Ombudsman had said. The PR responded to say they did not accept the PD and provided some further comments and evidence they wish to be considered.

The Ombudsman who issued the provisional decision then left this Service. So, the complaint was passed to me to consider. Having considered everything, along with the other Ombudsman's provisional decision, I communicated to both parties that I agreed with the provisional conclusions reached, and for the same reasons given in that decision. Neither party responded to this communication, or provided any further comments.

So, I'm now finalising my decision.

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

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

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

### The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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**

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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.

Again, in summary, it was said in the Letter of Complaint that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs C 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 Signature Collection membership 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.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). As explained in the PD, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's *possible* that Signature Collection membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's *probable*. Again, they're given little to none of the colour or context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Signature Collection membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mr and Mrs C - and the PR - have concerns about the way in which Signature Collection membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, along with those already explained in the PD, 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?**

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I've already explained why I'm not persuaded that Signature Collection membership was

actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr and Mrs C 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 in relation to Signature Collection membership, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs C and the Lender given their circumstances at the Time of Sale.

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

As set out in the PD, the complaint about the Lender being party to an unfair credit relationship was 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 C. 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 C 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, like the previous Ombudsman, I am not satisfied that the lending was unaffordable for Mr and Mrs C.

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 C knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Signature Collection membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr and Mrs C's 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.

The PR also says that there was one or more unfair contract term in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr and Mrs C 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 Signature Collection

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

I acknowledge that Mr and Mrs C may have felt weary after a sales process that went on for a long time. But again, they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Signature Collection membership when they simply did not want to. As previously explained, they were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs C made the decision to purchase Signature Collection 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 C'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 Signature Collection membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs C's Signature Collection membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

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

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

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs C were told by the Supplier that Signature Collection membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs C the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr and Mrs C as an investment in breach of Regulation 14(3), I have to be persuaded that it

was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Signature Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs C, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

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

Would the credit relationship between the Lender and Mr and Mrs C have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

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 (if there was one) had on the fairness of the credit relationship between Mr and Mrs C 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 C 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.

In the provisional decision the previous Ombudsman, in summary, explained that on their reading of the evidence before them, the prospect of a financial gain from Signature Collection membership was not an important and motivating factor when they decided to go ahead with their purchase. So, they did not think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr and Mrs C ultimately made.

They said this because of the testimony Mr and Mrs C provided. This was provided prior to the Investigator's view and wasn't signed or dated. But, the PR said this was drafted on 27 July 2021. In this testimony, in relation to this Time of Sale, they said:

*“Again 8th November 2017, When [sic] we arrived we had a letterwe [sic] were then told that we would need to attend another meeting which they assured us was just to ensure we knew how to use the membership and howto [sic] get the best out of it, No [sic] they wanted to show us the Signature collections near where we were staying, which I wasn't happy with because it was overlooked while everyone was sunbathing but once again we were pressured into signing, we had been pressurised into agreeing to this deal, we were told that we had to accept it there and then or the deal would be gone. [The Supplier] ran credit checks on both of us and decided that we were acceptable for credit. They arranged for finance through [the Lender] again.*

*[...]*

*We did have some doubts the day after signing the agreement but had convinced ourselves that we had made the right choice given the holidays we wanted to take in the future so continued to enjoy our holiday.”*

The previous Ombudsman noted that there was nothing in this testimony which made any allegation or suggestion that the Supplier had sold the membership to them as an investment at the Time of Sale. Nor did they say anything to suggest that they were motivated to purchase on the basis of the hope or expectation of a financial gain. Indeed, from what they'd had to say, it appeared that Mr and Mrs C made the purchase for the holidays it could provide.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, the previous Ombudsman was not persuaded that Mr and Mrs C's decision to purchase Signature Collection membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). And for that reason, they did not think the credit relationship between Mr and Mrs C and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

The PR responded to the provisional decision to, in summary, say that they feel the evidence does show that the Supplier sold membership as an investment and that was a motivating factor in their purchasing decision.

I have considered PR's submissions, but I have not reached a different conclusion than that which was already outlined in the provisional findings on this complaint. Indeed, I have come to the same conclusion for broadly the same reasons, having taken into account everything the PR has said in response to the original PD. That said, I will address the points the PR made in response.

The PR has highlighted the following part of Mr and Mrs C's testimony in support of their position:

*“We have tried to terminate our membership on a few occasions but been informed They [sic] could put our names on the list to sale [sic]?”*

But I fail to see how this shows that the Supplier sold the membership as an investment or that this was a motivating factor in Mr and Mrs C's purchasing decision, as the PR has suggested. In my view it simply shows that Mr and Mrs C had subsequently tried to exit their membership but had been told by the Supplier that they would need to arrange to sell it privately (since the Supplier did not offer a re-sale programme). It doesn't, in my view, give any insight into what they were told at the Time of Sale or what their motivations were for purchasing at that time. Indeed, they haven't said or suggested they expected to make a profit from terminating their membership or selling it privately in the way they've described.

The PR says that as the Supplier's pricing sheet set out the "unit share" Mr and Mrs C acquired under their Signature Collection membership, this shows the investment element played "quite an important role" in convincing them to purchase it. But I don't agree with that analysis. The pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. And the Supplier would have recorded that information irrespective of the customer's motivations for purchasing. So, I don't consider this document offers any insight into Mr and Mrs C's motivation for making their purchase.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*<sup>1</sup>, it was not challenged that the product in question was marketed and sold as an investment. But, as the previous Ombudsman explained in the PD, the Timeshare Regulations did not ban the sale of products such as the Signature Collection. 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 just because the complaints that were subject to judicial review were upheld, it does not follow I must (or should) also uphold Mr and Mrs C's complaint.

Finally, I agree with the PR that just because a purchaser was also interested in taking holidays with the Supplier, that does not preclude them also being motivated to take out Signature Collection membership by any investment element – indeed I would find it surprising if any members were not interested in taking holidays, given the nature of the product. However, for the reasons set out in this decision, I do not find such investment motivation. And I therefore, like the previous Ombudsman, do not think that the credit relationship between Mr and Mrs C and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

### **Section 140A: Conclusion**

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

### **Overall Conclusion**

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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 C's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase 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**

I do not uphold this complaint.

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<sup>1</sup> *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*').

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 8 January 2026.

Fiona Mallinson  
**Ombudsman**