DRN-6052438

The complaint

Mr and Mrs R'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 and Mrs R were the member 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 'Fractional Club' – which they bought on 3 June 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,230 fractional points at a cost of £32,463 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs R 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.

Mr and Mrs R paid for their Fractional Club membership by taking finance of £5,950 from the Lender (the 'Credit Agreement'), which was the balance left after trading in an existing membership.

Mr and Mrs R – using a professional representative (the 'PR') – wrote to the Lender on 3 October 2023 (the 'Letter of Complaint') to raise a number of different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs R concerns as a complaint and issued its final response letter on 1 November 2022, rejecting it on every ground.

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

Mr and Mrs R disagreed with the Investigator's assessment and asked for an Ombudsman's decision. An ombudsman considered the complaint and issued a provisional decision on Mr and Mrs R's complaint. An extract of that decision reads as follows:

> ***"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 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

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.

But here, the cash price given to the membership was over £30,000, and so the Lender can't be responsible to answering a claim under section 75 of the CCA. However, I can consider these allegations when I decide whether there was an unfair relationship as defined by Section 140A. I will consider that provision further below, but my findings on the alleged misrepresentations are as follows.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs R were:

(1) *told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
(2) *Told by the Supplier that they owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.*
(3) *told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

Neither the PR nor Mr and Mrs R have set out in any detail what words and/or phrases where allegedly used by the Supplier to misrepresent Fractional Club for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Mr and Mrs R entered into. And while, under the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor', longer than that if there were problems selling and the 'Owners' agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on).

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 – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr and Mrs R weren't told things about the way the membership worked, for example, was that the obligation to pay management fees could be passed on to their children. It seems to me that these are allegations that Mr and Mrs R weren't given all the information they needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr and Mrs R - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, for the reasons I've set out above, I'm not persuaded that was any misrepresentation caused an unfair credit relationship.

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

I've explained why I'm not persuaded Mr and Mrs R's Section 75 claim would be successful. But Mr and Mrs R also make arguments that either say or infer that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including the Supplier's representations and parts of its sales process at the Time of Sale. So, 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 R and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. *The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
4. *The inherent probabilities of the sale given its circumstances; and*
5. *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 R and the Lender.

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

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

They include allegations that:

1. *the right checks weren't carried out before the Lender lent to Mr and Mrs R.*
2. *the loan interest was excessive.*
3. *The Credit Agreement was arranged by a broker acting outside of its authorisation.*
4. *Mr and Mrs R were not given a choice of lender by the Supplier.*

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

I acknowledge that Mr and Mrs R 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 when they simply did not want to.

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 R made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 R 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 the Mr and Mrs R.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker and that the fact that the loan was used to refinance an earlier one wasn't set out in the Credit Agreement, 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 R knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were refinancing an earlier loan and that they were borrowing money to pay for Fractional Club 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 or didn't contain all the information it needed to (which I make no formal finding on), I can't see why that led to Mr and Mrs R 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.

Similarly, the PR has not explained how, if it were true, Mr and Mrs R not being offered a different lender to pay for Fractional Club membership caused them any unfairness or financial loss. Mr and Mrs R were aware of the interest rate set out on the face of the Credit Agreement, as well as the term of the loan and the monthly repayments, so they understood what it was they were taking out. Further, I don't think the rate of interest was excessive, compared either to other rates available from

other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr and Mrs R'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 now 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

I'm aware Mrs and Mr R's Letter of Complaint and Complaint Referral Letter went to some lengths to set out why they considered Fractional Club membership to be a UCIS and why this meant providing finance in relation to its sale was prohibited under FSMA.

In this respect, I must have regard for the conclusion reached in Shawbrook & BPF v FOS[1]. A timeshare contract is not a CIS (nor by extension a UCIS). And I'm satisfied that Mr and Mrs R's Fractional Club membership met the definition of a "timeshare contract" regulated by the Timeshare Regulations. So, the argument that the sale of finance in connection with a UCIS was prohibited under FSMA falls away. But that doesn't fully address the question of whether Fractional Club membership was marketed and sold as an investment.

In other words, it's a matter of law and was decided in the Judicial Review, when such a finding was rejected by the judge (at 39 to 54). It follows, as Mr and Mrs R acquired timeshare rights under their purchase, it did not amount to UCIS.

In the circumstances I am satisfied, that Mr and Mrs R'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 and Mr and Mrs R say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they 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

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[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) (''Shawbrook and BPF v FOS')

and Mrs R 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 R 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.

I can't just take that to have been automatically proved just because of what the High Court said in Shawbrook & BPF v FOS at [77]. The judge did not say that all timeshares will have been sold in breach of Regulation 14(3) just because they have investment elements, nor just because of the tension between that regulation and the nature of the product.

Indeed, the judge specifically said at [71] that if the ombudsman whose decision was under consideration in that case had concluded that the timeshare had been mis-sold because of the intrinsic design of fractional ownership timeshares, then that would have indicated that he had made an error of law. So instead, I have to consider the available evidence to decide what happened in this particular instance.

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 R, 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 R 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.

In other words, even if I did conclude that the membership was sold in breach of Regulation 14(3), I'm not currently persuaded that would've made a difference to the outcome of this complaint anyway. I will explain in the next section.

Was the credit relationship between the Lender and the Consumer 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 R 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 R 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 Mr and Mrs R decided to go ahead with their purchase.

To help me decide this point, I've carefully considered what Mr and Mrs R have said in the course of their complaint about how the membership was sold to them and their motivation for taking it out.

I note in the document (referred to as the "Witness Statement") provided in January 2024 Mr and Mrs R say: "We were told that the Fractional was better than Points as it would give us better holidays and that when it was sold we would get 1 52nd of the profit." That was the entirety of Mr and Mrs R's evidence on the issue.

I'm conscious that the Witness Statement wasn't provided until after the Investigator's view, which was about nine years after the Time of Sale and three years after PR says it was produced in September 2021. The timing of this is important as I recognise that it was several years later and memories can of course naturally fade and change over time.

The above notwithstanding, I also note that the Witness Statement is brief with no detail on what Mr and Mrs R were told, or why it had an influence on them. Their account is so brief that I can't put any significant weight on it.

Most of their memories are just a factual description of how Fractional Club membership worked and without any real substance to their evidence, I am unable to say why they thought they could 'profit' or whether that was something important to them taking out membership.

I'm also mindful of the email from Mr and Mrs R to the Supplier dated August 2021, in which they request to terminate their membership. Neither of them mentions anything about their "investment" and/or what they expected to get out of it.

Instead, they specifically said that they couldn't use the membership to its fullest and that they're not interested in beneficiary transfer or other ownership opportunities. To me, this does not fit with the idea that Mr and Mrs R treated their membership as an investment, rather they focused on the holiday usage they could get. Had they

thought they had 'invested' in something, I would have expected them to ask if they could have realised any beneficial interest.

The above doesn't mean they 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 R themselves 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 they 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 R'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 R and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

The PR says that Mr and Mrs R were not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership and the fact that Mr and Mrs R's heirs could inherit these costs.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant."

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs R sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs R nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that Mr and Mrs R's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

The Lender responded to the PD and accepted it.

The PR also responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

The ombudsman who issued the PD was not able to issue a further decision on this complaint, and so I reviewed it and sent the following email to both parties:

> *"I am writing to you as [my colleague], the ombudsman who issued the provisional decision, is now not able to issue a final decision on this complaint, and so it has been passed to me.*
>
> *Having reviewed the file, I think [my colleague]'s provisional decision is reasonable and so I will now issue a further decision. But before I do so, I wanted to give both parties the opportunity to provide any further evidence or arguments. If you have anything further to provide, please do so by 12 December 2025.*
>
> *In [my colleague]'s provisional decision, he explained that he would finalise his thoughts on how any payment of commission by the lender in this case could affect the fairness of the credit relationship. I am now able to give an answer on that part of the complaint.*
>
> *As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').*
>
> *The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly [2021] EWCA Civ 471, is not enough.*
>
> *However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:*
>
> 1. *The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship…was unfair" (see paragraph 327);*
> 2. *The failure to disclose the commission; and*
> 3. *The concealment of the commercial tie between the car dealer and the lender.*
>
> *The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:*
>
> 1. *The size of the commission as a proportion of the charge for credit;*
> 2. *The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
> 3. *The characteristics of the consumer;*
> 4. *The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and*
> 5. *Compliance with the regulatory rules.*

From my reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, Hopcraft, Johnson and Wrench is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think Hopcraft, Johnson and Wrench assists [Mr and Mrs R] in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

Based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of [Mr and Mrs R] but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

I recognise that the Lender was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between [Mr and Mrs R] and the Lender unfair to them – such that I should uphold the complaint. I say that because FHFL has explained that the Supplier would share finance proposals among its approved external finance partners; the Supplier couldn't write all its finance business "in-house" through FHFL; and FHFL largely provided loans to customers whose circumstances fell outside of its external finance partners' lending terms. So, I'm not persuaded that [Mr and Mrs R] were led into a credit agreement with the Lender because it was tied in some way to the Supplier.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to [Mr and Mrs R]."

Both parties responded to my email to say that they had nothing further to add to what I had said.

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

My findings

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 from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which my colleague outlined in their PD, for broadly the same reasons. For the avoidance of doubt, I adopt the reasoning in that PD as set out above.

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 R 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 R as an investment at the Time of Sale.

As outlined in the PD, the PR originally raised various other points of complaint, all of which were addressed at that time. But they didn't make any further comments in relation to those in their response to the PD. Indeed, they haven't said they disagree with any of those 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 the conclusions in relation to them as set out in the PD. So, I'll focus here on the PR's points raised in response.

Further, as neither party had anything further to add to what I said in relation to the nature of the relationships between the Supplier and the Lender, and any commission payment between them, I adopt into my findings the extract of my email above and will not comment further on this issue.

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

The PR has provided a cumber of submissions on how Fractional Club membership was sold to Mr and Mrs R and the impact that had on their purchasing decision, so I will deal with what has been said.

The PR has pointed to the Supplier's sales material that it says suggested the Supplier did sell Fractional Club membership as an investment. But that is something that my colleague accepted in their PD and assessed the impact of any potential breach of Regulation 14(3) of the Timeshare Regulations on the basis that there was such a breach. It was explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. I agree there is no need to make a formal finding on this point as, even if the Supplier did breach that prohibition, I do not think the evidence suggests it was an important part of Mr and Mrs R's purchasing decision.

I have looked at the evidence provided by Mr and Mrs R, via the PR. There is a one-page, unsigned document that was said to have been a statement taken on 24 September 2021, but first provided to our Service on 5 January 2024, that read in full:

> *"We went on holiday to Portugal about 10 to 15 years ago and it wasn't a great holiday. We met some people there and after a presentation we signed up for a promotional thing.*
>
> *After that we bought a number of Points Timeshares gradually increasing the number of Points that we had.*
>
> *In 2015 we surrendered the Points and moved to a Fractional.*
>
> *We had to attend a long presentation and was shown around the resort and an apartment. We were told that the Fractional was better than Points as it would give us better holidays and that when it was sold we would get 1 52nd of the profit.*
>
> *Generally, our loans had been with [one lender] but for the Fractional the loan was arranged with First Holiday Finance. We weren't given a choice. Once we agreed to buy the Fractional the loan was arranged quite quickly.*
>
> *We were told that we should take the loan and then when we went back to the UK we should take a loan at a lower interest rate.*
>
> *We paid all of the Maintenance fees until we relinquished the Timeshare. We had to pay another company to help with the relinquishment.*
>
> *The loan has now been paid off."*

This seems to be have been based on a note of a telephone call between Mr and Mrs R and the PR, also dated 24 September 2021 that included the following:

"Fractions meant property sold + we would get 152nd of profit of sale – Good hols plus return on property sale".

So there is evidence that in 2021 Mr and Mrs R recall being told they would get part of any profit from a sale, something that I accept may have happened. However, there is no evidence that points to what motivated their purchase some six years earlier. So I have needed to think about that, based on both Mr and Mrs R's memories and the surrounding evidence.

At the Time of Sale, Mr and Mrs R had been timeshare members for over ten years, having bought memberships in 2005 and 2008. The Supplier has provided evidence that they had booked 33 separate holidays by then, checking in for 31 of them, as well as cancelling a further 19 additional bookings. I think the evidence is clear that by the Time of Sale, Mr and Mrs R had an extensive history of taking holidays with the Supplier and it can be properly inferred that they enjoyed taking these holidays.

At the Time of Sale, Mr and Mrs R increased their overall points holding, therefore increasing their holiday entitlement with the Supplier. So it is arguable that this was an important part of their purchasing decision and I note that the 27 holidays taken between the Time of Sale and June 2022 suggest that they continued to use and enjoy their holiday entitlement.

The PR has argued that the evidence suggests Mr and Mrs R were motived by the investment element to membership, arguing that the evidence was that they expected to get 1/52nd of the profits of sale, as well as saying they would get good holidays plus a return. In support of this, the PR has put forward an analysis of the cost of membership against the potential value of the fractional share showing that such a belief was not unrealistic. The PR also argued that the cost of fractional points were more expensive, per point, than what Mr and Mrs R paid for their earlier memberships in 2005 and 2008, so if the holidays to be taken were the main motivating factor, they could have bought more vacation club points for less.

Although I think the PR's arguments have some force, I am unable to reconcile them with the evidence of why Mr and Mrs R told the Supplier they were giving up their membership in 2021. They explained that they could no longer afford it (I assume that being the cost of the annual maintenance fees) and they said:

"*We are not interested in a resale, beneficiary transfer any other ownership opportunities."*

To me, that points to Mr and Mrs R having no interest in any return that they may have been entitled to under Fractional Club membership and, in my view, does not fit with them taking it out six years earlier with an investment motivation in mind.

The PR has said the following:

"The Fractional that was purchased in June 2015 would have been for a term of 19 years and thus the sale date would have, in probability, been in December 2034. Clearly in 2021 the Clients had reached the decision that they could not afford the next 13 years (possibly more) of increasing Maintenance Fees (which started in 2015 at £2315.38 p.a.) As the Client has stated, they believed that they would receive 1/52nd of the profit on the sale of the property but having paid Maintenance fees up until relinquishment in order that their account was not suspended it is obviously fair to deduce that they could not financially continue this outlay."

However, neither the PR nor Mr and Mrs R have provided any explanation why they said what they did in 2021. Nor has there been any explanation why, if Mr and Mrs R had come

to the conclusion that they could no longer afford to pay for their 'investment', they explicitly said that they were not interesting in selling it on to obtain a return or to realise anything from their 'investment'. So although I have considered everything the PR has said, I am not persuaded that Mr and Mrs R were motivated by any investment element to purchase Fractional Club membership. And for that reason, I do not think the credit relationship between Mr and Mrs R and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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 R'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

I do not uphold Mr and Mrs R's complaint against First Holiday Finance Ltd.

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

Mark Hutchings
Ombudsman