DRN-6092817

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 unfair credit relationships with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr and Mrs R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 6 April 2014 (the 'First Time of Sale'). They entered into an agreement with the Supplier to buy 900 fractional points at a cost of £10,349 (the 'First Purchase Agreement'). They paid for this by taking finance of £9,849 from the Lender (the 'First Credit Agreement') and making a separate payment of £500.

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 First Purchase Agreement (the 'First Allocated Property') after the end of their membership term.

Mr and Mrs R then purchased membership of a different type of timeshare (the 'Signature Collection') from the Supplier on 30 March 2015 (the 'Second Time of Sale'). After trading in their previous membership, they paid £17,130 for 1,650 fractional points (the 'Second Purchase Agreement'). They paid for this by taking finance of £16,530 from the Lender (the 'Second Credit Agreement') and making a separate payment of £600. The outstanding balance from the First Credit Agreement was consolidated into the Second Credit Agreement.

Signature Collection membership was also asset backed and included a share in the net sale proceeds of a property named on the Second Purchase Agreement (the 'Second Allocated Property') after the end of Mr and Mrs R's membership term. However, the Signature Collection differed from other timeshares offered by the Supplier, including the one Mr and Mrs R previously held, in that members had preferential rights to stay in their allocated property, and the properties were said to be more luxurious.

Mr and Mrs R – via the PR – wrote to the Lender on 23 November 2021 (the 'Letter of Complaint') to raise a number of different concerns about the Second Time of Sale. 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 R's concerns as a complaint and issued its final response letter on 21 December 2021, rejecting it on every ground.

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

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's

decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'First PD') dated 28 August 2025 concerning the Second Time of Sale. In that PD, I said:

> "I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.
>
> However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.
>
> **Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**
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> This part of Mr and Mrs R's complaint was made for several reasons, which included that the Supplier misrepresented the Signature Collection membership at the Time of Sale as it told them they had purchased an investment which would considerably increase in value and that they would have access to the Allocated Property at any time.
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> Creditors can generally reasonably reject Section 75 claims that they are first made aware of after the claim has become time-barred under the Limitation Act (the 'LA'), as it wouldn't be fair to expect them to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. Therefore, it is relevant to consider whether Mr and Mrs R's Section 75 claim was time-barred under the LA before they put it to the Lender.
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> A claim under Section 75 is a 'like' claim against the creditor. It in effect mirrors the claim a consumer could make against the Supplier.
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> A claim for misrepresentation against the Supplier would typically be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).
>
> However, a claim under Section 75, like the one in question here, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.
>
> The date on which the cause of action accrued was the Time of Sale. That's when Mr and Mrs R entered into the purchase of their timeshare based on the alleged misrepresentations of the Supplier – which they say they relied on. Further, as the loan from the Lender was used to help finance the purchase, it was when they entered into the Credit Agreement that they suffered a loss.
>
> Mr and Mrs R first notified the Lender of their Section 75 claim on 23 November 2021. Given more than six years had passed between the Time of Sale and when they first put their claim to the Lender, in my view it was neither unfair nor unreasonable that the Lender rejected their concerns about the Supplier's alleged misrepresentations.

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

I've already explained why I don't think the Lender acted unfairly or unreasonably when it rejected Mr and Mrs R's Section 75 claim in respect of the Supplier's alleged misrepresentations at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr and Mrs R and the Lender along with all the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

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

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 R 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 R'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 were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr and Mrs R 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 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 Signature Collection 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 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 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 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 the 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 R'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 R 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 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 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 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 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's 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 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 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 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.

Was the credit relationship between the Lender and Mr and Mrs R 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

Signature Collection membership was not an important and motivating factor when they decided to go ahead with their purchase.

The PR sent us a statement containing Mr and Mrs R's recollections of the sales of timeshares to them by the Supplier. The statement is dated 7 February 2017 but was not sent to us until 22 August 2023. Although the Signature Collection membership is mentioned briefly within the statement, Mr and Mrs R's recollections appear to relate entirely to the sale of their previous timeshare in 2014 as they reference their allocated property under that membership.

Within the statement, Mr and Mrs R provide their reasons for agreeing to the 2014 purchase. These included savings on family holidays and the ability to holiday wherever they liked during half term. And that they considered the Supplier to be a "five star-rated holiday company". They do say that the 2014 timeshare was sold to them as an "excellent investment" whereby they would "get [their] money back 100% plus profit". However, the 2014 sale is not the subject of this complaint.
We recently raised this with the PR. It responded that it did not hold a statement from Mr and Mrs R relating to the sale of the Signature Collection membership. But it said it had spoken to Mr and Mrs R and they had said that Signature Collection membership was sold to them on the same premise as their previous timeshare. And that had Mr and Mrs R not been mis-sold the 2014 purchase as an investment, they would not have agreed to purchase the Signature Collection membership. Therefore, the Signature Collection purchase should be declared void.

I have carefully considered what the PR has said. But I am not currently minded to agree. I'll explain why.

I am not considering the 2014 sale in this complaint. As far as I'm aware, Mr and Mrs R have not complained about this sale. I also have limited information on this purchase, such as how it was financed. If the PR believes I should consider the 2014 sale under this complaint, I invite it to explain why in response to this provisional decision, providing further details of the sale.

In any event, the 2014 and 2015 sales had different circumstances. Mr and Mrs R purchased Signature Collection membership in 2015 – they did not buy this type of timeshare in 2014. Earlier in this provisional decision, I explained that Signature Collection membership differed from the other types of timeshares offered by the Supplier – and that Mr and Mrs R had previously held. There were reportedly more luxurious holidays on offer, as well as the ability to stay in the Allocated Property one week a year.

So, while the PR says Mr and Mrs R told it that they bought Signature Collection membership on the same premise as the 2014 purchase, that would be surprising given the additional features Signature Collection membership offered.

I have considered all the available evidence in the round, including the absence of compelling testimony from Mr and Mrs R that the driver for them purchasing the Signature Collection membership was its inherent investment element.

Having done so, I'm not persuaded that their motivation for purchasing Signature Collection membership was the investment element. I think it's more likely that their motivation was holiday related, such as the ability to stay in the Allocated Property one week a year, or the perceived increase in luxury Signature Collection membership offered, especially as they considered the Supplier to be a "five star-rated holiday company".

That doesn't mean Mr and Mrs R 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 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 Signature Collection 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 Signature Collection 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 Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mr and Mrs R and award them compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 (*'Durkin'*).

However, as the Lender hasn't been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason."

In conclusion, given the facts and circumstances of the complaint about the Second Time of Sale, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs R's Section 75 claim, and I was not persuaded that the Lender was party to a credit relationship with them under the Second Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

I noted in the First PD that Mr and Mrs R's recollections within the statement provided by the PR related entirely to the First Time of Sale. I explained that the complaint we had been asked to consider concerned the Second Time of Sale. I said that if the PR believed the First

Time of Sale should also be considered under this complaint, it should explain why and provide further details of the sale.

The Lender accepted the First PD and had no further comments. The PR did not accept the First PD. In summary, it responded as follows:

- The First Time of Sale should also form part of this complaint as the First and Second Credit Agreements are "inextricably linked". Both purchases were financed by the Lender and the First Credit Agreement was consolidated into the Second.
- Mr and Mrs R have confirmed that Signature Collection membership was sold to them "on the same premise" as Fractional Club membership – "an excellent investment as the Signature apartments were very luxurious and would bring a bigger return at the end of the term."
- It was not challenged in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*') that fractional ownership was marketed and/or sold as an investment.
- A contradiction in the purchase documentation from the Second Time of Sale rendered the relevant credit relationship unfair.
- One of the terms in the Second Purchase Agreement was applied in a way that was unfair to Mr and Mrs R.

As the PR's response included new arguments and evidence, I decided it was appropriate to issue a further provisional decision (the 'Second PD') setting out my thoughts on it before making my final decision. In that PD, dated 7 January 2026, I said:

> **"Should the First Time of Sale also form part of this complaint?**
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> The territorial scope of the Financial Ombudsman Service is set out at DISP 2.6 of the Financial Conduct Authority's ('FCA') Handbook. DISP 2.6.1 R concerns our Compulsory Jurisdiction which covers the Lender. It says:
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> > "The Compulsory Jurisdiction covers complaints about the activities of a firm (including its appointed representatives), of a payment service provider (including agents of a payment institution), of an electronic money issuer (including agents of an electronic money institution), of a CBTL firm, of a designated credit reference agency or of a designated finance platform which:
> >
> > (a) (except for regulated claims management activities and activities ancillary to regulated claims management activities) are carried on from an establishment in the United Kingdom; or
> > (b) are carried on from an establishment in an EEA State, in the case of a TP firm, a TA EMI firm, a TA PI firm or a TA RAISP firm with respect to services provided into the United Kingdom; or
> > (c) are, or are ancillary to, regulated claims management activities."
>
> Simply put, this means that the Lender needs to have been carrying out its activities (including the act of lending itself, and the exercise of its rights and duties under any credit agreement) from an establishment in the UK for the activities to fall within the jurisdiction of the Financial Ombudsman Service.
>
> My understanding is that, until 1 August 2015, all loans granted by the Lender were advanced by an entity incorporated in the British Virgin Islands, which do not form

part of the UK. From 1 August 2015, all new loans granted by the Lender were advanced by an entity incorporated in the UK. Further, all existing loans which were still running were also assigned to this UK-based entity on the same date.

In practical terms, this means that any loan made by the Lender which was still running as of 1 August 2015 falls within the territorial jurisdiction of the Financial Ombudsman Service. Any loan which had already been paid off by that date will fall outside of our jurisdiction, meaning we are unable to consider complaints about them.

The First Credit Agreement ended around 30 March 2015 when the outstanding balance was consolidated into the Second Credit Agreement. So, it was no longer running as of 1 August 2015 and never fell within our jurisdiction. The Second Credit Agreement was still running as of that date; therefore, it does fall within our territorial jurisdiction.

That said, although I'm unable to consider a complaint about the First Credit Agreement, I can consider whether any existing unfairness from the First Time of Sale rendered the credit relationship relating to the Second Credit Agreement unfair. This is because both Credit Agreements are connected. I set out my provisional findings on this below.

Does any existing unfairness from the First Time of Sale render the credit relationship relating to the Second Credit Agreement unfair for reasons relating to a breach of Regulation 14(3)?

In the First PD, I explained that I was not persuaded that Signature Collection membership would be sold "on the same premise" as Fractional Club membership, given the different features it offered. I therefore did not find Mr and Mrs R's testimony sufficiently persuasive to find that their purchase at the Second Time of Sale was motivated by the prospect of a financial gain (i.e. a profit).

I have reconsidered the evidence following the PR's response to the First PD. In their statement, Mr and Mrs R say that Fractional Club membership was sold to them as an "excellent investment" whereby they would "get [their] money back 100% plus profit". And I accept it's possible that if Fractional Club membership was sold to them as an investment with the potential of a profit, this may have still been in their mind when they purchased Signature Collection membership.

But looking again at the statement, I find that I can place little weight on it. Mr and Mrs R say that during the First Time of Sale, the Supplier gave them a tour of the area surrounding the First Allocated Property and the unit itself. However, that is not credible as the First Purchase Agreement shows that the sale took place in Malaga whereas the First Allocated Property was located in Tenerife.

I'm therefore not persuaded I can give their written recollections the weight necessary to find that existing unfairness from the First Time of Sale rendered the credit relationship relating to the Second Credit Agreement unfair for reasons relating to a breach of the relevant prohibition. And for this reason, along with those set out in the First PD, I'm not persuaded that a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made at the Second Time of Sale.

The other points raised by the PR

The PR says that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in the First PD, the Timeshare Regulations did not ban 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.

The PR also says there is ambiguity in the proposed sale date of the Second Allocated Property. The PR suggests that a delayed sale date could lead to an unfairness to Mr and Mrs R in the future, as any delay could mean a delay in the realisation of their share in the Second Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2034. The same date is set out under point 1 of the Members Declaration, which has been signed as being read by Mr and Mrs R. This date indicates that the membership has a term of approximately 18 years from the first year of occupancy. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

> "The Owning Company will retain such Suite until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate."
>
> [my emphasis]

It seems clear to me that the commencement date for the start of the sales process is 31 December 2034. This actual date is repeated in the sales documentation as I've set out above. So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

The PR argues that clause D of the Second Purchase Agreement was operated unfairly against Mr and Mrs R. The clause says:

> **"Default:** In the event of the Applicant failing to make any payment in respect of the Purchase Price due under this Agreement within 14 days of being given written notice to that effect by the Sales Company or on its behalf, the Sales Company may, at the Sales Company's option, rescind this Agreement whereupon all monies paid by the Applicant will be forfeited as compensation to the Sales Company and the Sales Company shall be under no further liability to the Applicant."

In support of this argument, the PR relies on the case of *Link Financial Limited v Wilson* [2014] EWHC 252 (CH) ('*Wilson*'). In that case, the judge held that it was disproportionate to have a contractual term saying that fractional membership can be ended by the Supplier for non-payment of fees – however small the amount outstanding may be – without refunding any of what they paid for their purchase, because then the Supplier would not only receive a windfall (the purchase price paid for the timeshare) but could also resell the same allocated property to another consumer. The judge described this as "wholly disproportionate and penal."

I agree with that, but before I can accept that this means that the relationship between the creditor and the debtor thereby became unfair, as the judge went on to find in *Wilson*, I think I have to take into account how the clause has actually

operated in practice in relation to Mr and Mrs R's agreement, not just how it could potentially operate hypothetically. I do not think that the clause's mere existence, by itself, amounts to grounds to find that an unfair credit relationship exists. The judge in *Wilson* said as much at paragraph [46] of the judgement:

> "The fact that clause D can be regarded in the abstract as an unfair term is not however the end of the enquiry for the purposes of s.140A of the Act. In considering the fairness of the relationship, it is necessary to consider all other relevant matters, and (amongst other things) these necessarily include how the clause has been operated in practice."

In *Wilson* the clause had been used to terminate the defendant's timeshare. Mr and Mrs R's membership was not terminated but was suspended after they stopped paying their fees. In a letter sent in May 2017, the Supplier told them that their membership could be reinstated if they cleared their arrears.

I think that is a proportionate response to the non-payment of the fees. It wouldn't be reasonable to expect a business to carry on providing a service which its customer is no longer paying for. Suspending membership for non-payment seems to me to be a proportionate incentive to get a customer to resume paying and clear their arrears.

It follows that I am not persuaded Mr and Mrs R's credit relationship with the Lender relating to the Second Credit Agreement was unfair to them for any of the points raised by the PR considered in this section."

In summary, I explained that I was unable to consider a complaint about the First Time of Sale as it fell outside the territorial jurisdiction of the Financial Ombudsman Service. However, I could consider whether any existing unfairness from the First Time of Sale rendered the credit relationship relating to the Second Credit Agreement unfair. But when I looked again at Mr and Mrs R's statement, I was not persuaded I could give their written recollections the weight necessary to find that existing unfairness from the First Time of Sale rendered the credit relationship relating to the Second Credit Agreement unfair. I also was not persuaded Mr and Mrs R's credit relationship with the Lender relating to the Second Credit Agreement was unfair to them for any of the other points raised by the PR in response to the First PD.

The Lender accepted the Second PD and had no further comments. The PR did not agree with the findings reached.

I am now in a position to finalise my decision.

What I've decided – and why

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

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

I've considered the case afresh following the responses to the Second PD. Having done so, I've reached the same conclusions as those which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

In its response to the Second PD, the PR has largely repeated the arguments it made in its response to the First PD. I responded to those arguments in detail in the Second PD and my findings about them remain the same. I will not be responding again to points which I have already responded.

The PR has referred to sections of the judgment in *Shawbrook & BPF v FOS* to support its argument that clause D of the Second Purchase Agreement was operated unfairly against Mr and Mrs R. I note the judge in that case said a court considering unfair contract terms would have to consider whether these "had in fact been exercised to the detriment of a complainant." For the reasons provided in the Second PD, I'm not persuaded the relevant clause has been in this case.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 17 February 2026.

Alex Salton
Ombudsman