

The complaint

Mr N's complaint is, in essence, that First Holiday Finance Ltd (the 'Lender') acted unfairly and unreasonably by being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

The loan in question was taken out in Mr N's name only and as such, he is the only eligible complainant here. But, as the timeshare purchased using the loan was bought in the joint names of Mr N and Ms O, I'll refer to them both throughout where appropriate.

What happened

Mr N and Ms O purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 26 July 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £13,530 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr N and Ms O 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 N and Ms O paid for their Fractional Club membership by paying a £500 deposit and taking finance for the remaining amount of £13,030 from the Lender (the 'Credit Agreement') in Mr N's name only.

Mr N – using a professional representative (the 'PR') – wrote to the Lender on 18 September 2023 (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 did not provide a response to the complaint within the weight week period required by the regulator. So, 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 N 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. In that decision, I said:

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

Having considered the entirety of the credit relationship between Mr N 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. *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 N and the Lender.

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

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

The PR says, for instance, that:

1. *the right checks weren't carried out before the Lender lent to Mr N;*
2. *the Credit Agreement was arranged by a broker acting outside of its authorisation,*
3. *there was one or more unfair contract terms in the Purchase Agreement; and;*
4. *Fractional Club membership was marketed and sold as investment in breach of a prohibition on doing so.*

While the PR says that the right affordability checks weren't carried out at the Time of Sale, 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 N was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr N.

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 N knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for him, 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 N's financial loss – such that I can say that the credit relationship in question was unfair on him 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 him, even if the loan wasn't arranged properly.

The PR also says that there was 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 N and Ms O 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 Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mr N's credit relationship with the Lender was rendered unfair to him 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 him. And that's the suggestion that Fractional Club membership was marketed and sold to him and Ms O 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 N and Ms O'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 says that the Supplier did exactly that at the Time of Sale.

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 N and Ms O 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 N and Ms O 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.

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 N and Ms O, 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 N and Ms O 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 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 N 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 N and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him and Ms O to enter into the Purchase Agreement and him to enter into the Credit Agreement is an important consideration.

Mr N has provided a witness statement which is signed and dated 18 August 2023. Describing what happened at the Time of Sale, he's said:

"I was taken to a desk with a [Supplier] rep. He started to explain [the membership] and the types of holidays I could go on. He asked me how many holidays I take a year and started trying to convince me that [the Supplier] could offer a better price than the average holiday.

The salesman then started talking about the Fractional Property Owner's Club ("FPOC"). The way he explained the fraction was very confusing and I struggled to grasp the concept.

He then went on to explain that I would be getting the best of both worlds with this purchase as I would be able to use it for holidays but also rent it out and make money.

Throughout the meeting, the term 'investment' was used frequently. I was told that after I had paid off the loan, I would own the property and I would be able to sell it. This gave me the impression that I would be buying a valuable asset.

I was given the impression that I would be getting money back. I wasn't told specifically how much however, I knew at the end of the term I would be getting back everything I had invested.

The salesman didn't discuss maintenance fees with me, so when I saw the extra payment later on, I was shocked."

Part of my assessment of the testimony provided is to consider when it was written. I'm conscious that it was drafted after the judgment in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial

Services Ltd (t/a Barclays Partner Finance) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS') was handed down.

The PR has referenced this and so I think it's clear they and Mr N were aware of a case with similar circumstances which was upheld, as well as the reasons for that. So, I think there's a real risk that Mr N's recollections were influenced by that.

Mr N's testimony here also includes some of the same phrases I've seen in other witness statements provided to this Service by consumers represented by the same PR. While there are parts which aren't necessarily identical, in my view they are sufficiently similar to lead me to conclude that it was likely influenced by one of the factors I've mentioned above. It also causes me to question the statement's value in establishing Mr N's likely motivations at the Time of Sale as it therefore might not be representative of Mr N's own thoughts.

I accept that Mr N's testimony indicates that he believes Fractional Club membership was marketed and sold to him and Ms O as an investment. That, however, doesn't necessarily speak to their motivations in making the purchase.

Further, I note that Mr N has gone on to describe what happened after their purchase, saying:

"I started to realise there may be a problem with my purchase when I tried to book a holiday using the membership.

I was told that I couldn't go anywhere that I wanted in the world and that I had to build up or purchase more points. This was never disclosed to me so it was very frustrating to hear.

As well as this, I had to continue paying maintenance fees during COVID-19. I never understood why I had to make these payments as due to lockdown, I was not able to use the accommodation."

I think it's fair to say from this that their unhappiness with the membership was due to how it functioned as a holiday product.

In response to the Investigator's view, Mr N provided a further witness statement. This was fairly brief and the main purpose of this statement was to explain that Mr N now wished to add the sentence: "There is no way that I would have purchased the Fractional membership if the salesman had specifically told me that the product was not an investment". I've considered this, but it's ultimately difficult to explain why Mr N did not mention this in his original statement. Given the timing of when this was provided i.e. following both the aforementioned judgment in Shawbrook & BPF v FOS and the Investigator's findings, I think there is a very real risk this has also been influenced by one or both of those. I'm therefore simply not able to place much, if any, weight on Mr N's further comment here.

So, 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 N and Ms O decided to go ahead with their purchase. That 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 N himself doesn'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 N and Ms O'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 N and the Lender was unfair to him 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 N and Ms O was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership.

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 failures 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 N and Ms O 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 2010 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 N nor the PR have persuaded me in this particular case that they would not have pressed ahead with their purchase had those details 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 facts and circumstances.

I note that the PR requested details of any commission paid by the Lender to the Supplier and reserved Mr N's position until it received the information. I've therefore considered whether or not the commission payment rendered the credit relationship unfair.

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 N in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

Overall, therefore, 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 N.

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 N but as the supplier of contractual rights he 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 him 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 N and the Lender unfair to him – 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 N was 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 N.

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 N and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis."

In conclusion, I was not persuaded that the Lender was party to a credit relationship with Mr N under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor could I see any other reason why it would be fair or reasonable to direct the Lender to compensate him.

The Lender accepted my provisional decision and confirmed they had nothing further to add. The PR also responded and said they didn't have any further comments or evidence they wished to be considered.

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.

As neither party has provided any new evidence or arguments, I don't believe there is any reason for me to reach a different conclusion from that which I reached in my provisional decision (outlined above). I do wish to stress that I have considered all the evidence and arguments afresh before reaching that conclusion.

My final decision

For the above reasons, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 15 April 2026.

Fiona Mallinson
Ombudsman