DRN-6274534

The complaint

Mr C'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').

What happened

Mr C was a 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 his membership of a timeshare that I'll call the 'Signature Collection' – which he bought on 13 August 2015 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 2,350 fractional points at a cost of £45,413 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mr C more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after the end of his membership term. However, the Signature Collection differed from other timeshares offered by the Supplier, in that members had preferential rights to stay in their allocated property, and the properties were said to be more luxurious.

Mr C paid for the majority of his Signature Collection membership by taking finance of £40,413 from the Lender (the 'Credit Agreement'). He also paid a deposit of £5,000 separately.

Mr C – using a professional representative (the 'PR') – wrote to the Lender on 28 November 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 dealt with Mr C's concerns as a complaint and issued its final response letter on 1 February 2024, 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 C 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 'PD') dated 23 March 2026. In that decision, 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 140A of the CCA: did the Lender participate in an unfair credit relationship?

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

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

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

The PR suggests 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 C 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 Signature Collection 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 C experiencing a 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.

I acknowledge that Mr C may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase Signature Collection membership when he simply did not want to. He was also given a 14-day cooling-off period and has not provided a credible explanation for why he did not cancel his membership during that time. And with all that being the case,

there is insufficient evidence to demonstrate that Mr C made the decision to purchase Signature Collection membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

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 C in practice, nor that any such terms led him to behave in a certain way to his 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.

Overall, therefore, I don't think that Mr C'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 Signature Collection membership was marketed and sold to him as an investment in breach of a 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 C's Signature Collection membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

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

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

But the PR says that the Supplier did exactly that at the Time of Sale.

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 C the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it's 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 <u>as an investment</u>. 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 C as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Signature Collection

membership offered him 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 C, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

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 also possible that Signature Collection membership was marketed and sold to Mr C as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and Mr C 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 C and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr C 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 to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

The PR has provided a statement from Mr C dated 3 November 2023 containing his recollections of the Time of Sale: Amongst other things, this says:

> "13. The salesman then started talking about the Signature Collection membership. He explained that we would receive benefits such as a private chef or band at a small but extra cost.
>
> 14. He mentioned that as well as these benefits, there was also a fractional aspect to the membership.
>
> 15. This meant that I would be buying a percentage of a building and then after 19 years would be able to receive a financial return when the building was sold.

16. This was very attractive to me, due to my interest in properties and renovations.

17. In fact, I can remember the salesman specifically saying “19 years later the property is sold and you receive your share of the sale of the property”.

18. This gave me the impression that I would be getting the best of both worlds. Not only would I be able to have high quality holidays and flexibility, but I would also be able to benefit financially at the end of the term.

19. As the meeting continued, the salesman started to refer to the product as an
‘investment’. He would say things like “How many holidays give you flexibility of
guaranteed luxury and an investment vehicle giving you money back after 19 years?”.
This gave me the impression that the product would be a valuable asset.

20. I was told that the money I would receive back would be the same as I what I had
initially invested. To demonstrate this, I was shown visuals for how the property would
appreciate. When I asked to take the visuals with me, I was told that I was not able
too [*sic*].

[…]

24. I was not made aware of any clear exit strategy. I was given the impression that the product would be easy to sell as there were a number of people waiting to buy it.

26. I was not made aware of any risks associated with the investment.”

In response to the Investigator’s view that the complaint should not be upheld, the PR also provided further comment from Mr C as to why the investment element of Signature Collection membership was attractive to him:

> “Both my wife and I had a large portfolio of Buy To Let Properties. We also renovated several properties in that time span and continue to do so to this day. After a lengthy discussion with the sales manager and [*sic*] visited the [Supplier’s] Flag Ship Apartment in Spain. The apartment that was offered on a 19 year lease offered a good return for us with full money back guarantee after the 19 year lease expired. That meant that we could entertain estate agents that we were doing business with and achieve better relationships to buy more property deals at attractive prices.”

But it was only 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, that Mr C recalled that the Supplier led him to believe that Signature Collection membership offered him the prospect of a financial gain. And experience tells me that the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with

others.

Mr C's testimony was provided over eight years after the Time of Sale and contains inconsistencies when compared with the other available evidence. For example, at paragraph 4 of his statement, Mr C says "prior to my experience with [the Supplier], I had no experience with timeshares or holiday clubs". When the Supplier's contact notes show that he had a membership with another timeshare provider prior to purchasing a membership from the Supplier.

In addition, Mr C says the following at paragraphs 27, 28 and 29:

> "27. The salesman told me that he would need me to provide him with a decision there and then. After a while, the General Manager came over and started to apply pressure as well.
>
> 28. Despite the high pressure, I left the meeting and called my wife about the purchase. The [Supplier's] salespeople were not happy.
>
> 29. A couple of days later, I decided that I was happy to sign the paperwork. A taxi was sent to my room and I went to complete the documents."

But the Supplier's records show that Mr C agreed to purchase Signature Collection membership on the Time of Sale. Around five days later, he complained that his biannual membership had the wrong first year of occupancy as he wanted it to start in an even year rather than odd. And he was offered a bonus week on the Supplier's yacht as an apology.

Further, in the "aftermath" section of his statement, Mr C says:

> "30. I started to realise that there may be a problem with my purchase a couple of years later.
>
> 31. Availability started to become really poor and I wasn't getting the value of what I paid for."

However, the Supplier has confirmed that Mr C reserved ten holidays following his purchase of Signature Collection membership and had no booking request declined.

As there isn't any other evidence on file to corroborate Mr C's recent evidence about his motivations at the Time of Sale, there seems to me to be a very real risk that his recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, coupled with the incongruities in his account, I'm not persuaded that I can give his written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

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 C's decision to purchase this at the Time of Sale was motivated by the prospect of a financial gain (i.e. a profit). And for that reason, I do not think the credit relationship between Mr C 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 C was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Signature Collection 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 C sufficient information, in good time, on the various charges he could have been subject to as a Signature Collection member 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 C nor the PR have persuaded me in this particular case that he would not have pressed ahead with his 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 C's position until it received the information. I've therefore considered whether or not any 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 FCA's Dispute Resolution rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr C 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.

Based on what I've seen, 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 C 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 C and the Lender unfair to him – such that I should uphold the complaint. I say that because the Lender 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 the Lender; and the Lender largely provided loans to customers whose circumstances fell outside of its external finance partners' lending terms. So, I'm not persuaded that Mr C 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, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged 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 commercial 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 C."

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

The Lender accepted the PD. The PR did not respond. So, I am now in a position to finalise my decision.

The legal and regulatory context

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

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

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

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

- CONC 3.7.3 R
- CONC 4.5.3 R
- CONC 4.5.2 G

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

As neither party has provided any further comments or evidence for me to consider, I see no reason to depart from the conclusions I reached in the PD. I therefore adopt the provisional findings I previously reached as my final decision.

My final decision

My final decision is to not uphold Mr C'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 C to accept or reject my decision before 5 May 2026.

Alex Salton
Ombudsman