

The complaint

Mr and Mrs C's complaint is, in essence, that First Holiday Finance Ltd 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 claims under Section 75 of the CCA.

What happened

I issued my provisional decision to both parties explaining why I thought Mr and Mrs C's complaint shouldn't be upheld and invited both parties to provide any further evidence and / or submissions in reply.

The background to this complaint was set out in my provisional decision together with my provisional findings which are both copied below and now form part of this final decision.

Background

Mr and Mrs C was 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' – the history of Mr and Mrs C's purchases funded by First Holiday Finance is set out below:

- *1,501 Vacation Club¹ points on 28 April 2011 for £10,900 – having traded in their existing membership ('Purchase Agreement 1')*
- *1,932 fractional points on 11 April 2012 for £18,342 – having traded in their 1,501 Vacation Club points. ('Purchase Agreement 2')*
- *2,214 fractional points on 24 June 2013 for £23,321 – having traded in the second lot of 1,932 fractional points. ('Purchase Agreement 3')*
- *2,740 fractional points on 2 June 2014 for £7,100 – having traded in the third lot of 2,214 fractional points. ('Purchase Agreement 4')*

(which, when appropriate, I'll simply refer to as the 'Purchase Agreements')

As this complaint is concerned with the purchases in April 2011, April 2012, June 2013 and June 2014, those are the 'Times of Sale' for the purposes of my decision.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs C more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement after their membership term ends.

Mr and Mrs C paid for their fractional points by taking the following amounts of finance of from First Holiday Finance:

- *£10,900 on 28 April 2011 ('Credit Agreement 1')*
- *£18,342 on 11 April 2012 ('Credit Agreement 2')*

¹ Vacation Club membership was points based only and not 'asset backed'

- £23,321 on 24 June 2013 ('Credit Agreement 3')
- £27,841 on 2 June 2014 ('Credit Agreement 4')

(which, when appropriate, I'll simply refer to as the "Credit Agreements")

Mr and Mrs C – using a professional representative (the 'PR') – wrote to First Holiday Finance on 22 August 2019 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs C's concerns as a complaint and issued its final response letter on 17 September 2019, 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.

First Holiday Finance disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

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 Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

After careful consideration, I'm currently minded not to uphold Mr and Mrs C's complaint. Before I explain why, I want to make it clear that my role as an ombudsman doesn't mean I need to address every single point that has been made to date. Rather, it is to decide what's fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, that doesn't mean I haven't considered it.

There are various aspects to Mr and Mrs C's complaint. These include the allegations of misrepresentation (and possibly of breach of contract) in respect of the Vacation Club and/or Fractional Club memberships, and the suggestion that First Holiday Finance ought to have accepted and met their claims under S.75 CCA. I'll deal with those concerns first.

Section 75: How First Holiday Finance dealt with Mr and Mrs C's claims about the Supplier's alleged misrepresentations at the Times of Sale and possible breach of contract²

Certain conditions must be met for S.75 CCA to apply including, but not limited to, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Because of the way in which S.75 CCA operates, if the Supplier is liable for having misrepresented something to Mr and Mrs C at the Time of Sale or has breached its contract with them, that might give rise to a potential joint and several liability on the part of First Holiday Finance. Equally, of course, if the Supplier has a defence to such a claim, that defence is also available to First Holiday Finance.

The Limitation Act 1980 might afford a complete defence to the S.75 CCA claims made by Mr and Mrs C. However, I've not found it necessary to reach a conclusion on that line of argument, because I'm not inclined to find that the conditions necessary to bring a S.75 CCA claim are met in this case.

I say this because it's my understanding that when Mr and Mrs C entered into the Credit Agreements in April 2011, April 2012, June 2013 and June 2014, they did so with First Holiday Finance Ltd based in the British Virgin Islands ("FHFBI") and operating from the Isle of Man, rather than the UK entity of the same name. The UK entity has provided us with evidence – I set out more detail below – that shows it wasn't engaged in regulated lending activity until it applied for permission from the Financial Conduct Authority ("FCA") in 2015. On 1 August 2015, FHFBI assigned its loan book (including Mr and Mrs C's final loan) to the UK entity First Holiday Finance.

S.75 CCA enables a claim to be brought against the creditor. At the time the Credit Agreement was made, the creditor was FHFBI. While FHFBI assigned its loan book to First Holiday Finance, it didn't necessarily follow that its duties or other obligations – such as any potential liability for a S.75 CCA claim – were similarly assigned. Although the CCA

² Mr and Mrs C's Witness Statement contains some comments that are capable of interpretation as allegations of a breach of contract in relation to the availability of properties under their Vacation Club and/or Fractional Club membership.

section 189(1) definition of creditor includes an assignee, Goode³ indicates that this shouldn't be interpreted as creating a positive liability on the assignee for a monetary claim under (among other things) S.75 CCA.

That's not to say that a claim can't be made along the lines outlined by Mr and Mrs C. Rather, it highlights the inherent difficulty they might face in succeeding with that claim. And with this in mind, I can't say that First Holiday Finance acted unfairly or unreasonably towards Mr and Mrs C when it declined to pay them compensation for the claims they said it was liable for under S.75 CCA.

Section 140A: did First Holiday Finance participate in an unfair credit relationship? – Credit Agreements entered in April 2011, April 2012, June 2013

I've explained why I'm not persuaded Mr and Mrs C's relationship with First Holiday Finance could lead to a successful section 75 claim and outcome in this complaint. But Mr and Mrs C also make arguments that either say or infer that the credit relationships between them and First Holiday Finance was unfair under section 140A of the CCA for Credit Agreements 1,2 and 3, when looking at all the circumstances of the case, including the Supplier's representations and parts of its sales process at the Times of Sale they've mentioned.

This service doesn't have a free hand to consider every complaint that's brought to us. The rules under which the Financial Ombudsman Service operate are set out by the regulator, the Financial Conduct Authority (FCA). These are known as the DISP rules. These rules set out the limits to what our service can and can't consider. I am entirely bound by the provision of these rules and I cannot disregard them. The relevant rule in this case is set out in DISP 2.6.1R.

For acts and omissions up to 31 December 2020, DISP 2.6.1R states this service can only consider complaints about activities which take place from an establishment in the UK. Section 418 of the Financial Services and Markets Act 2000 ('FSMA') sets out six cases where an activity would be deemed as having taken place within the UK where they would not otherwise have been regarded as doing so. Example 3 is the most relevant to the circumstances here – it says:

(1) The third case is where –

- a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
- b) the day-to-day management of the carrying on of the regulated activity is the responsibility of**
 - (i) his registered office (or head office); or**
 - (ii) another establishment maintained by him in the United Kingdom.**

[my emphasis]

The FCA also set out in its Handbook guidance on the territorial scope of Section 418 FSMA in PERG 2.4 – “Link between activities and the United Kingdom”. But, in the circumstances of this complaint, I cannot see that PERG 2.4 expands the scope of Section 418 of FSMA beyond what I have already set out above.

³ Goode: Consumer Credit Law and Practice – Division I Commentary – Part IC Consumer Credit Legislation – 45A Assignment – III Assignment and the CCA 1974: the assignee as creditor/lender or owner – 1 The basic rule – Pre-assignment breaches (para 45A.62)

Companies House records show that First Holiday Finance Ltd incorporated in the United Kingdom on 16 February 2011, but it remained dormant until 1 August 2015. First Holiday Finance has shared with this service an excerpt from the business plan it gave to the FCA when applying for full authorisation in 2015.

First Holiday Finance's business plan explains how the entity had been set up and incorporated in the British Virgin Islands (FHFBI) in 1998. At the same time, its entire lending operation was outsourced to a third-party debt administrator operating from the Isle of Man. Plans for First Holiday Finance to start lending from the UK in 2011 were put on hold because of what it described as the 'general economic situation'. All loans continued to be written by FHFBI, although it's dormant UK entity, which had been incorporated in February 2011, did maintain its Office of Fair Trading (OFT) licence. On 1 August 2015, FHFBI assigned its entire loan book to First Holiday Finance Ltd (the UK entity, referred to in this decision as First Holiday Finance). All new loans were written by First Holiday Finance from then on. So, this shows that the finance under the Credit Agreements brokered by the Supplier was provided by FHFBI, which was operating outside of the UK.

Mr and Mrs C's complaint regarding an unfair credit relationship resulting from Credit Agreements 1,2 and 3, is a complaint made against the business which provided the loan – in this case FHFBI. And as FHFBI assigned its loan book to First Holiday Finance in August 2015, I need to decide whether First Holiday Finance had any legal responsibility for the Credit Agreements in question here.

As has been shown, First Holiday Finance took over the provision and administration of new and existing loans (including those provided by FHFBI) on 1 August 2015. But Mr and Mrs C's first three loans were all settled by June 2014 – before FHFBI assigned its loan book to First Holiday Finance. So there were no loans 'handed over' and First Holiday Finance had no administrative responsibility for Mr and Mrs C's first three loans.

It follows that I find Mr and Mrs C's complaint of unfairness pursuant to Section 140A of the CCA against First Holiday Finance for Credit Agreements 1,2 and 3 is not in the jurisdiction of the Financial Ombudsman Service. This is because the activity complained about (whilst being a regulated activity) was carried out by FHFBI from outside of the UK, and the loans were settled in full prior to the business being operated from within the UK. So, this part of their complaint is outside of the territorial scope of this Service and is not in jurisdiction.

Section 140A: did First Holiday Finance participate in an unfair credit relationship? – Credit Agreement 4 entered in June 2014

Mr and Mrs C's fourth and final loan from FHFBI was written under English law and regulated under the CCA. First Holiday Finance acquired and continued to administer the loan up until 31 December 2019, when it took the decision to write-off the balance after Mr and Mrs C had stopped making repayments in February 2016. Section 140A of the CCA is relevant law and it is not subject to the same difficulty as their section 75 claim.⁴ So determining what's fair and reasonable in all the circumstances of the complaint includes considering whether the credit relationship between Mr and Mrs C and First Holiday Finance was unfair. And where appropriate, any relief would take into account the £26,477 capital written off along with the £14,578 in uncollected interest.

Having considered the entirety of the credit relationship between Mr and Mrs C and First Holiday Finance along with all of the circumstances of the complaint, I don't think the credit relationship between them were likely to have been rendered unfair for the purposes of

⁴ Goode (para 45A.65) indicates that section 140B empowers a Court to impose a positive liability on an assignee

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 C and First Holiday Finance.

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

Mr and Mrs C's complaint about First Holiday Finance being party to an unfair credit relationship was and is made for several reasons.

They include, for various reasons, the allegation that the Supplier misled Mr and Mrs C and carried on unfair commercial practices under Regulations 5 and 6 of the CPUT Regulations. However, as Regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Time of Sale (which I make no formal finding on), they led Mr and Mrs C to make the purchasing decision they did, I'm not persuaded that anything done or not done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under Regulation 7 Schedule 1 of the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also says that:

1. the right checks weren't carried out before First Holiday Finance lent to Mr and Mrs C.
2. Mr and Mrs C were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.
3. there was one or more unfair contract terms in the Purchase Agreement.

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

I haven't seen anything to persuade me that the right checks weren't carried out by First Holiday Finance given this complaint's circumstances. But even if I were to find that First Holiday Finance failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs C was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with First Holiday Finance 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 C.

I acknowledge that Mr and Mrs C 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 C made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs C's credit relationship with First Holiday Finance 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 First Holiday Finance 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

First Holiday Finance does not dispute, and I am satisfied, that Mr and Mrs C'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 C 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 and Mrs C the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that 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 C as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that 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 and Mrs C, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned 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 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 First Holiday Finance 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 C and First Holiday Finance under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs C and First Holiday Finance 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 C decided to go ahead with their purchase. Mr and Mrs C explain in their Witness Statement that they learnt during the sales presentation that their previous purchase had led to an increase in their annual management charge and how they could reduce their annual costs if they switched to the new updated version of Fractional Club membership. They went on to say that they later found the reduction to be negligible – so I think Mr and Mrs C's motivation behind their purchase was to secure a lower annual management charge, and their dissatisfaction arose when this was less than anticipated.

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 and Mrs C 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 C'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 C and First Holiday Finance 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 C were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

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 C 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 C 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 there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs C in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, 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 – and certainly no further relief beyond the £26,477 capital written off and the £14,578 interest not collected by First Holiday Finance.

Mr and Mrs C's Commission Complaint

The PR says that a payment of commission from First Holiday Finance to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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 C in arguing that their credit relationship with First Holiday Finance was unfair to them 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 First Holiday Finance were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr and Mrs C.

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 C 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 First Holiday Finance 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 C and First Holiday Finance unfair to them – such that I should uphold the complaint. I say that because First Holiday Finance 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 First Holiday Finance); and First Holiday Finance 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 C was led into a credit agreement with First Holiday Finance 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, First Holiday Finance 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 First Holiday Finance were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr and Mrs C.

Responses to my provisional decision

First Holiday Finance responded to the provisional decision and accepted it.

Neither Mr and Mrs C nor the PR responded to the provisional decision.

The deadline to receive responses from the parties has now passed, so I'm finalising 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.

Neither Mr and Mrs C nor First Holiday Finance have provided further evidence or new information for me to consider. So, I've not seen enough for me to alter my provisional conclusions.

In conclusion, I do not think that First Holiday Finance acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and I am not persuaded that First Holiday Finance was party to a credit relationship with Mr and Mrs C under Credit Agreement 4 that was unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct First Holiday Finance to compensate them.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 May 2026.

Stefan Riedel
Ombudsman