

The complaint

Mr and Mrs O complained to First Holiday Finance Ltd (FHF) about the sale of a timeshare it had financed and say that FHF acted unfairly and unreasonably as a result.

What happened

On 19 August 2016 ('the Time of Sale') Mr and Mrs O bought a timeshare membership from a timeshare provider ('the Supplier'). This was membership of the Fractional Property Owners Club ('FPOC Membership').

FPOC Membership provided Mr and Mrs O with a number of 'points' every year that they could spend to stay at properties provided by the Supplier. But this was also 'asset backed', which means that their membership was linked to a specific property ('the Property'). Mr and Mrs O had no preferential right to stay at the Property but after 19 years the Property would be placed for sale and the proceeds of sale would be divided amongst the people whose membership was linked to the Property.

While Mr and Mrs O's FPOC Membership was in place they had to pay maintenance fees every year for the running of the membership programme, including the upkeep of the Property. In the first year this charge was set at €850. The FPOC Membership cost £14,848 and Mr and Mrs O paid for this by taking a 12 year loan for the full purchase price, less a £500 advance payment, from FHF. The total amount payable after charges and interest was £29,445.38.

Mr and Mrs O had concerns about availability of holidays and contacted the Supplier about this. Unable to get a resolution they were happy with, Mr and Mrs O then used a professional representative (PR) to write to FHF in October 2019 to make a complaint on their behalf. The PR wrote a letter saying that under sections 75 and/or 140A of the Consumer Credit Act (CCA) FHF needed to pay compensation to Mr and Mrs O due to actions by the Supplier when it sold them the FPOC membership.

FHF didn't accept that Mr and Mrs O had any cause for complaint so the PR complained on Mr and Mrs O's behalf to this service. The PR referred to documents attached to the complaint form which included an unsigned and undated witness statement by Mrs O and a signed statement by Mr O dated 26 November 2020.

In summary Mrs O's statement says:

- They were 'cold called' by the Supplier who offered them a promotional holiday and asked them to attend a presentation which they agreed to. The Supplier's presentation took more than three hours because she and Mr O weren't convinced about buying the timeshare. She remembers vividly that the Supplier said they could go anywhere in the world for a holiday at a cheaper rate by having FPOC Membership and showed them different holiday homes in the areas of the world they were interested in. At that time she and Mr O didn't realise they were being sold a timeshare.

- Every time they tried booking a holiday online from the Supplier's website there was no availability and they ended up calling its booking office. The Supplier usually told them to book the holiday through a 'parent company' (which I'll refer to as the service company) and they had to pay more money to the service company as well as use their points. When they tried to book a holiday in Portugal six months before the travel date there was no availability when booking online. When they called the Supplier to clarify availability it told them to book through the service company because they might have to book two years in advance from the Supplier.
- They had only been able to holiday abroad as part of the Supplier's invitation to attend the presentation and another location abroad for which they used the free bonus points given for joining as members and chosen for them by the Supplier. On that holiday the Supplier tried to sell them an upgrade to their timeshare, which they refused. After those two holidays, they were unable to book a holiday of their choice. They wanted to go to Portugal but the supplier told them that wasn't available and offered Turkey, which they turned down, and they ended up going to Scotland. Another time, instead of going to Dubai, as they wanted, they ended up going to Ireland. The accommodation there wasn't a hotel but a block of rooms in an abandoned church in a remote village with nothing to do, which was very different to the photos of five star accommodation they were shown at the timeshare sales presentation. And Mr O couldn't go on that holiday because he couldn't find any facilities for the medical treatment he may have needed close to the location.
- The Supplier's sales representative told them that the offer to sign up for the timeshare, with various gifts included, was only available if they signed up immediately.
- The purchase price was £14,348.00, with an annual maintenance fee of about 850 Euros. Mr O told the Supplier that he couldn't afford the purchase price and it then told them about the finance company, FHF. The Supplier said FHF would finance the purchase and all they had to do is to pay back about £204 every month. They had to pay a deposit of £500 to secure the purchase and there was no 'cooling-off' period.

FHF provided the Supplier's comments on the issues that Mrs O's statements raised, which in summary were:

- Mrs O wasn't told that she could travel 'anywhere' in the world, she would have been told that she could travel 'all over' the world in the resorts within its portfolio, or through the complimentary membership with the service company. If Mrs O had expressed an interest in travelling to certain parts of the world she would have been shown the resorts available either through itself or the service company.
- The fact that the Supplier is selling timeshare isn't hidden. If that hadn't been clear to Mrs O at the presentation the contractual documentation was clear that she and Mr O were buying a timeshare.
- There are always holidays available through the FPOC membership but it didn't guarantee that specific accommodation types, at specific resorts would be available for specific travel dates. The presentation, contractual documentation and supporting literature say that all accommodation is subject to availability, Each time that Mr and Mrs O made a request for a holiday, if the exact dates and

location couldn't be met it offered alternatives. On the occasions that Mr and Mrs O's specific requests for holidays couldn't be met the requests were made for out of season (when resorts were closed), for specific check in days that weren't available (such as a Monday) or for areas that didn't feature in its resort portfolio. It couldn't comment on availability offered through the third party service company. It didn't tell Mrs O that she needed to book a holiday two years in advance.

- For Mrs O's holiday in Ireland the holiday description stated that the accommodation is in a very old abbey set in tranquil parkland so the location and type of accommodation was clear.
- Only special offers at its resorts are available to book online, other requests need to be made through its reservations team. Mr and Mrs O had made a request to book two weeks in Dubai for Christmas about 4 months beforehand which was short notice for peak season and it was a resort it didn't own so that request couldn't be met.
- Mr and Mrs O were given an exclusive purchase offer, not available at another time.
- Mr and Mrs O didn't sign the purchase document on the day of the presentation, they returned to sign two days later. Although card details may have been taken on the day of purchase the payment wasn't processed until the 5 September 2016, after their 14 days 'cooling off' period had ended. The 14 days withdrawal period is clearly detailed in the Purchase Agreement and Information Statement which Mr and Mrs O signed.

Mr O's statement said, amongst other things, that he was in debt due to the monthly payment to the Supplier which affected his finances, family life and mental health.

One of our Investigators issued her findings on this complaint on 26 September 2023 rejecting the complaint.

Mr and Mrs O confirmed they had read our Investigator's findings and were unhappy with the outcome. They wanted an Ombudsman to make a decision on their complaint. They didn't make any further representations or provide any more evidence.

What I provisionally decided – and why

I made a provisional decision as Mr and Mrs O were, but are no longer, represented by a professional representative in this complaint so I wanted to give Mr and Mrs O the opportunity to comment before I made my final decision. I explained why I was intending to not uphold the complaint. I said:

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

When deciding complaints, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

- “(1) relevant:*
 - (a) law and regulations;*
 - (b) regulators' rules, guidance and standards;*

(c) codes of practice; and

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.”

Where I need to make a finding of fact based on the evidence, I make my decision on the balance of probabilities. In other words, when I make a finding that something happened, it's because I think it is more likely than not that thing did happen.

Mr and Mrs O's PR made a claim on their behalf against FHF under section 75 of the CCA. That says that if the debtor (Mr and Mrs O) under a debtor-creditor-supplier agreement has, in relation to a transaction financed by the agreement, any claim against the supplier (the timeshare supplier) in respect of a misrepresentation or breach of contract, he or she has a "like" claim against the creditor (FHF), who (with the timeshare supplier) is then jointly and severally liable to the debtor. The PR also mentioned section 140A of the CCA that deals with unfair debtor-creditor relationships.

The issues that Mr and Mrs O have raised could either fit a section 75 CCA claim or could give rise to an unfair debtor-creditor relationship. That is the relevant law, which I've had in mind when considering Mr and Mrs O's complaint.

The PR no longer represents Mr and Mrs O and I think the best evidence of what they are actually complaining about - availability of holidays - is set out in Mrs O's statement. So I've focused on the specific allegations set out in Mrs O's witness statements to see if FHF unfairly didn't accept the section 75 claim and/or whether FHF was a party to an unfair debtor-creditor relationship. Although the PR did refer to other concerns in its letter of complaint, as they were not referred to in the statements of Mr and Mrs O I don't think they were important to them, nor do I have any evidence to support those more general allegations.

It's clear from what Mrs O has detailed that she and Mr O had problems in obtaining a holiday at the destination and time they wanted through their FPOC membership. The Supplier acknowledges that they complained to it about the issue before they made the claim through the PR. So it's clear to me that was an important issue for Mr and Mrs O and the substance of their complaint.

The Supplier accepts that Mr and Mrs O would have been told they could travel 'all over' the world in the resorts within its portfolio, or through the service company's resorts. But the Supplier says it didn't guarantee that specific accommodation types, at specific resorts would be available for specific travel dates. I think that accords with common sense – it's unrealistic to expect a holiday supplier to be able to provide accommodation at any location, at any time of the year, at all times. So even if Mr M and Mrs O were told that they would not have a problem booking holidays, I can't say that meant they were told they would be provided with any holiday they asked for with unlimited availability. Also the Information Statement provided to Mr and Mrs O, which they signed, says 'All bookings are subject to availability and are handled on a first-come first-served basis'. So I think the Supplier made it clear enough to Mr and Mrs O that they wouldn't have unlimited choice for their holidays.

The Supplier has an agreement with the service company whereby FPOC members can exchange their holiday use periods at the Supplier's resorts for use at resorts booked through the service company. Mrs O says that if they booked a holiday through the service company they had to pay another fee to that company as well as use their points. The Information Statement says there will be exchange fees to pay when booking through the service company. So I think the Supplier gave Mr and Mrs O information that a separate fee

would need to be paid to the service company and I can't say they were misled that there would be no cost associated.

Mrs O's witness statement details how the accommodation she and her family had in Ireland was very different to photos of five star accommodation shown at the timeshare purchase presentation. But it seems to be that the accommodation in Ireland was booked through the service company and wasn't part of the Supplier's own resort network. So any description given about that accommodation would not have been provided by the Supplier at the point of sale. So I can't say that Mr and Mrs O were misled by the Supplier about the type of accommodation for that holiday.

From what Mrs O says in her statement, she and Mr O felt enticed into buying the membership by the Supplier telling them this purchase offer wasn't available at another time. The Supplier says the particular purchase offer given to Mr and Mrs O wasn't available at another time. So without any evidence to show the Supplier's comment is wrong I can't fairly say that it made a misrepresentation about that matter. Even if the Supplier did make the same offer at another time I haven't seen enough to persuade me that this, alone, rendered Mr and Mrs O's credit relationship with FHF unfair to them.

Mrs O says that at the time of the purchase she and Mr O didn't realise they were being sold a timeshare. But I think it's likely that during the presentation the Supplier would have given some information that the product being sold was a timeshare. Even if that wasn't made clear at the presentation, the Supplier says that Mr and Mrs O didn't sign the purchase documents until two days after the presentation and I think the purchase documentation, which Mr and Mrs O signed, is clear enough that they would be buying a timeshare. So I don't think there's enough evidence for me to say that the Supplier made a misrepresentation about that matter.

I've seen Mr O's bank statement from 2020 shows that the payment of about £204 each month helps put the account into arrears. But from what Mrs O says in her witness statement she and Mr O were told the correct amount they would need to pay each month under the loan agreement. So they were given the correct information to decide if they would be able to afford the monthly payments. And I can't see any evidence from the time the loan was granted to show it was unaffordable for them (nor do Mr and Mrs O make this allegation). I appreciate that if Mr O's health has deteriorated since they purchased the FPOC membership their financial situation may be different to what it was when they decided to take out the loan for the purchase. But I haven't seen any evidence to persuade me that the Supplier's decision to lend to Mr and Mrs O is likely to have rendered their credit relationship with FHF unfair to them.

Mrs O says in her witness statement that they had to pay a deposit of £500 to secure the purchase within the 14 days 'cooling-off' period, which under the relevant legislation was prohibited. The Supplier said although card details may have been taken on the day of purchase for the deposit the payment wasn't processed until after the 14 days 'cooling-off' period had ended. I've seen no evidence that any payment was sent to the Supplier before then. But even if by the Supplier took Mr and Mrs O's deposit within the 14 days 'cooling-off' period, contrary to the regulations, I'm not persuaded that the breach of that regulation was likely to have rendered their credit relationship with FHF unfair to them as I can't see that it would have caused Mr and Mrs O the sort of unfairness or harm that required a remedy in this case.

Overall, on the information I currently have I'm not persuaded that FHF acted unfairly when it dealt with Mr and Mrs O's section 75 claim. And I'm not persuaded that FHF, having financed the purchase of Mr and Mrs O's FPOC membership, acted unfairly or unreasonably given the circumstances of this complaint'.

Responses to my provisional decision

FHF said it had nothing further to add. Our Investigator spoke to Mr O to see if he and Mrs O had any other evidence they wanted me to consider. Mr O told us he felt that I had already made a decision, but he wanted to say that he didn't think we were doing 'due diligence' as the company is being investigated for fraud and taken to court in the relevant European country. He added that he didn't know why the solicitors he and Mrs O had previously used had brought the complaint to us and he feels he is being punished twice.

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'm sorry that Mr and Mrs O are so disappointed by my provisional decision. I've noted Mr O's comments but he is referring to the timeshare provider. FHF, who this complaint is against, is a separate business from the timeshare provider. The information he's given about the timeshare provider doesn't change my mind about the conclusion I came to in my provisional decision.

For the reasons I've given in my provisional findings and these findings I'm still not persuaded that FHF acted unfairly when it dealt with Mr and Mrs O's section 75 claim. And I'm not persuaded that FHF, having financed the purchase of Mr and Mrs O's FPOC membership, acted unfairly or unreasonably given the circumstances of this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 2 August 2024.

Nicola Sisk
Ombudsman