

The complaint

Mr and Mrs T complain that First Holiday Finance Ltd ('FHF') is liable to pay them compensation following a complaint made about a timeshare bought using credit provided by FHF.

What happened

On 23 January 2012, whilst existing members of a timeshare arrangement, Mr and Mrs T bought membership of an asset-backed timeshare, the Fractional Property Owners Club ('FPOC') from a timeshare company (the 'Supplier'). The purchase was made using finance from FHF, taken in joint names. Mr and Mrs T entered into a Fixed Sum Loan Agreement (the 'Credit Agreement') for £8,933. This Credit Agreement was paid off and cleared on 20 August 2013.

On 9 September 2019, via a professional representative, Mr and Mrs T complained to FHF. In essence they complained that FHF was party to an unfair credit relationship with them, under Section 140A of the Consumer Credit Act 1974 (the 'CCA'), and they also made a claim under Section 75 of the CCA. They said the following misrepresentations were made by the Supplier which were untrue:

- They were told their existing 'points based' membership was being phased out, and it was likely that they would find it increasingly difficult to book accommodation.
- They were told the value of their 'fraction' would increase over the term, so they would make money when it was sold.
- They were told the FPOC membership had a guaranteed end date.
- They would own an interest in a specific parcel of "real property".
- The FPOC scheme was an investment.

Mr and Mrs T said they had also experienced problems with the FPOC membership:

- They had either not received a copy of the Information Statement prior to making the FPOC purchase or did not have adequate time to review it prior to signing.
- There was no assessment of their creditworthiness completed before making the Credit Agreement.
- The terms of the Credit Agreement were not explained to them.
- They had been unable to book the holidays they wanted.
- There were user fees added when they booked holidays, which had not been explained.
- They had complained to the Supplier about the rising costs of booking in 2015.
- The duration of the FPOC membership, and the obligation to pay management charges for the duration of the membership is an unfair term, contrary to the Unfair Terms in Consumer Contracts Regulations 1999.

- The Supplier used unfair or misleading sales practices contrary to the Consumer Protection from Unfair Trading Regulations 2008. These included:
 - Including untrue statements in respect of the nature and characteristics of the product sold;
 - Not accurately setting out the risks of the product to Mr and Mrs T;
 - Alcohol being offered during the sales process, which was likely to impair their judgement;
 - Making false statements that the offer was only available for a limited time in order to elicit an immediate decision; and
 - Creating the impression that they couldn't leave until a contract is formed.

FHF did not accept Mr and Mrs T's claim under Section 75, nor did they uphold their complaint under Section 140A.

Mr and Mrs T referred their complaint to our Service. Their complaint was in two parts – that their credit relationship with FHF was unfair under Section 140A of the CCA; and that FHF was unfair and unreasonable in refusing to accept their claim under Section 75 of the CCA.

Having considered everything, our Investigator thought that Mr and Mrs T's complaint under Section 140A of the CCA had been made too late under the Financial Conduct Authority ('FCA') rules. And she thought FHF would likely have a defence to Mr and Mrs T's claim under Section 75 under the Limitation Act 1980 (the 'LA').

As no agreement on either the matter of our Service's jurisdiction to consider the entirety of Mr and Mrs T's complaint, nor their merits could be reached, the matter has been passed to me.

This decision only considers the merits of Mr and Mrs T's complaint about the way FHF handled their claim under Section 75 of the CCA. I have dealt with whether our Service has jurisdiction to consider Mr and Mrs T's complaint that the credit relationship between themselves and FHF was unfair to them under Section 140A of the CCA, in a separate 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.

In this part of Mr and Mrs T's complaint, they are alleging that FHF was unfair and unreasonable in refusing to allow their claim under Section 75 of the CCA. Mr and Mrs T say FHF ought to have allowed it as there were misrepresentations made by the Supplier at the time of sale, and these misrepresentations induced them into making the purchase.

The LA imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we would usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier. The limitation period to make such a claim against FHF for alleged misrepresentations by the Supplier expires six years from the date on which Mr and Mrs T had everything she needed to make such a claim.

As the letter of complaint to FHF makes clear, Mr and Mrs T entered into the purchase of the timeshare on 23 January 2012 based on the alleged misrepresentations of the Supplier, which Mr and Mrs T say they relied on. And as the credit arrangement from FHF was used to help finance the purchase, it was when Mr and Mrs T entered into the Credit Agreement that they suffered a loss – which means it was at that time that they had everything they needed to make a claim.

Mr and Mrs T first notified FHF of their claim for alleged misrepresentations by the Supplier on 9 September 2019. As that was more than six years after they entered into the Credit Agreement and related timeshare agreement, I don't think it would have been unfair or unreasonable of FHF to rely on the LA to decline Mr and Mrs T's claim. As such I do not think FHF needs to do anything further in relation to this complaint.

My final decision

I do not uphold Mr and Mrs T's complaint against First Holiday Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 1 August 2024.

Chris Riggs
Ombudsman