

The complaint

Mr and Mrs M complain that Vacation Finance Limited, trading as VFL Finance Solutions, won't refund to them the money that they paid to acquire some membership credits from a holiday company. They're being represented in their complaint by a claims management company.

What happened

Mr and Mrs M entered into a membership application agreement with a holiday company in May 2018 to buy 4,300 level 1 membership credits. The membership application fee was £9,600 and they made an advance payment of £2,880 by bank transfer. I understand that they entered into a fixed sum loan agreement with Vacation Finance for a loan of £6,720 and that they agreed to make 120 monthly repayments of £87.32 to Vacation Finance – but I've not been provided with a copy of that agreement.

Mr and Mrs M's representative made claims, on behalf of Mr and Mrs M, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in December 2020. It said that: the product and the loan agreement were mis-sold to Mr and Mrs M; the product was misrepresented to them; the contract was breached; commission was paid between Vacation Finance and the holiday company which wasn't disclosed to Mr and Mrs M which created a breach of fiduciary duty and an unfair relationship; the loan agreement was unaffordable; the holiday company and Vacation Finance had an unfair relationship and the loan agreement wasn't in Mr and Mrs M's best interest; and the holiday company had filed for liquidation.

Vacation Finance didn't provide a substantive response to those claims so Mr and Mrs M complained to this service. Their complaint form says that: the holiday company and Vacation Finance failed to conduct a proper assessment of their ability to afford the loan; Vacation Finance paid a commission to the holiday company which wasn't declared to them and the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement; all rendering the loan agreement unfair pursuant to section 140A. Vacation Finance then provided this service with a detailed explanation as to why it didn't consider that Mr and Mrs M's claims should be upheld.

Our investigator didn't recommend that Mr and Mrs M's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the membership application agreement. She said that she hadn't seen enough to suggest that the relationship between Mr and Mrs M and Vacation Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr and Mrs M.

Mr and Mrs M's representative, on behalf of Mr and Mrs M, says that it doesn't agree with our investigator's recommendation and has asked for this complaint to be referred to an ombudsman. It says that an unregulated credit intermediary was used by Vacation Finance and it is of the view that the loan agreement is unenforceable. It has also raised concerns about the way that the finance was sold to Mr and Mrs M and has referred to a decision issued by this service on a complaint relating to a different type of holiday ownership product in which it says that the voluminous documentation for the product was reviewed and the debtor-creditor relationship was considered to be unfair. It says that the same voluminous documents and the same unfair charges exist in the product that was sold to Mr and Mrs M so their relationship with Vacation Finance is unfair.

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.

Having done so, I agree with our investigator that Mr and Mrs M's complaint shouldn't be upheld for these reasons:

- Mr and Mrs M signed the membership application agreement in May 2018 to buy 4,300 level 1 membership credits from the holiday company - they also signed other documents including the holiday company's terms and conditions and a separate standard form of the withdrawal notice that could be given to withdraw from the agreement – I consider it to be likely that they would have signed other documents at that time (including a loan agreement with Vacation Finance) but I've not been provided with copies of those agreements;
- Mr and Mrs M's representative made claims to Vacation Finance in December 2020 and Mr and Mrs M then made a complaint to this service – the claim letter referred to claims under sections 75 and 140A, including that the membership credits were misrepresented to Mr and Mrs M, but their complaint form only referred to claims under section 140A and didn't refer to a misrepresentation made by the holiday company;
- the claim letter said that a comprehensive witness statement from Mr and Mrs M was enclosed but Vacation Finance says that a witness statement wasn't enclosed with the letter that it received and I've not been provided with a copy of Mr and Mrs M's witness statement;
- section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met) and section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor;
- I'm not determining the outcome of Mr and Mrs M's claims under sections 75 and 140A as only a court would be able to do that but I'm considering whether or not Vacation Finance's response to their claims was fair and reasonable in the circumstances;
- the claim letter said that Mr and Mrs M were advised that the package would enable them to have exclusive accommodation and cheaper holidays and that, over the length of the contract, they would save an amount in excess of the sum paid – it also said that they were advised that the product was of some substance, but it's clear that the product is worthless and has no merit, and it was represented to them that the purchase would be an investment, the product would increase in value and, after a period of a few years, they would be able to sell it at a considerable profit;

- none of Mr and Mrs M and their representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to them;
- one of our investigators requested Mr and Mrs M's representative to ask Mr and Mrs M to describe in their own words how the credits were sold to them, how they thought it was an investment and to explain how they thought they would make money from it and to provide other specified information – their representative said that Mr and Mrs M had been asked to provide that information but were struggling to obtain it;
- Mr and Mrs M had bought 4,300 level 1 membership credits and the terms and conditions that they signed say: *"The Credits purchased grant me the right of occupation or use of a Unit in each Use Year until the Termination Date or accelerated occupation and use in accordance with the terms and conditions outlined in the Standard information Document"*;
- I've not been provided with the standard information document but I've seen no evidence to support Mr and Mrs M's claim that the holiday company misrepresented to them that the membership credits would enable them to have exclusive accommodation and cheaper holidays and that, over the length of the contract, they would save an amount in excess of the sum paid;
- the credits can be exchanged for the use of holiday accommodation so I consider that they do have some value and substance and I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr and Mrs M that the credits would be an investment;
- I'm not persuaded that there's enough evidence to show that the credits were mis-sold or misrepresented to Mr and Mrs M by the holiday company or that they were induced into entering into the membership application agreement by any such misrepresentations;
- the claim letter also says that the holiday company has ceased to trade so has committed a repudiatory breach of contract – but Vacation Finance says that the holiday club is now operated by a newly appointed club manager and full use of the membership credits remains available to Mr and Mrs M;
- I consider that the liquidation of the holiday company might be a breach of contract for which Vacation Finance could be liable under section 75 - but I consider the appointment of the new club manager company to have been a suitable remedy for any breach of contract, I've seen no evidence to show that Mr and Mrs M's use of their membership credits has been adversely impacted by the liquidation of the holiday company and I'm not persuaded that Mr and Mrs M would be entitled to terminate the membership application agreement in these circumstances;
- I've seen no evidence to show that there's been any other breach of contract relating to the membership credits for which Vacation Finance would be liable under section 75;
- Mr and Mrs M's representative says that commission was paid between Vacation Finance and the holiday company which wasn't disclosed to Mr and Mrs M which created a breach of fiduciary duty and an unfair relationship but Vacation Finance says that no commission was paid to the holiday company;
- I've not been provided with any other evidence to show that Vacation Finance paid a commission to the holiday company and I'm not persuaded that there's been a breach of any fiduciary duty in these circumstances;
- Mr and Mrs M's representative says that the loan agreement was unaffordable for Mr

and Mrs M and their complaint form says that the holiday company and Vacation Finance failed to conduct a proper assessment of their ability to afford the loan – but none of Mr and Mrs M and their representative has provided detailed evidence about Mr and Mrs M's financial position in May 2018 or to show that a loan of £6,720 with a monthly payment of £87.32 wasn't affordable for them at that time;

- Vacation Finance says that its usual process involved obtaining income and expenditure information from the prospective debtor as well as conducting credit reference checks with external credit reference agencies and that Mr and Mrs M advised in their loan application form that they had a combined annual income of £52,400 which exceeded its minimum credit score requirement and they had a calculated monthly disposable amount of £736 so the monthly payment of £87.32 was deemed affordable;
- it also said in July 2021 that Mr and Mrs M had maintained their monthly loan payments and I'm not persuaded that enough evidence has been provided to show that the loan wasn't affordable for Mr and Mrs M when it was made to them in May 2018 or that the loan was mis-sold to them;
- Mr and Mrs M's complaint form says that the holiday company unduly pressured Mr and Mrs M into entering into the membership application agreement and the loan agreement – but Mr and Mrs M had signed the holiday company's separate standard form of the withdrawal notice that could be given to withdraw from the membership application agreement within 14 calendar days without giving any reason;
- if they were concerned about the way that the membership credits had been sold to them and didn't want to buy them, I consider that it would be reasonable to expect them to have contacted either the holiday company or Vacation Finance within the withdrawal period to withdraw from the membership application agreement – but I've seen no evidence to show that they did so;
- Vacation Finance says that Mr and Mrs M bought a holiday club membership in August 2016 and it described their purchase and usage history since then, including that during their holiday at the resort in May 2018 they attended a sales meeting at which they traded in their one week of annual holiday entitlement towards the purchase of the membership credits;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs M were unduly pressured into entering into the membership application agreement and the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mr and Mrs M's representative has referred to a decision issued by this service on a complaint relating to a different type of holiday ownership product in which it says the voluminous documentation for the product was reviewed and the debtor-creditor relationship was considered to be unfair – it says that the same voluminous documents and the same unfair charges exist in the product that was sold to Mr and Mrs M so their relationship with Vacation Finance is unfair;
- that decision related to a different type of holiday ownership product which was sold as an investment and related to a specified property – Mr and Mrs M bought membership credits from the holiday company which didn't relate to a specified property and I'm not persuaded that they were sold to them as an investment;
- both types of products were often sold in similar ways and may have had similar contractual documentation but the operation and effect of the contractual documentation would be significantly different between the products;
- I don't consider that the presence of an unfair (or potentially unfair) term alone is

likely to mean that a court would conclude that it created an unfair relationship between a debtor and a creditor as the court would consider how the term operated in practice and whether the operation of that term caused the relationship to be unfair;

- I'm not persuaded that there's enough evidence to show that the terms of the documents have been applied or operated unfairly against Mr and Mrs M and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the documents or the charges created an unfair relationship between Mr and Mrs M and Vacation Finance;
- Mr and Mrs M's representative said in response to our investigator's recommendation that an unregulated credit intermediary was used by Vacation Finance but that didn't form part of the claim that was made to Vacation Finance or the complaint that was made to this service so I can't make any finding on that issue in this decision – but I'm not persuaded that Mr and Mrs M's representative has provided enough evidence to show that that an unregulated credit intermediary was used or that the loan agreement would be unenforceable;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs M's relationship with Vacation Finance was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mr and Mrs M and Vacation Finance in these circumstances;
- Vacation Finance didn't issue a substantive response to Mr and Mrs M's claims so I can't say that its response to their claims was fair and reasonable – but it then provided this service with a detailed response to those claims and I consider that the reasons that it gave for not upholding Mr and Mrs M's claims were fair and reasonable; and
- I sympathise with Mr and Mrs M for the issues that they've had with their membership credits but I find that it wouldn't be fair or reasonable in these circumstances for me to require Vacation Finance to refund to them any of the money that they've paid for those credits, to cancel their loan agreement, to pay them any compensation or to take any other action in response to their complaint.

My final decision

My decision is that I don't uphold Mr and Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 9 November 2023.

Jarrold Hastings
Ombudsman