DRN-4526567

## The complaint

Mr and Mrs R complain that Vacation Finance Limited trading as VFL Finance Solutions ("VFL") didn't provide a fair and reasonable response to their claim under sections 75 and 140A of the Consumer Credit Act 1974 ("the CCA") in relation to a timeshare product financed by a loan they provided.

## What happened

Mr and Mrs R were on holiday in or around June 2019 using a timeshare product they'd previously purchased from a supplier who I'll refer to as "A". During that holiday, they met with A to discuss their earlier timeshare purchases. During that meeting, Mr and Mrs R agreed to purchase 95,000 timeshare product points from A at a total cost of £26,639, of which £25,064 was funded under a fixed-sum loan agreement with VFL.

In April 2021, using a professional representative ("the PR"), Mr and Mrs R submitted a claim to VFL under sections 75 and 140A of the CCA. In the claim, the PR alleged that Mr and Mrs R purchased the timeshare points having relied upon representations made by A which turned out not to be true. And under section 75 of the CCA ("S75"), VFL are jointly liable for those misrepresentations. In particular, the PR allege A:

- told Mr and Mrs R *"the bottom had gone out of resales, because people were purchasing* [points-based products] *rather than apartments"*;
- said, *"there was no value in apartments anymore"*;
- offered to take back two apartments from them *"so that they were not burdened with maintenance fees"*; and
- said the purchase of more points would mean not having to pay maintenance fees for three years, plus instead of paying a 30% deposit, this would be reduced to 15%.

Further, the PR said that as A are in liquidation, they can't provide the service sold. They suggest this constitutes a breach of contract which VFL are jointly liable for under S75.

The PR also allege that the misrepresentations, together with other things done (or not done) by A renders the relationship with VFL, under the agreements, unfair pursuant to section 140A of the CCA ("S140A). In particular, the PR allege that A breached various regulations and legislation that applies by:

- saying the product was available at this price but only if purchased on that day;
- advising that VFL had the best deal on offer;
- making no comparisons to other loan companies;
- failing to mention that Mr and Mrs R were free to arrange their own finance;
- failing to disclose whether commission was being paid to them by VFL; and
- pressuring Mr and Mrs R to enter into the credit agreement;

The PR also allege no affordability checks were carried out before agreeing to provide the loan.

VFL didn't uphold Mr and Mrs R's claim. They didn't agree there was any evidence to support the allegations of misrepresentation. Or that there was any evidence to support the allegations of unfairness under S140A. They also didn't think there was any evidence of loss from the alleged breach of contract. VFL said they followed their usual process and conducted an appropriate affordability assessment. And there was and has been no evidence to suggest the loan was unaffordable.

The PR didn't agree with VFL's findings, so referred Mr and Mrs R's claim to this service as a complaint. One of this service's investigators considered all the information and evidence provided. Having done so, they didn't think VFL had acted fairly. In particular, our investigator was persuaded that A had represented the points-based product to Mr and Mrs R as an upgrade to their existing timeshare investment with an opportunity to re-sell them in the future. But they haven't been able to do that, and our investigator thought A would've known that at the time of the sale. Our investigator thought VFL hadn't fairly assessed Mr and Mrs R's claim under S75. And had it done so, believes it should've been upheld.

The investigator thought VFL should put things right by refunding all loan repayments made by Mr and Mrs R, cancelling any remaining loan outstanding. They also thought VFL should pay 8% simple interest on the repayments to the point of settlement, refund any deposits and charges paid to A less the value of any holidays taken – adding interest at 8% simple to this refund. Finally, the investigator thought VFL should remove any related information from Mr and Mrs R's credit file.

VFL didn't respond to our investigators findings and recommendations. So, Mr and Mrs R's complaint was passed to me to consider further. Having done that, I reached a different outcome to that of our investigator. So, I issued a provisional decision on 28 November 2023 giving the parties to this complaint the opportunity to respond to my findings before I reach a final decision.

In my provisional decision I said:

> Relevant considerations
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> When considering what's fair and reasonable, DISP[1] 3.6.4R of the FCA[2] Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.
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> S75 provides consumers with protection for goods or services bought using credit. Mr and Mrs R paid for the timeshare points under a restricted use fixed sum loan agreement. So, it isn't in dispute that S75 applies here. This means they would be afforded the protection offered to borrowers like them under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.
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> S140A looks at the fairness of the relationship between Mr and Mrs R and VFL arising out of the credit agreement (taken together with any related agreements). And because the points purchased were funded under that credit agreement, they're deemed to be related agreements. Only a court has the power to make a determination under S140A. But as it's relevant law, I've considered it when deciding what I believe is fair and reasonable.
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> It's important to distinguish between the complaint being considered here and the legal claim. The complaint this service is able to consider specifically relates to whether I believe VFL's failure to uphold Mr and Mrs R's claim was fair and reasonable given all the evidence and information available to me, rather than actually deciding the legal claim itself.

[1] Dispute Resolution: The Complaints sourcebook (DISP)

[2] Financial Conduct Authority

It's also relevant to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we don't provide a legal service. And as I've already said, this service isn't able to make legal findings – that is the role of the courts. Where a consumer doesn't accept the findings of an ombudsman, this doesn't prejudice their right to pursue their claim in other ways.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

Based upon the information provided, it appears Mr and Mrs R's claim here is one of a number of separate and concurrent claims submitted relating to various timeshare purchases made by Mr and Mrs R over a period of time. VFL have pointed this out in their claim response. So, it's important to make clear that my decision here is only looking at the purchase Mr and Mrs R made in June 2019. And while I may consider other purchases made, I will do that where I feel it has relevance to the compliant being considered.

Mr and Mrs R's timeshare experience

In a written testimony, Mr and Mrs R have provided details of their various purchases and product holdings with A over the years. These include purchases made in 2007, 2008, 2009, 2010, 2011, 2012 (x 2), 2014 (x2), 2015 (x2), 2016, 2018 and 2019. The latter of these being the subject of this complaint.

From what Mr and Mrs R have said, the original purchase in 2007 appears to relate to a traditional timeshare apartment in a specified season. Additional timeshare apartments were then purchased and subsequently upgraded to higher specifications and seasons over time. Mr and Mrs R suggest that many of the purchase decisions were driven by a desire to derive a rental income with an opportunity to sell them later for a profit.

It's important to acknowledge that as part of this complaint, I've not been provided with anything suggesting that VFL were involved in financing all of the previous purchases. And in any event, those don't form part of this specific complaint – other than for background information. So, in considering Mr and Mrs R's complaint here, I haven't investigated any of the (alleged) circumstances of those transactions.

Do Mr and Mrs R have a valid claim?

It appears that during the investigation of Mr and Mrs R's complaint, some confusion arose as regards the transaction that Mr and Mrs R believe they entered into in June 2019. Mr and Mrs R have since clarified that they, in fact, only purchased an additional 20,000 points from A in 2019, rather than the 95,000 suggested in the claim submitted by the PR. The agreed price paid for those additional points was £10,000.

The purchase documentation from the time of the sale doesn't appear to show this as it suggests they purchased 95,000 new points costing £26,639. But Mr and Mrs R have explained that 75,000 of these points had actually already been purchased in June 2018 for £26,500 (subject to a separate complaint). They've also confirmed the loan outstanding from 2018 was rolled into the 2019 transaction resulting in the documented total purchase price of £26,639. In other words, the purchase price of

£10,000 agreed in June 2019 plus the amount owed under their existing loan from 2018. Mr R then paid a deposit of £1,575 using a credit card provided by another business resulting in a new loan of £25,064 – as detailed above. Our investigator requested documentary evidence to support what Mr and Mrs R said. But those documents don't appear to be available.

So, in considering Mr and Mrs R's complaint here, I can only look at the underlying transaction that was funded by VFL in 2019 – that being confirmed by Mr and Mrs R as the purchase of 20,000 points for an agreed price of £10,000. It seems any additional amount relates to a prior transaction.

Furthermore, it transpires that a S75 claim was also submitted for that purchase to Mr R's credit card provider who funded the associated deposit of £1,575. And the credit card provider made an ex-gratia offer of £26,639 to Mr R which, I understand, has been accepted.

Where a legal claim for misrepresentation is upheld by a court, it can only consider an award that ultimately puts the consumer back in to the position they would've been but for the misrepresentation. In other words, reflecting any losses and associated costs. But Mr R has already accepted £26,639 from his credit card provider. That being the purchase price documented in June 2019, even though Mr and Mrs R have confirmed the actual purchase price was £10,000.

On this basis, it appears Mr and Mrs R no longer have any financial losses associated specifically with the June 2019 purchase given the amount received substantially exceeds their outlay at the time and any subsequent costs. And because of that, it appears there is no longer a claim to be pursued for that purchase.

Summary

Given my findings above, I think any alleged losses have already been recovered by Mr and Mrs R by virtue of the payment already accepted from Mr R's credit card provider. It appears this comfortably covers anything that could potentially be awarded under both S75 and S140A. Because of that, I can't reasonably ask VFL to do anything more.

**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.

Despite follow up by this service, none of the parties have responded to my provisional decision with any new comments, information or evidence for me to consider. In the circumstances, I've no reason to vary from those findings. Because of that, I won't be asking VFL to do anything more here.

**My final decision**

For the reasons set out above, I don't uphold Mr and Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 31 January 2024.

Dave Morgan
**Ombudsman**