

The complaint

Mr and Mrs S complain that Vacation Finance Limited won't refund to them the money that they paid for some holiday club membership credits. They're being represented in their complaint by a claims management company.

What happened

I issued a provisional decision on this complaint in October 2023 in which I described what had happened as follows:

"Mr and Mrs S had two holiday club memberships and they entered into a membership application agreement to buy 11,650 membership credits from a holiday company in April 2019 for a purchase price of £10,500. They relinquished their previous memberships and paid £3,150 of the purchase price by bank transfer. They also entered into a fixed sum loan agreement with Vacation Finance for a loan of £7,350 and they agreed to make 120 monthly repayments of £95.51 to Vacation Finance.

Mr and Mrs S's representative made claims, on behalf of Mr and Mrs S, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in February 2020. It said that: the product was misrepresented to Mr and Mrs S; the contract was breached; commission was paid between Vacation Finance and the holiday company which wasn't disclosed to Mr and Mrs S which created a breach of fiduciary duty and caused an unfair relationship; and the loan was unaffordable.

Vacation Finance didn't provide a substantive response to those claims so a complaint was made to this service. Mr and Mrs S's 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 a detailed response to Mr and Mrs S's claims. It said that it appeared from all of the information that it had seen that Mr and Mrs S purchased the credits to enjoy holidays and not as a financial investment so it didn't uphold the complaint regarding all allegations of misrepresentation. It said 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 for it to approve a loan application, a customer needed to meet a certain minimum credit score and the monthly repayment had to be no more than a quarter of the customer's disposable income. It said that Mr and Mrs S advised in their loan application that they had a combined annual income of £38,000 which exceeded its minimum credit score requirement and had a calculated monthly disposable amount of £565 so the monthly payment of £95.51 was deemed affordable. It also said that Mr and Mrs S have maintained their monthly payments.

It said that it paid no commission to the holiday company and that the club was being operated by a newly appointed club manager and full use of memberships remained available to all members who continued to make payment of the annual fees in line with their agreement.

Our investigator recommended that Mr and Mrs S's complaint should be upheld. She thought that the holiday company had misrepresented the credits as something that would help them recoup their investment by being re-sold easily in the future and she said that the evidence suggested that that couldn't have been the case. She recommended that Vacation Finance should: cancel the loan and refund all loan payments with interest; and pay Mr and Mrs S the £3,150, with interest.

Vacation Finance hasn't responded to those recommendations so this complaint has been passed to me for a decision. Mr and Mrs S's representative has raised concerns about the way that the finance was sold to Mr and Mrs S".

I said in my provisional decision: *"I don't consider that Mr and Mrs S's complaint should be upheld for these reasons:*

- Mr and Mrs S signed the membership application agreement in April 2019 to buy 11,650 holiday club membership credits – and they also signed a trade-in check list in which they confirmed that they were relinquishing their previous memberships;*
- they also signed other documents including the terms and conditions, a separate standard form of the withdrawal notice that could be given, an initial disclosure document, a standard information form and the loan agreement;*
- the standard information form said that Mr and Mrs S were: "... purchasing credits ... which can be exchanged for rights of occupation and use in a unit of accommodation or a yacht or use of other lifestyle products such as luxury cars ... until the Termination Date in accordance with the Membership Club Rules, the Reservation Rules and the Deed of Trust";*
- Mr and Mrs S's representative made claims to Vacation Finance in February 2020 and Mr and Mrs S then made a complaint to this service – the claim letter refers to claims under sections 75 and 140A, including that the credits were misrepresented to Mr and Mrs S, but their complaint form only refers to claims under section 140A and doesn't refer to a misrepresentation made by the holiday company;*
- 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 S'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;*
- Mr and Mrs S's representative's February 2020 letter to Vacation Finance says that the credits were misrepresented to Mr and Mrs S because they were advised that the product was of some substance and that the purchase would be an investment as 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 – but it says that the product is worthless and has no merit;

- Mrs S says that she and her husband wanted to sell their existing memberships in April 2019 but were told that there was no resale office and the chances of selling them were remote so pressure was put on them to buy the credits which they were told they could sell all or parts of from 2024 – she says that they were allocated 11,650 points but could only use 320 each year for 25 years (which she says should have been 466 points each year) and were told that they could sell the points in 2024 and that if they didn't come every year they could rent out the credits and make some money – she's also provided a photo of what she's described as the salesperson's scribbblings;*
- the standard information form says: "The Resale Facility for [the credits] will be available to be applied for as of the year 2024 and cannot be relied upon as the basis for entering into a Membership. Resale values or timeframes cannot be guaranteed and are subject to offer and demand"; and it also describes the arrangements for accelerated usage of the credits;*
- the credits can be exchanged for rights of occupation and use in a unit of accommodation or a yacht or use of other lifestyle products so I don't consider that the credits are worthless;*
- the explanation that has been provided by Mrs S doesn't refer to the credits as being an investment and none of Mr and Mrs S and their representative has provided a detailed account of the circumstances in which Mr and Mrs S were told that the credits were an investment, the conversations that took place or the information that was provided to them before they bought the credits;*
- I'm not persuaded that the "salesperson's scribbblings" show that the credits were represented to Mr and Mrs S as an investment and I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr and Mrs S that the credits were an investment, that the credits were misrepresented to them by the holiday company or that they were induced into entering into the membership application agreement by any such misrepresentations;*
- the February 2020 letter also says that the holiday company has ceased to trade and has committed a repudiatory breach of contract - I understand that the holiday company went into liquidation in May 2020 and I consider that the liquidation of the holiday company would be a breach of contract for which Vacation Finance would be liable under section 75;*
- but I also understand that a new management company has been appointed to provide the services in connection with the credits that Mr and Mrs S had bought from the holiday company in April 2019 and that the credits are available for them to use;*
- I've seen no evidence to show that Mr and Mrs S's use of the credits has been adversely impacted by the liquidation of the holiday company and I consider the appointment of the new management company to have been a suitable remedy for any breach of contract and I'm not persuaded that Mr and Mrs S would be entitled to terminate their membership application agreement in these circumstances;*
- I'm not persuaded that there's enough evidence to show that there's been any other breach of contract by the holiday company for which Vacation Finance would be liable under section 75;*
- Mr and Mrs S's representative says that there was an unfair relationship between*

Mr and Mrs S and Vacation Finance because 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;*
- the February 2020 letter says that the loan was unaffordable for Mr and Mrs S 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 S and their representative has provided detailed evidence about Mr and Mrs S's financial position in April 2019 or to show that the loan 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 for it to approve a loan application, a customer needed to meet a certain minimum credit score and the monthly repayment had to be no more than a quarter of the customer's disposable income;*
- it also says that Mr and Mrs S advised in their loan application that they had a combined annual income of £38,000, which exceeded its minimum credit score requirement, and had a calculated monthly disposable amount of £565, so the monthly payment of £95.51 was deemed affordable;*
- Vacation Finance hasn't provided any further information about the affordability checks that it conducted at that time but I consider that it would have been reasonable for it to have concluded on the basis of the information that it says that Mr and Mrs S advised in their loan application that they could afford a loan with a monthly repayment of £95.51;*
- it also says that Mr and Mrs S have maintained their monthly payments and I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr and Mrs S when it was made to them, that Vacation Finance should have done more to assess the affordability of the loan for them, that the loan was mis-sold to them or that Vacation Finance has acted incorrectly in connection with the loan;*
- Vacation Finance says that it paid no commission to the holiday company and I've not been provided with any evidence to show that a commission was paid by it to the holiday company so I'm not persuaded that there's enough evidence to show that there's been a breach of any fiduciary duty;*
- Mr and Mrs S's complaint form says that the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement and Mrs S says that pressure was put on her and her husband to buy the credits but no further description of the undue pressure that was applied to them has been provided;*
- Mr and Mrs S had signed the separate standard form of the withdrawal notice that could be given to withdraw from the membership application agreement within 14 days without giving any reason – and if they'd been unduly pressured into entering into that agreement and didn't want to buy the credits I consider that it would be reasonable to expect them to have exercised their right to withdraw from the agreement – but they didn't do so;*
- I'm not persuaded that there's enough evidence to show that Mr and Mrs S were unduly pressured into entering into the membership application agreement or the*

loan agreement or that the holiday company used unacceptable sales practices against them;

- *I'm not persuaded that there's enough evidence to show that Mr and Mrs S'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 S and Vacation Finance in these circumstances;*
- *although Vacation Finance didn't respond to Mr and Mrs S's claims until after they'd complained to this service, I consider that the reasons that it then provided for not upholding their claims were fair and reasonable; and*
- *I sympathise with Mr and Mrs S for the issues that they've had with their 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 under the loan agreement, to cancel the loan, to pay them any compensation or to take any other action in response to their complaint".*

Subject to any further comments or evidence that I received from any of Mr and Mrs S, their representative and Vacation Finance, my provisional decision was that I didn't intend to uphold this complaint. Vacation Finance hasn't responded to my provisional decision but Mr and Mrs S's representative says that Mr and Mrs S don't agree with my provisional decision and have made the following comments:

- they dislike the tone that I've taken regarding the photographic evidence from the salesman and they say that I'm implying that they've made it up and did it themselves;
- they can't provide more evidence as they didn't record the conversations that they had;
- they've not been contacted by the new management company; and
- I come across as very pro Vacation Finance and they're not sure why I keep referring to the holiday company.

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'm not persuaded that I should change my provisional decision.

Mrs S said, in support of her complaint: *"I will take a photo of the salespersons scribbles (I sent this with the original letter) which may or not help"*. I referred to the photo as being of the *"salesman's scribbles"* but I don't consider it to be likely that Mr and Mrs S would have created the notes made by the salesman. I'm not persuaded that those notes show that the credits were represented to them as an investment or that there's enough evidence to show that the holiday company represented to them that the credits were an investment.

If the credits had been sold to them as an investment, I consider that it would be reasonable to expect them to have obtained more information from the holiday company about, for example, the nature of the investment, the return that they should expect and how that compared with the return on other investments. But none of Mr and Mrs S and their representative has provided a detailed account of the circumstances in which Mr and Mrs S were told that the credits were an investment, the conversations that took place or the information that was provided to them before they bought the credits.

My role is to consider all of the available evidence and arguments to decide what's fair and reasonable in the circumstances of a complaint. I'm neither pro Vacation Finance nor pro Mr and Mrs S but, having considered all of the evidence, I'm not persuaded that Mr and Mrs S's complaint about Vacation Finance's response to the claims that had been made to it should be upheld.

I've asked our investigator to provide Mr and Mrs S with some contact information for the management company that has been appointed to provide the services in connection with the credits.

Mr and Mrs S's complaint is about Vacation Finance's response to the claims that had been made to it. The claim relates to the credits that they bought under the membership application agreement in April 2019. The other party to that agreement is the holiday company but it's not the organisation about which they're complaining so it wouldn't be appropriate for me to identify it in my decision and, for that reason, I've referred to it as *"the holiday company"*.

I consider that the reasons that Vacation Finance provided for not upholding Mr and Mrs S's claims were fair and reasonable so, although I sympathise with Mr and Mrs S for the issues that they've had with their credits, 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 under the loan agreement, to cancel the loan, 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 S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 5 January 2024.

Jarrold Hastings
Ombudsman