

## **The complaint**

Mr and Mrs T 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**

Mr and Mrs T had owned holiday products that they'd bought from a holiday company since July 2003. They entered into a membership application agreement in September 2019 to buy 24,000 level four holiday club membership credits from the holiday company. The membership price was £9,950, they paid a deposit of £1,495 and they entered into a fixed sum loan agreement with Vacation Finance for a loan of £8,455. They agreed to make 120 monthly payments of £109.87 to Vacation Finance.

Mr and Mrs T's representative, on behalf of Mr and Mrs T, made claims to Vacation Finance in January 2022 under sections 75 and 140A of the Consumer Credit Act 1974. It said, in summary and amongst other things, that: the membership credits were mis-sold to Mr and Mrs T and, but for the misrepresentations made to them, they wouldn't have purchased them nor entered into the loan agreement; the holiday company is in liquidation and can't provide the service sold so is in breach of contract; the terms of the agreement are so egregious as to be unfair; the payment of commission was hidden from view; the membership credits were marketed as an investment and were sold to Mr and Mrs T under extreme sales pressure and they weren't given the opportunity to consider any other creditors; no affordability checks were carried out on Mr and Mrs T's ability to afford the loan; and their relationship with Vacation Finance is unfair.

Vacation Finance responded to those claims in detail and said that it hadn't seen nor been presented with any evidence which would lead it to conclude that Mr and Mrs T's membership credits were mis-sold or misrepresented to them at the time of purchase. It also said that it maintained that it lent to them in a responsible manner and didn't uphold any of the claims.

Mr and Mrs T weren't satisfied with its response so a complaint was made to this service. Their complaint form says: Vacation Finance paid a commission to the holiday company which wasn't declared to them; the holiday company failed to conduct a proper assessment of their ability to afford the loan; the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure them; the membership credits were misrepresented to them; the holiday company marketed and sold the credits as an investment in breach of the Timeshare Regulations; the holiday company is in liquidation so is in breach of contract; and they weren't provided with key information necessary for them to be able to make an informed decision regarding their purchase; all rendering the loan agreement unfair under section 140A; and it says that their complaint should also be considered under section 75.

Our investigator didn't recommend that Mr and Mrs T's complaint should be upheld. She didn't think that Vacation Finance's decision to turn down Mr and Mrs T's claims was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale. She said that she hadn't seen enough to suggest that the relationship between Mr and Mrs T 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 T and that she didn't think that the holiday company had breached the contract.

Mr and Mrs T's representative says that Mr and Mrs T aren't accepting our investigator's recommendation and requested that this matter be referred to an ombudsman for a decision. It has provided an addendum containing Mr and Mrs T's additional arguments which says, in summary and amongst other things, that: the product was sold to Mr and Mrs T as an investment; the holiday company represented to them that trading-in their existing products for the membership credits was the only method of realising their investment on their earlier purchases; the re-sale scheme would be open for members five years following the start of a membership but existing members who exchanged products for membership credits were allowed to access the scheme within one year of first occupancy; the resale programme is now discontinued and the holiday company appears to have gone into administration; the products that Mr and Mrs T bought in October 2014 and June 2016 were also misrepresented to them; the holiday company breached the Timeshare Regulations and misrepresented the membership credits as something that could be re-sold easily in the future; and, were it not for the representations, Mr and Mrs T wouldn't have purchased the membership credits and traded-in their existing product.

### **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 T's complaint shouldn't be upheld for these reasons:

- the addendum containing Mr and Mrs T's additional arguments describes the purchases of holiday products that Mr and Mrs T made between July 2003 and June 2016 and includes copies of the membership application agreements for those purchases but their complaint only relates to the purchase that they made in September 2019 which they paid for using a loan provided by Vacation Finance;
- Mr and Mrs T say that they exchanged two weeks of holiday club membership for the membership credits and they entered into a membership application agreement with the holiday company in September 2019 to buy 24,000 membership credits, but I've not been provided with a copy of the agreement, just the summary that was sent to them by the holiday company and the summary shows that the membership price was £9,950 and that they paid a deposit of £1,495;
- I've also not been provided with a copy any of the other contractual documentation that it's likely that Mr and Mrs T would have signed with the holiday company at that time;
- Mr and Mrs T also entered into a loan agreement with Vacation Finance that they signed in September 2019 which shows that the cash price was £9,950 and an advance payment of £1,495 was made so the loan amount was £8,455;
- Mr and Mrs T's representative made claims to Vacation Finance in January 2022 under sections 75 and 140A and a complaint was then made to this service: 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 T'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 January 2022 claim letter says that it was represented to Mr and Mrs T by the holiday company before their September 2019 purchase that: their current product was unsellable as part of the re-sale scheme and that they would be required to purchase the membership credits if it was their intention to sell their product at a profit; the holiday company was ceasing to trade in timeshare apartments; benefits of the membership credits included that there would be no fixed time period when they would be required to access their holidays; the membership credits were an excellent investment; the annual maintenance fees would increase greatly if they didn't convert to the membership credits; and the membership credits were available for a greatly reduced discount price but only if purchased on that day;
- the claim letter says that those were false and misleading representations made to induce Mr and Mrs T into entering into the membership application agreement but the letter doesn't include 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 Mr and Mrs T before their September 2019 purchase;
- none of Mr and Mrs T and their representative has provided a detailed account of the circumstances in which it was represented to Mr and Mrs T that the membership credits were an investment, the conversations that took place, the information that was provided to them before their September 2019 purchase or any documentary or other evidence to show that it was represented to them that the membership credits were an investment;
- I understand that the membership credits can be used for accommodation and experiences and I'm not persuaded that it's likely that the membership credits would properly be considered to be an investment and I'm not persuaded that there's enough evidence to show that the membership credits were misrepresented to Mr and Mrs T as an investment, or that they were marketed or sold to them as an investment in breach of the Timeshare Regulations;
- Mr and Mrs T say in their complaint form that the membership credits didn't provide the same level as their previous holiday products and they couldn't book two weeks using their membership credits without paying more money (but the holiday company didn't advise them of that discrepancy when they bought the membership credits and they couldn't afford to keep paying the extra charge so haven't used their membership credits);
- there's no reference in the documents that Mr and Mrs T have provided from the time of sale to show that the holiday company had said that a resale scheme would be available and I've seen no evidence to show any steps that Mr and Mrs T have taken to try to re-sell their membership credits;
- none of Mr and Mrs T and their representative has provided a detailed account of the circumstances in which the other alleged misrepresentations were made, the conversations that took place or the information that was provided to them and which caused the membership credits to have been misrepresented to them;

- I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the membership credits to Mr and Mrs T, that they were mis-sold to them or that they were induced into buying them by any such misrepresentations;
- the claim letter and Mr and Mrs T's complaint form also say that the holiday company is in liquidation and can't provide the service sold so is in breach of contract, but Vacation Finance says the holiday clubs are now operated by a newly appointed club manager and full use of the membership credits remains available to all members who continue to make payment of the annual fees in line with their membership;
- I consider that the liquidation of the holiday company could be a breach of contract for which Vacation Finance might have liability under section 75, but I consider the appointment of the new club manager to have been a suitable remedy for any such breach of contract and I've seen no evidence to show that Mr and Mrs T's use of their membership credits has been adversely impacted by the liquidation of the holiday company;
- Mr and Mrs T say that they haven't used their membership credits but I understand that they're available for them to use and I'm not persuaded that there's enough evidence to show that there's been any other breach of contract, or any breach of any applicable regulation by the holiday company for which Vacation Finance would be liable under section 75 in these circumstances;
- as well as claiming that the membership credits were misrepresented to Mr and Mrs T and that there's been a breach of contract, the January 2022 claim letter makes other claims, including that: the terms of the agreement are so egregious as to be unfair; the payment of commission was hidden from view; the membership credits were sold to Mr and Mrs T under extreme sales pressure and they weren't given the opportunity to consider any other creditors; no affordability checks were carried out on Mr and Mrs T's ability to afford the loan; and their relationship with Vacation Finance is unfair;
- Mr and Mrs T's complaint form says the membership credits were misrepresented to them, the holiday company marketed and sold the credits as an investment in breach of the Timeshare Regulations, and the holiday company is in liquidation so is in breach of contract – but it also says that Vacation Finance paid a commission to the holiday company which wasn't declared to them, the holiday company failed to conduct a proper assessment of their ability to afford the loan; the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure them; and they weren't provided with key information necessary for them to be able to make an informed decision regarding their purchase;
- Mr and Mrs T's representative says that the terms of the agreement are so egregious as to be unfair – but it hasn't provided the terms and conditions or said which of the terms it considers to be unfair;
- it would be for a court to determine whether or not any of the terms in the agreements that Mr and Mrs T entered into in September 2019 are unfair but 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 T and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the documents created an unfair relationship between Mr and Mrs T and

#### Vacation Finance;

- Mr and Mrs T's representative says that the payment of commission was hidden from view and Mr and Mrs T's complaint form says that Vacation Finance paid a commission to the holiday company which wasn't declared to Mr and Mrs T, but Vacation Finance says that it has paid no commission to the holiday company and I've not been provided with any evidence to show that Vacation Finance paid a commission to the holiday company;
- Mr and Mrs T's representative says that no affordability checks were carried out on Mr and Mrs T's ability to afford the loan and Mr and Mrs T's complaint form says that the holiday company failed to conduct a proper assessment of their ability to afford the loan, but Vacation Finance says that it followed its usual process and conducted an appropriate affordability assessment;
- Vacation Finance also said in January 2022 that Mr and Mrs T had successfully paid all instalments that had become due so it's clear that affordability isn't an issue for them and none of Mr and Mrs T and their representative has provided any evidence to show that the loan wasn't affordable for Mr and Mrs T when it was made to them in September 2019;
- Mr and Mrs T's representative says that Mr and Mrs T weren't given the opportunity to consider any other creditors but Vacation Finance says that Mr and Mrs T were at no point required to enter into the loan agreement, there's no stipulation that a loan must be taken from it and they were fully within their rights to make alternative arrangements to finance the product – it also says that the pre-contract credit information that was provided to them clearly provided other alternatives of financing;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr and Mrs T when it was taken out, that the loan has caused them any financial difficulties, that the loan was mis-sold to them or that Vacation Finance has acted incorrectly in connection with the loan;
- Mr and Mrs T's representative says that the membership credits were sold to Mr and Mrs T under extreme sales pressure and Mr and Mrs T's complaint form says that the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure them - but they'd bought holiday products from the holiday company in July 2003, July 2004, September 2005, August 2006, July 2012, October 2014 and June 2016 so I would expect them to have been prepared for the sales tactics that might be used by the holiday company before they went into the sales presentation in September 2019 and that, if they didn't want to buy the membership credits, they would have made that clear to the holiday company at that time;
- Mr and Mrs T had the right to withdraw from the membership application agreement and the loan agreement within fourteen days without giving any reason but I've seen no evidence to show that they contacted either the holiday company or Vacation Finance to withdraw from either of those agreements within the withdrawal periods;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs T were unduly pressured into entering into the membership application agreement or the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr and Mrs T's representative has also referred to breaches by the holiday company of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 and the Consumer Protection from Unfair Trading Regulations 2008 – and the addendum containing Mr and Mrs T's additional arguments says that the holiday company failed to provide the necessary information required by the regulations;

- none of Mr and Mrs T and their representative has identified the information that was necessary for Mr and Mrs T to make an informed decision regarding the purchase but wasn't provided to them by the holiday company and I don't consider that they've provided all of the documentation that would have been provided to Mr and Mrs T at the time of the purchase;
- Mr and Mrs T have made other purchases from the holiday company and I consider that it would be reasonable to expect them to have been aware of the information that they needed before they made a decision to buy the membership credits in September 2019 so I'm not persuaded that there's enough evidence to show that there's been a breach of either of those regulations;
- having considered all of the information and evidence that Mr and Mrs T and their representative have provided, I'm not persuaded that there's enough evidence to show that Mr and Mrs T'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 T and Vacation Finance in these circumstances;
- I sympathise with Mr and Mrs T for the issues that they've had with their membership credits but I consider that Vacation Finance's response to the claims that had been made to it was fair and reasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Vacation Finance to refund to Mr and Mrs T any of the money that they've paid under the loan agreement, to cancel their 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 T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 5 January 2024.

Jarrold Hastings  
**Ombudsman**