

The complaint

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

What happened

Mr and Mrs H bought holiday club memberships from a holiday company in September 2013 and September and December 2014. They entered into finance agreements with a finance provider to pay for part of the costs of those memberships.

They entered into a membership application agreement in September 2017 to buy another holiday club membership. The membership application fee was £75,639, they paid £10,800 by bank transfer and they entered into a fixed sum loan agreement with Vacation Finance for a loan of £64,839. They agreed to make 120 monthly repayments of £842.55 to Vacation Finance.

Mr and Mrs H's representative made claims to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in September 2020. It said that the products were misrepresented to Mr and Mrs H, the contracts were breached, commission was paid between Vacation Finance and the holiday company which wasn't disclosed to Mr and Mrs H, the finance agreements were unaffordable and the lending was irresponsible.

Vacation Finance didn't issue a substantive response to those claims so a complaint was made to this service. Vacation Finance then provided a detailed response to Mr and Mrs H's claims but it said that their September 2017 purchase was the only purchase funded (in part) by a loan from it. It set out the reasons that it didn't uphold any of their claims and it said that it had seen no evidence which would lead it to conclude that the membership that Mr and Mrs H had bought in September 2017 was mis-sold or misrepresented at the point of sale and it said that it had lent to them in a responsible manner.

Our investigator recommended that Mr and Mrs H's complaint should be upheld. He said that this service was unable to help Mr and Mrs H in respect of their first three purchases as the loans weren't provided by Vacation Finance, the activities complained about weren't regulated by the Financial Conduct Authority and the brokering and lending for each loan took place outside the territory of this service's jurisdiction. He also said the total price of the membership that they bought in September 2017 was more than £30,000 (which is the maximum limit for a claim under section 75) so he didn't think that Vacation Finance would be acting unfairly by not accepting Mr and Mrs H's claim under section 75. But he said that he was able to consider their allegations about misrepresentation under section 140A and whether it gave rise to an unfair relationship between them and Vacation Finance Limited. He also said that he needed to consider whether there were other issues that would render the relationship unfair.

He thought that the holiday company had misrepresented the membership to Mr and Mrs H as something that they would receive a return on but the evidence suggested that that couldn't have been the case. He said that Mr and Mrs H had paid for a product that they

wouldn't have purchased if not for the misrepresentation so they'd suffered a loss. He thought that Vacation Finance was wrong to decline their section 140A claim and that a court would likely find the debtor-creditor relationship unfair at the point of sale.

He recommended that Vacation Finance should put Mr and Mrs H in the position they would have been in if they hadn't bought the membership so it should: refund the repayments made to Vacation Finance less the market value of any holidays that they took using their membership; write off any outstanding balance under the loan agreement; refund any deposits, management charges and other charges paid by Mr and Mrs H from the time of sale onwards; pay interest on those amounts; remove any adverse information recorded on Mr and Mrs H's credit file as a result of the loan; and either procure Mr and Mrs H's release from their obligations to the holiday company or agree to take over their points and/or indemnify them for any future maintenance costs.

He asked both parties to provide their submissions on what they thought the market value was at the time of those holidays along with supporting evidence and he said that, if neither side provided such submissions, it would be reasonable to use the relevant annual management charges as an estimate of what those holidays were worth on the open market.

Vacation Finance hasn't responded to our investigator's recommendations so I've been asked to issue a decision on Mr and Mrs H's complaint. Their representative has also raised its serious concerns about the way in which the finance was sold to Mr and Mrs H.

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 the outcome recommended by our investigator for these reasons:

- Mr and Mrs H's claims are made under sections 75 and 140A about the four memberships that they bought from the holiday company between September 2013 and September 2017 but the finance that they used to pay for at least part of the cost of their purchases in September 2013 and September and December 2014 was provided by a company that isn't Vacation Finance;
- our investigator said that those loans weren't provided by Vacation Finance, the activities complained about weren't regulated by the Financial Conduct Authority and the brokering and lending for each loan took place outside the territory of this service's jurisdiction – and, as those loans weren't provided by Vacation Finance, I consider that I'm unable to include those loans in this decision so I'm only considering Mr and Mrs H's complaint about Vacation Finance's response to the claims that they made relating to the September 2017 agreement;
- in certain circumstances, 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;
- one of those circumstances is that section 75 doesn't apply to a claim that relates to any single item to which the supplier has attached a cash price of more than £30,000 – the application fee for the membership that Mr and Mrs H bought in September 2017 was £75,639 so I consider that the holiday company had attached a cash price of more than £30,000 to the membership so Mr and Mrs H aren't able to make a claim under section 75;

- but, in these circumstances, I'm able to consider whether the claims that Mr and Mrs H have made about the membership being misrepresented caused their relationship with Vacation Finance to have been unfair under section 140A;
- 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 so, in this decision I'm not determining the outcome of Mr and Mrs H's claim under section 140A as only a court would be able to do that but I'm considering whether or not Vacation Finance's response to their claim was fair and reasonable in the circumstances;
- Mr and Mrs H's representative's letter to Vacation Finance in September 2020 said that the holiday company represented to Mr and Mrs H that the membership would be an investment that would increase in value and they would be able to sell it after a few years at a considerable profit but that was untrue and that the misrepresentation, amongst other things, caused their relationship with Vacation Finance to be unfair;
- Mr and Mrs H signed documents in September 2017 including the membership application agreement, the holiday company's terms and conditions, a declaration of fair sales practice, a significant information form, a standard form of the withdrawal notice that could be given, an internal disclosure document, an internal exchange checklist, pre-contract credit information and the loan agreement;
- Mr H has provided a witness statement in which he says that he was told that the holiday company was planning to build a series of freehold villas and apartments adjacent to the hotel on land that it had apparently procured with access to the beach and that he and his wife were advised that they would be able to part-exchange their memberships for the purchase of one of those properties and that investing in the membership in September 2017 to increase their total investment was the best course of action;
- he's also provided e-mails that he exchanged with the holiday company about the progress of the building work and was told that the plans were "*simply awesome*" and that the building work had begun, and his need to realise part of his investment – I consider that those e-mails support Mr and Mrs H's claim that the membership was sold to them as an investment;
- Mr and Mrs H had bought memberships in September 2013 and September and December 2014 and I don't consider it to be likely that they would have spent £75,639 on another membership unless they considered it to be an investment and would receive something in the future in return for their investment – I also don't consider that it would be reasonable to conclude that Mr and Mrs H were going to use all of their memberships for holidays;
- the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 prohibit the holiday company from marketing or selling the membership as an investment;
- I've seen no evidence to show that the membership was likely to increase in value or that Mr and Mrs H would be able to resell it for a profit so I consider it to be more likely than not that the holiday company misrepresented the membership to Mr and Mrs H as an investment that would increase in value and that they could easily re-sell in the future;
- I consider that Mr and Mrs H were induced into buying the membership in September 2017 by the misrepresentation that was made to them by the holiday company and that they wouldn't have bought it if it hadn't been misrepresented to them;

- I consider that they entered into the loan agreement with Vacation Finance to pay for £64,839 of the price of the membership as a result of that misrepresentation and that the misrepresentation caused their relationship with Vacation Finance to be unfair;
- I consider it to be more likely than not in these circumstances that a court would conclude that there was an unfair relationship between Mr and Mrs H and Vacation Finance so I consider that Vacation Finance's response to Mr and Mrs H's section 140A claim wasn't fair or reasonable;
- I find that their complaint should be upheld and that it would be fair and reasonable for Vacation Finance to take the actions described below to put Mr and Mrs H back in the position that they would have been in if the membership hadn't been misrepresented to them; and
- as I'm upholding their complaint on that basis I make no finding on the other issues that Mr and Mrs H's representative said caused Mr and Mrs H's relationship with Vacation Finance to be unfair, that the loan agreement was unaffordable and the lending was irresponsible or its concerns about the way that the loan was sold to them.

Putting things right

Our investigator recommended that Vacation Finance should: refund the repayments made to Vacation Finance less the market value of any holidays that they took using their membership; write off any outstanding balance under the loan agreement; refund any deposits, management charges and other charges paid by Mr and Mrs H from the time of sale onwards; pay interest on those amounts; remove any adverse information recorded on Mr and Mrs H's credit file as a result of the loan; and either procure Mr and Mrs H's release from their obligations to the holiday company or agree to take over their points and/or indemnify them for any future maintenance costs.

He asked both parties to provide their submissions on what they thought the market value was at the time of those holidays along with supporting evidence and he said that, if neither side provided such submissions, it would be reasonable to use the relevant annual management charges as an estimate of what those holidays were worth on the open market. Vacation Finance hasn't responded to our investigator's recommendations and none of Mr and Mrs H and their representative has provided any submissions as to the market value of any holidays that Mr and Mrs H took using the membership that they bought in September 2017 so I find that it would be fair and reasonable in these circumstances to use the annual management charges as an estimate of the market value of their holidays.

The membership application fee under the membership application agreement that Mr and Mrs H entered into in September 2017 was £75,639 and they paid £10,800 of that amount by bank transfer and entered into the loan agreement with Vacation Finance for a loan of £64,839. I find that it would be fair and reasonable for Vacation Finance to refund to Mr and Mrs H the payment of £10,800 that they made, with interest from the date of payment to the date of settlement.

I find that it would also be fair and reasonable for Vacation Finance to refund to Mr and Mrs H the payments that they've made to it under the loan agreement, with interest from the date of each payment to the date of settlement, to write-off any outstanding balance under the loan agreement and to end that agreement, and to remove any adverse information that it's recorded on Mr and Mrs H's credit files relating to the loan agreement.

I find that it would also be fair and reasonable for Vacation Finance to arrange for the membership that Mr and Mrs H bought in September 2017 to be cancelled (including

releasing them from any further obligation to the holiday company) or agree to take over their membership or indemnify them for any future liability (including maintenance charges) that they incur as a result of the membership.

My final decision

My decision is that I uphold Mr and Mrs H's complaint and I order Vacation Finance Limited, trading as VFL Finance Solutions, to:

1. Refund to Mr and Mrs H the £10,800 that they paid to the holiday company.
2. Refund to Mr and Mrs H the payments that they've made to it under the loan agreement.
3. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
4. Write-off any outstanding balance under the loan agreement and end the loan agreement.
5. Remove any adverse information that it's recorded on Mr and Mrs H's credit files relating to the loan agreement.
6. Arrange for the membership that Mr and Mrs H bought in September 2017 to be cancelled (including releasing them from any further obligation to the holiday company) or agree to take over their membership or indemnify them for any future liability (including maintenance charges) that they incur as a result of the membership.

HM Revenue & Customs requires Vacation Finance to deduct tax from the interest payments to be made to Mr and Mrs H and Vacation Finance must give them certificates showing how much tax it's deducted if they ask it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 1 August 2023.

Jarrold Hastings
Ombudsman