DRN-4326489

The complaint

Mr R complains that Vacation Finance Limited ("VFL") unfairly turned down his claims under sections 75 and 140A of the Consumer Credit Act 1974 ("the CCA") relating to a loan provided to him to purchase a timeshare product.

What happened

Mr R has been a holder of timeshare products provided and sold by a company (who I'll refer to as "A") since 2004. Over that time, he purchased various timeshare products and upgrades from A, many of which were funded by loans provided by various different businesses.

In or around November 2021, Mr R wrote to Vacation Finance Limited ("VFL") to complain and submit a claim under sections 75 and 140A of the CCA. Although I haven't found a copy of the actual complaint submitted to VFL, it appears it related to the purchase of additional membership points in a product provided by A and financed under a fixed-sum loan agreement with VFL in June 2019.

Having not received a substantive response from VFL, Mr R referred his complaint to this service. In doing so, he included several reasons for his claim supported by references to other similar claims, complaints, rulings and published findings that either involved A as the supplier or where similar circumstances and allegations were involved. It isn't practical for me to repeat everything that Mr R said in his claim. However, I would summarise the main aspects briefly as follows:

- the product purchased was fraudulently represented as an investment in real property which could be sold at a profit;
- A wasn't authorised or licensed under the Office of Fair Trading to broker finance;
- he was coerced into signing the credit agreement after hours of high pressure selling involving aggressive and oppressive practices;
- he wasn't provided with copies of the agreements or given time to read and understand them;
- the purchase agreement was unfair as ongoing maintenance fees were unclear with no right to challenge their calculation; and
- no checks were completed to ensure the loan was affordable.

Mr R believes the various allegations point to breaches of various regulations and legislation that applies to the sale of timeshare products and any associated finance rendering the loan with VFL as unenforceable.

Having referred his complaint to this service, VFL subsequently provided a written response to Mr R. They summarised Mr R's claim as alleging that:

- he was drawn into an agreement which he believes to be a financial scam;
- VFL was an unauthorised company, so shouldn't have been able to provide the associated loan in question; and
- he is not in a position to pay back the loan.

VFL didn't uphold the various allegation pointing out that Mr R had made use of the various timeshare products over the years on multiple occasions and continued to do so. They said there was evidence Mr R was happy to complete the purchase of membership points and in any event, was very much aware of the statutory 14-day cooling off period in which he could've elected to cancel the agreements.

VFL said Mr R had continued to meet repayments to his loan and they'd not been informed of any financial struggles. So, they had no reason to believe the loan wasn't affordable for him.

Finally, VFL didn't agree they hadn't acted in line with their authorisation or the relevant associated regulations.

One of our investigator's considered everything Mr R said and provided together with any other evidence available from the time of the sale. Having done so, they didn't believe VFL had acted unfairly or unreasonable in rejecting Mr R's claim. In particular, our investigator didn't think there was any evidence to support the allegation that the timeshare product had been misrepresented. Or that there was anything that might suggest a court was likely to find the relationship between Mr R and VFL was unfair.

Mr R didn't agree with our investigator's findings and asked for his complaint to be referred to an ombudsman. In doing so, he made various comments and observations including:

- there'd been a failure to compare his complaint to similar complaints about A and VFL;
- the relevant rules regulations and principles hadn't been adequately considered; and
- our investigator had failed to consider findings relating to another business that had financed purchases from A.

As an informal resolution couldn't be reached, Mr R's complaint has been passed to me to consider further. In the interim period, Mr R has continued to provide further information and evidence that he feels is relevant to his complaint.

Having considered the relevant information about Mr R's complaint, I reached a similar outcome to that of our investigator. But in doing so, I addressed various aspects that I felt weren't fully considered previously. Because of that, I issued a provisional decision on 3 August 2023, giving both Mr R and Vacation Finance Limited the opportunity to respond to my findings below before I reached 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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> Section 75 of the CCA ("S75") provides consumers with protection for goods or services bought using credit. Where Mr R paid for his timeshare product having financed it with a restricted use regulated loan from VFL, he is afforded the protection offered to borrowers like him under those provisions. So, I've taken this section into account when deciding what's fair in the circumstances of this case.
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> Section 140A of the CCA ("S140A") looks at the fairness of the relationship between Mr R and VFL arising out of any credit agreement (taken together with any related agreements). And where the product purchased was funded under a credit

[1] Dispute Resolution: The Complaints sourcebook (DISP)
[2] Financial Conduct Authority

agreement, it's deemed to be a related agreement. 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.

It's important to distinguish between the complaint being considered here and the legal claim. The complaint referred to this service specifically relates to whether I believe VFL's treatment of Mr R's claim was fair and reasonable given all the evidence and information available to me. This service isn't afforded powers to determine any legal claim itself. That is the role of the courts.

The FCA's DISP rules specifically relate to complaints about regulated financial products and services and provides rules and guidance about what this service is able to consider. It isn't the role of this service to supervise, regulate or impose fines on any business. It's also not our role to ask a business to alter their procedures or processes or impose improvements on the level of service offered to their customers. These aspects fall firmly within the remit of the regulator – in this case, the FCA.

But it is our role to examine and decide whether a business has been fair and reasonable in the manner in which those policies and procedures are applied in the individual circumstances of Mr R's experience with them.

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 do not provide a legal service. And as I've said above, 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, it 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.

Mr R's timeshare product experience

Based upon the information available, it appears Mr R has a long association with A and the products they offer. In particular relating to a holiday destination he regularly attends. Mr R has confirmed that association started in July 2004 when he purchased his first timeshare product from A. It appears later purchases and upgrades were agreed and completed in or around March 2013, June 2014, June 2015, June 2018 and June 2019.

Over time, Mr R's product holding varied in terms of the allocated accommodation, time period and flexibility according to the product purchased on each occasion. And I understand many, if not all, of the purchases were completed utilising finance provided by different businesses (including VFL).

So, based upon this information, I think it's reasonable to conclude that Mr R had a reasonably strong awareness about the products he'd purchased, how they operated and any associated costs. I also think it's reasonable to conclude that Mr R was familiar with A (as a timeshare supplier) and the sales presentations given by them. Particularly as the presentations he's referred to in 2018 and 2019 weren't his first experience.

The claim for misrepresentation under S75

It's not entirely clear which purchase is actually the subject of Mr R's claim. Having read all the claims and comments submitted – including a letter Mr R sent to the FCA, there seems to be reference to multiple purchases and loans. As the claim was raised with VFL, I can only consider that in relation to any purchase funded under loan agreements with them – subject to any limitations. VFL's response to Mr R's claim specifically references a loan and purchase that took place in June 2019. So, for the purpose of this decision, that is the one I shall focus on.

For me to conclude there was a misrepresentation by A in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that A made false statements of fact when selling the timeshare product. In other words, that they told Mr R something that wasn't true in relation to one or more of the points raised. I would also need to be satisfied that the misrepresentations were material in inducing Mr R to enter the contract. This means I would need to be persuaded that Mr R reasonably relied on those false statements when deciding to buy the timeshare product.

From the information available, I can't be certain about what Mr R was specifically told (or not told) about the benefits of the product he purchased. It was, however, indicated that he was told these things. So, I've thought about that alongside the other evidence available. Although not determinative of the matter, I haven't seen any documentation which supports Mr R's assertions, like marketing material or documentation from the time of the sale that echoes what he says he was told. In particular that the product purchased was represented as a financial investment.

I don't think the contract can have been marketed and sold as an investment contrary to The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the TRs") simply because there might have been some inherent value to Mr R's membership. And in any event, I've found nothing within the limited evidence provided to suggest A provided any assurances or guarantees about the future value of the product purchased. A would had to have presented the membership in such a way that used its investment element to persuade Mr R to contract. Only then would it have fallen foul of the prohibition on marketing and selling certain holiday products as an investment, contrary to Regulation 14(3).

On balance, and in the absence of supporting evidence from the time of the sale, I therefore can't reasonably say, with any certainty, that A did in fact make the alleged misrepresentation.

The unfair relationship claim under S140A

The court may make an order under S140B in connection with a credit agreement if it determines that the relationship between the creditor (VFL) and the debtor (Mr R) is unfair to the debtor because of one or more of the following (from S140A):

a) any of the terms of the agreement or of any related agreement;

b) the way in which the creditor has exercised or enforced any of the rights under the agreement or any related agreement;

c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

As I've said previously, it's important to acknowledge that only a court can make a determination under S140A. But as this is relevant law, I need to take it into account in reaching my decision – where appropriate.

- The pressured sale and process

The claim and subsequent submissions set out several allegations that Mr R was pressured into completing the purchase to the point of being made uncomfortable. I

acknowledge what he says about the length of the sales presentations he attended. So, I can understand why it's argued that the prolonged nature of any presentation might have felt like a pressured sale – especially if, as he approached the closing stages, he was going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date.

Against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mr R agreed to the purchase in 2019 when he simply didn't want to. I haven't seen any evidence to demonstrate that he went on to say something to A, after the purchase, to suggest he'd agreed to it when he didn't want to. And he hasn't provided a credible explanation for why he didn't subsequently seek to cancel the purchase within the 14-day cooling off period usually permitted here. I acknowledge that he says the cooling off period wasn't highlighted to him. However, given his long experience and dealings with A, I'm not persuaded he wouldn't have been aware of it.

If he only agreed to the purchase because he felt he was pressured, I find this aspect difficult to reconcile with the allegation in question. I haven't seen anything substantive to suggest Mr R was obviously harassed or coerced into the purchase. And because of that, I'm not persuaded there's sufficient evidence to demonstrate he made the decision to proceed because his ability to exercise choice was – or was likely to have been – significantly impaired contrary to Regulation 7 of the Consumer Protection from Unfair Trading Regulations ("CPUT").

In deciding whether to make a determination under S140A, *"the court shall have regard to all matters it thinks are relevant (including matters relating to the creditor* [A] *and matters relating to the debtor* [Mr R]*)"*.

Mr R already held an existing timeshare product he'd purchased previously from A. Importantly; the new purchase appears to relate to an upgrade of his existing timeshare product holding. So, it doesn't appear it was a new product purchase. And Mr R wasn't a new customer. So, it's likely he would've benefitted from his previous experience and what might be expected from the meeting and sales presentation in 2019.

Whilst there could be potential for a court to decide that some of the allegations might have led to an unfair debtor-creditor relationship here, I think any decision is likely to be taken within the context of Mr R's overall experience. And even if I was to find that some of the information could've been clearer during the sale – and I make no such finding – I think it's unlikely this would lead to a court finding this led to a sufficiently extreme imbalance in knowledge to render the debtor-creditor relationship unfair.

- Time to consider the agreement(s)

I've seen very limited documentation from the time of the sale. But having previously seen similar documents relating to A's product sales, I'm aware they normally include a period of 14 days from the date of agreeing to the purchase within which to cancel the agreement without giving any reason – as required under the TRs.

So, even if I were to find that Mr R wasn't given adequate opportunity to read, consider and understand the purchase documentation at the time of the sale - and I make no such finding - I would expect him to have had sufficient time in which to consider his decision within the subsequent 14 days. And, where appropriate, raise any questions or concerns before the loan was drawn and the purchase completed. There's no suggestion or evidence that Mr R did raise any questions or concerns prior to the sale being completed. Or that he had any intention of cancelling the agreement.

I've already acknowledged that Mr R says he wasn't given copies of the agreements. And he also suggests these were posted to him at a later date – but not received. If that were the case, I'd expect to see evidence that he'd requested copies of these documents sooner. But I haven't seen anything suggesting that happened. And as I've already said, given his experience with A goes back to 2004, I think it's reasonable to conclude he would've been aware of A's processes and of any regulatory cooling off period available to him.

- Regulatory breaches

One of the main aims of the various regulations that applied here was to enable consumers to understand the financial implications of their purchase so that they are put in a position to make an informed decision. If A's disclosure and/or the terms of the purchase didn't recognise and reflect that aim, and Mr R ultimately lost out or almost certainly stands to lose out from having entered into a contract, the financial implications of which he didn't fully understand at the time of contracting, that may amount to unfairness under S140A.

However, given the limited documentation provided, I haven't seen any evidence to support the breaches alleged here. And as the Supreme Court decision in Plevin[3] makes clear, it doesn't automatically follow that regulatory breaches create unfairness for the purpose of S140A. Such breaches and their consequences (if there are any) must be looked at in the round, rather than in a narrow or technical way. In other words, if I were to find there'd been regulatory breaches – and I make no such finding - they are only likely to lead to unfairness where there's evidence Mr R suffered loss as a consequence.

I haven't seen any evidence that A enforced any of the terms within the product agreement to such an extent that they caused loss or resulted in unfairness.

Are the agreements null and void?

Various arguments have been made to support a belief that the timeshare and lending agreements here are null and void as a result of various alleged regulatory breaches.

Specifically:

- The authorised status of A – This service's records show that A was registered as a representative of VFL from 25 April 2016. And VFL was authorised under this service's compulsory jurisdiction from 31 March 2016 which means they held the required authorisation from the FCA. And as their representative, A was able to introduce credit business to them. So, I don't agree that A didn't hold the required authorisation to introduce business to VFL under section 19 of the Financial Services and Markets Act 2000 ("FSMA)".
- Canvassing off trade premises - Section 154 of the CCA says, *"It is an offence to canvass off trade premises the services of a person carrying on a business of credit-brokerage […]".* The Financial Conduct Authority ("FCA") Handbook defines *"canvassing off trade premises"* as:

  (a) an activity by an individual ("the canvasser") of soliciting the entry of another individual ("B") into an agreement by making oral representations to B during a visit by the canvasser to any place (other than a place in (b)) where B is, being a visit made by the canvasser for the purpose of making such oral representations.

[3] *Plevin vs Paragon Personal Finance Ltd [2014] ('Plevin')*

(b) a place where a business is carried on (whether on a permanent or temporary basis) by:

(i) the lender or owner; or

(ii) a supplier; or

(iii) the canvasser; or

(iv) a person who employs the canvasser or has appointed the canvasser as an agent; or

(v) B;

is excluded from (a).

It's my understanding that the sale, and resultant credit application, was completed at A's offices/premises at the resort Mr R was visiting. And given I've established that A was a registered representative of VFL at the time of the sale, I think they were entitled to do that. So, I can't reasonably say there was a regulatory breach in doing so.

Having considered the arguments put forward by Mr R, I don't think there appears to be any circumstances, based upon the evidence available, that would likely lead to the agreement(s) being determined as null and void.

Were the required lending checks undertaken?

There are certain aspects of Mr R's claim that could be considered outside of S75 and S140A. In particular, in relation to whether VFL undertook a proper credit assessment. Mr R's allegation suggests the loan was provided irresponsibly. In particular that no affordability checks were undertaken by A or VFL.

VFL haven't provided specific details of the checks they undertook. So, If I were to find that they hadn't completed all the required checks and tests – and I make no such finding – I would need to be satisfied that had such checks been completed, they would've revealed that the loan repayments weren't sustainably affordable for Mr R in order to uphold his complaint here.

At our investigator's request, Mr R has provided copies of personal bank account statements covering periods before and after the product sale here. I've considered that information carefully. Unfortunately, it's not entirely clear what Mr R's complete financial situation was at the time. That said, the personal bank account statements appear to show that the accounts were well managed with no obvious sign of financial difficulty or distress.

Mr R has also provided a copy of his personal credit report. But there doesn't appear to be anything included within it that would give any cause for concern – whether by way of missed or late payments or any other adverse public information.

Accepting that the amount borrowed wasn't insubstantial, I haven't seen any evidence to show that the loan was unaffordable or unsuitable for him. And I've not seen anything that supports any suggestion of financial difficulty from that time. So, with no other specific information about Mr R's actual financial situation at the time and no supporting evidence that suggests he struggled to maintain loan repayments, I can't reasonably conclude the loan was unaffordable for him or that he suffered loss as a consequence.

Summary

I acknowledge that Mr R feels very strongly that the circumstances relating to other similar complaints should be considered when deciding his own. While I've thought carefully about what Mr R has said about these, together with the associated

information and reports he's provided, much of the information is generic and not specific to the facts of Mr R's own purchase or recollections. So, I ultimately don't think they offered much help in making factual findings about what specifically happened in Mr R's case.

I do appreciate he will be disappointed, but for the reasons I've explained, I haven't found anything that persuades me that VFL's handling and response to his claim was unreasonable or unfair. And for that reason, I don't currently intend to ask VFL to do anything more here.

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.

VFL haven't provided any additional comment or evidence in response to my provisional decision. However, following a request from this service, they did provide a copy of what they believe, was Mr R's original claim to them.

Mr R didn't agree with my provisional findings. In doing so, he raised various objections and observations about aspects of my provisional findings that he felt were either wrong or inaccurate. I don't propose to refer to all of these. Only those comments I feel may be particularly relevant to my decision here. That isn't to say that I've not considered all of Mr R's comments and observations. As I've stated above, I've considered everything that's been provided in reaching my decision.

Mr R has consistently argued that I should take into consideration the circumstances, facts, witness statements and experience of other consumers who've had reason to complain about their timeshare purchases. While I understand Mr R's stance here, I should remind him I'm unable to decide his claim, or that of other timeshare owners. Only a court can do that.

So, while I have considered the relevant laws and regulations and their impact, this service is only afforded powers to consider the specific facts and evidence so far as they relate directly to his own experience and set of circumstances. And in doing so, decide whether VFL's response to his claim was fair and reasonable. I'm aware of the existence of other claims and complaints. But I don't believe the individual circumstances of others is helpful in establishing the facts of what actually happened in Mr R's specific case.

Mr R has also provided a copy of his original email complaint to VFL from May 2021. I would like to thank him for that as I hadn't previously seen it. Having considered it, I'm content that all the relevant points raised in that complaint have been considered in reaching my decision.

Mr R seeks to clarify that he didn't say VFL hadn't completed checks to ensure his loan was affordable. Rather that the checks were inappropriate. While I've considered this, it doesn't persuade me to vary from my provisional findings. Ultimately, whether or not the checks completed were adequate or appropriate, I would need to see evidence that the loan was ultimately unaffordable or unsuitable for me to consider upholding his complaint. And more importantly, that VFL's checks should've made them aware of that. And I still haven't seen anything that persuades me that's the case here.

Mr R has provided copies of email exchanges with VFL in which he requests copies of loan agreements from 2018 and 2019. However, these exchanges appear to date from around 2022 – almost three years after the purchase in 2019. There's no evidence Mr R requested these immediately following the sales meeting or in the period just after completion of the purchase. And with no evidence to demonstrate he had any desire or intention to cancel the purchase or the associated loan at that time, I'm not persuaded Mr R would've done anything differently, even if the loan agreements had been received.

Mr R remains insistent the product was sold to him as an investment with the ability to sell points later on at a profit. But as I've said in my provisional decision, I found no evidence to support that allegation. And despite Mr R's response, I still haven't seen anything that persuades me to vary from my provisional findings.

But I will address Mr R's comments around his ability to resell points. In particular as he's now provided copies of exchanges he had with A and the subsequent membership management company on this very subject.

It appears Mr R was given the ability to list his points for sale. But I haven't seen anything to suggest the timeshare management company (or A before them) had any contractual obligation to provide that service, or to provide any guarantees or warranties regarding the price that could be achieved or the timescales a sale could be achieved in.

Even if I were to find that the management company were obliged to offer a resale service – and I make no such finding - I can't reasonably say that Mr R suffered any loss that VFL would be liable to reimburse. With no guarantees of achieving either a successful sale or minimum sale price, it isn't possible to establish whether a loss has actually been incurred.

Mr R has also indicated his willingness to consider a compromise over settlement of his claim and the related complaint. However, as I haven't seen anything that persuades me to vary from my provisional findings, I don't think this is something I'm able to consider here.

Summary

Having carefully considered everything provided, I'm not persuaded to vary from the findings in my provisional decision. I do understand Mr R's frustrations and strength of feeling. But ultimately, I don't think it would be fair or reasonable to ask VFL to do anything more here.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 September 2023.

Dave Morgan
Ombudsman