

The complaint

Mrs J complains that Vacation Finance Limited won't refund to her the money that she paid for some holiday club membership credits. She's being represented in her complaint by a claims management company.

What happened

Mrs J entered into a membership application agreement to buy 19,995 holiday club membership credits from a holiday company in October 2018. The membership price was £15,000, she paid a deposit of £4,500 and entered into a fixed sum loan agreement with Vacation Finance for a loan of £10,500. She agreed to make 120 monthly repayments of £136.44 to Vacation Finance. Vacation Finance agreed that interest would be waived if the loan balance was settled within six months of the loan start date. Mrs J repaid the loan in May 2019.

Mrs J's representative made claims, on behalf of Mrs J, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in October 2020. The representative's letter to Vacation Finance included claims that: the membership credits were mis-sold to Mrs J and, but for the misrepresentations made to her, she wouldn't have purchased them nor entered into the loan agreement; the holiday company was in liquidation so can't provide the service sold and is in breach of contract; the membership credits were sold to Mrs J as an investment, contrary to the Timeshare Regulations, and under extreme sales pressure; the terms of the agreement are so egregious so as to be unfair and the payment of commission was hidden from view; and the holiday company didn't undertake a proper affordability check.

Vacation Finance didn't respond to those claims until October 2022. It then provided a detailed response to them and said that it hadn't seen nor been presented with any evidence which would lead it to conclude that the membership credits were mis-sold or misrepresented to Mrs J at the time of purchase, that it had lent to her in a responsible manner and didn't uphold any of the claims. Mrs J wasn't satisfied with its response so a complaint was made to this service.

Mrs J's complaint form says that: Vacation Finance paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure her; the membership credits were misrepresented to her; the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations; the holiday company is in liquidation so is in breach of contract; and she wasn't provided with key information necessary for her to be able to make an informed decision regarding her purchase, in breach of the Timeshare Regulations; all rendering the loan agreement unfair pursuant to section 140A; and it said that the claim should also be considered under section 75.

Our investigator didn't recommend that Mrs J's complaint should be upheld. He wasn't persuaded that there was a misrepresentation at the time of sale or that there had been a

breach of contract for which Vacation Finance was likely to be jointly liable. He said that he hadn't seen enough to suggest that the relationship between Mrs J and Vacation Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs J.

Mrs J disagreed with our investigator's recommendation and asked for her complaint to be referred to an ombudsman for a decision. Her representative said that Mrs J would like to prepare her own detailed submissions to accompany its submission but no further information has been received from either Mrs J or her representative.

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 Mrs J's complaint shouldn't be upheld for these reasons:

- Mrs J had bought a holiday product from the holiday company in February 2013 and she then signed the membership application agreement in October 2018 to buy 19,995 holiday club membership credits - she also signed the holiday company's standard information form but I consider it to be likely that she would have signed other documents with the holiday company but those documents haven't been provided;
- Mrs J also signed the loan agreement in October 2018 for a loan of £10,500 from Vacation Finance - Vacation Finance agreed that interest would be waived if the loan balance was settled within six months of the loan start date and Mrs J repaid the loan in May 2019;
- Mrs J's representative made claims to Vacation Finance in October 2020 about the membership application agreement that Mrs J had entered into in October 2018 and Mrs J then made a complaint to this service – the representative's letter included claims under sections 75 and 140A;
- 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 those claims as only a court would be able to do that but I'm considering whether or not Vacation Finance's response to them was fair and reasonable in the circumstances;
- the October 2020 letter says that it was represented to Mrs J by the holiday company that: her existing holiday product was unsellable and that she was required to purchase some membership credits if she intended to sell her product at a profit; the holiday company was ceasing to trade in timeshare apartments and was starting a membership credits system instead; there were numerous benefits to this new system, including the fact that there would be no fixed time period at which she would be required to access holidays; this would be an excellent investment; her annual maintenance fees would increase greatly if she didn't convert to the membership credits system; and the membership credits were available for a greatly reduced discount price but only if purchased on that day;

- the standard information form described the membership credits and says: *"You are 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 at various locations each Use Year ..."*;
- neither Mrs J nor her representative has provided 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 Mrs J before her October 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs J that the membership credits were an investment, that the membership credits were misrepresented to her by the holiday company or that she was induced into entering into the membership application agreement by any such misrepresentations;
- nor am I persuaded that there's enough evidence to show that the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations;
- the October 2020 letter also says that the holiday company is in liquidation so can't provide the service sold and is in breach of contract but Vacation Finance says that the holiday club is now operated by a newly appointed club manager and full use of their memberships remains available to all members who continue to make payment of the annual fees;
- I consider that the liquidation of the holiday company could be a breach of contract for which Vacation Finance might be liable under section 75 - but I consider the appointment of the new club manager to have been a suitable remedy for any breach of contract, and I've seen no evidence to show that Mrs J's use of her membership credits has been adversely impacted by the liquidation of the holiday company;
- I'm not persuaded that 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;
- the October 2020 letter also says that Mrs J's relationship with Vacation Finance was unfair and Mrs J's complaint form says that: Vacation Finance paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure her; and she wasn't provided with key information necessary for her to be able to make an informed decision regarding her purchase, in breach of the Timeshare Regulations;
- Vacation Finance says that it paid no commission to the holiday company and I've not been provided with any evidence to show that it paid a commission to the holiday company;
- Vacation Finance says that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mrs J but it hasn't provided any further information about the affordability assessment that it conducted;
- neither Mrs J nor her representative has provided any detailed information about Mrs J's financial situation in October 2018 when the loan was made to her but she made four monthly loan repayments of £136.44 and then made two payments of £4,728.26 in May 2019 to fully repay the loan;
- the loan was made to Mrs J in October 2018 and was fully repaid in May 2019 but I've seen no evidence to show that she complained to Vacation Finance about the

affordability checks that it had conducted until her representative's October 2020 letter – if the loan was unaffordable for her I consider that it would be reasonable to expect her to have contacted Vacation Finance about that issue sooner than she did;

- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mrs J in October 2018 when it was made to her, that Vacation Finance didn't assess the affordability of the loan for her, that the loan was mis-sold to her or that Vacation Finance has acted incorrectly in connection with the loan;
- Mrs J had the right to withdraw from the membership application agreement and the loan agreement within fourteen days without giving any reason and in the paragraph above her signature on the standard information form it says: *"The consumer has the right to withdraw from this contract without giving any reason within 14 days from the conclusion of the contract or receipt of the contract if that takes place later"*;
- I've seen no evidence to show that Mrs J contacted either the holiday company or Vacation Finance to withdraw from either the membership application agreement or the loan agreement within the applicable withdrawal periods;
- Mrs J signed those agreements in October 2018 but I've seen no evidence to show that she complained to either the holiday company or Vacation Finance about the undue pressure that she claims was applied to her until her representative's October 2020 letter – if she had been unduly pressured into signing the membership application agreement and didn't want to buy the membership credits, I consider that it would be reasonable to expect her to have contacted either the holiday company or Vacation Finance about that issue sooner than she did;
- I'm not persuaded that there's enough evidence to show that Mrs J was unduly pressured into entering into the membership application agreement or the loan agreement or that the holiday company used unacceptably aggressive commercial practices against her;
- Mrs J's complaint form says that the Timeshare Regulations require the holiday company to provide Mrs J with sufficient information about the proposed contract to enable her to make an informed decision about whether to enter into it, but it didn't do so;
- neither Mrs J nor her representative has identified the information that Mrs J required to make an informed decision regarding the purchase but that wasn't provided to her by the holiday company - and I don't consider that they've provided all of the documentation that would have been provided to Mrs J at the time of the purchase;
- Mrs J had made a purchase from the holiday company in February 2013 and I consider that it would be reasonable to expect her to have been aware of the information that she needed before she made a decision to buy the membership credits in October 2018 so I'm not persuaded that there's enough evidence to show that there's been a breach of any of those regulations as alleged;
- the October 2020 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Mrs J nor her representative has said which of the terms they consider to be unfair;
- it would be for a court to determine whether or not any of the terms in the membership application agreement or the other documents that Mrs J entered into with the holiday company 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 Mrs J 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 Mrs J and Vacation Finance;
- having carefully considered all of the information and evidence that Mrs J and her representative have provided, I'm not persuaded that there's enough evidence to show that Mrs J'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 Mrs J and Vacation Finance in these circumstances;
- there was a significant delay in Vacation Finance's response to the claims that had been made to it but it explained the reasons for the delay and apologised for the delay and any inconvenience caused and I consider that its response to those claims was fair and reasonable in the circumstances; and
- I sympathise with Mrs J for the issues that she's had with her membership credits, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Vacation Finance to refund to her any of the money that she's paid under the loan agreement, to pay her any compensation or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Mrs J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 13 February 2024.

Jarrold Hastings
Ombudsman