

The complaint

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

What happened

Mr N and Ms C bought 4,000 holiday club membership credits from a holiday company in March 2018. The membership price was £12,400 and they paid a deposit of £3,720 using a debit card. They entered into a fixed sum loan agreement with Vacation Finance for a loan to pay the remaining amount and agreed to make monthly loan payments of £112.79.

Mr N and Ms C's representative made claims to Vacation Finance in July 2021 under sections 75 and 140A of the Consumer Credit Act 1974. It said that the holiday company was in liquidation and couldn't provide the service sold so was in breach of contract. It also said that the membership was mis-sold to Mr N and Ms C and, but for the misrepresentations made to them, they wouldn't have purchased it nor entered into the loan agreement. It also said that the terms of the agreement are so egregious as to be unfair, the payment of commission was hidden from view and the membership was marketed as an investment. It said that the membership was sold to them under extreme sales pressure, a proper affordability check wasn't undertaken and Mr N and Ms C's relationship with Vacation Finance was unfair.

Vacation Finance responded to those claims in detail and said that it hadn't seen or been presented with any evidence which would lead it to conclude that Mr N and Ms C's product was mis-sold or misrepresented to them at the time of purchase. It also said that it lent to them in a responsible manner but they only made one payment in April 2018 before the loan was cancelled.

Mr N and Ms C weren't satisfied with its response so a complaint was made to this service. Their complaint form says that their claim should be considered under section 75 because the holiday company is in liquidation so is in breach of contract as it can't provide the goods or service sold to them and the holiday company misrepresented the product to them. It also said 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; and the holiday company unduly pressured them into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure them; all rendering the loan agreement unfair under section 140A. Mr N and Ms C have also made a complaint to this service about their claims management company but that complaint has been dealt with separately.

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

court would reach the conclusion that the relationship was unfair. She said that no commission was paid to the holiday company by Vacation Finance in relation to the purchase and that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr N and Ms C.

Mr N and Ms C's representative, on behalf of Mr N and Ms C, has asked for this complaint to be considered by an ombudsman. It has provided a detailed submission of Mr N and Ms C in response to our investigator's recommendation which says, in summary and amongst other things, that: the holiday company misrepresented the credits as something that could be resold easily in the future; and our investigator has failed to properly assess Mr N and Ms C claims under sections 75 and 140A and, had she done so, they would have been upheld.

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 N and Ms C's complaint shouldn't be upheld for these reasons:

- Mr N and Ms C have provided a document from the holiday company which summarises the purchase that they made in March 2018 and shows that they bought 4,000 credits for a membership price of £12,400, they paid a deposit of £3,720 and agreed to make monthly payments of £112.79 but they haven't provided a copy of the membership application agreement or any of the other documents that it's likely that they also signed at that time;
- Vacation Finance says that Mr N and Ms C claims relate to a purchase that they made in March 2018 and the subsequent loan taken by them from it to finance the purchase but that they only made one payment in April 2018 before the loan was cancelled - none of Vacation Finance, Mr N and Ms C and their representative has provided a copy of the loan agreement or the other loan documents that it's likely that would have been provided to Mr N and Ms C about the loan;
- Mr N and Ms C's representative made claims to Vacation Finance in July 2021 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 Mr N and Ms C'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 N and Ms C's representative's July 2021 claim letter describes the alleged misrepresentations that were made to Mr N and Ms C by the holiday company about the credits and the submission in response to our investigator's recommendation says that the product was consistently marketed and sold to Mr N and Ms C as an investment and that the holiday company misrepresented the product as something that could be resold easily in the future;
- that submission also says that Mr N and Ms C were told they would be able to use the 4,000 credits within five years but it's come to light that they're only permitted to use 160 points each year;

- other than the brief descriptions in Mr N and Ms C's representative's July 2021 claim letter and in the submission in response to our investigator's recommendations, none of Mr N, Ms C and their 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 Mr N and Ms C before their March 2018 purchase or any documentary or other evidence in support of the claims that have been made;
- I understand that the credits can be used for accommodation and experiences and I'm not persuaded that it's likely that the credits would properly be considered to be an investment and I'm not persuaded that there's enough evidence to show that they were marketed or sold to Mr N and Ms C as an investment so I don't consider that there's been any breach of regulation as claimed by their representative;
- nor am I persuaded that there's enough evidence to show that the holiday company misrepresented to Mr N and Ms C that the product was something that could be resold easily in the future or that the credits continue in perpetuity;
- I'm not persuaded that there's enough evidence to show that the credits were misrepresented or mis-sold to Mr N and Ms C by the holiday company or that they were induced into buying them by any such misrepresentations;
- I understand that the holiday company went into liquidation in May 2020 and 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 also understand that a new management company has been appointed to provide the services in connection with the credits that Mr N and Ms C had bought from the holiday company in March 2018 and that the credits are available for them to use;
- I've seen no evidence to show that Mr N and Ms C'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 N and Ms C would be entitled to terminate their agreement in these circumstances;
- I'm not persuaded that there's enough evidence to show that there's been any other breach of contract or regulation by the holiday company for which Vacation Finance would be liable under section 75;
- Mr N and Ms C's representative says that there was an unfair relationship between Mr N and Ms C and Vacation Finance because it 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; and the holiday company unduly pressured them into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure them;
- Vacation Finance says that it paid no commission to the holiday company and our investigator said that, from the information provided by Vacation Finance, she'd seen that no commission was paid to the holiday company by Vacation Finance in relation to Mr N and Ms C's purchase;
- the submission in response to our investigator's recommendation says at no point did the holiday company make Mr N and Ms C aware of any commission which was attached to the loan agreement – but it provided no evidence in support of the claim that Vacation Finance paid a commission to the holiday company and I've seen no evidence to show that Vacation Finance paid any commission to the holiday company relating to the loan that it made to Mr N and Ms C;

- Vacation Finance said in its December 2021 final response letter to Mr N and Ms C's representative that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mr N and Ms C and that they only made one payment in April 2018 before the loan was cancelled;
- Mr N says that he made it clear to the holiday company that he and Ms C would pay the amount due in a lump sum as they didn't want to pay interest to Vacation Finance but he was told that one payment needed to be paid so he sent it through his bank in April 2018 but in his haste he paid £129.79 instead of the £112.79 that was payable – and he's provided evidence showing the payment of £129.79 that was made;
- Vacation Finance hasn't provided any other information about the affordability assessment that it conducted but none of Mr N, Ms C and their representative has provided any evidence to show that the loan wasn't affordable for Mr N and Ms C - and as the loan was cancelled soon after it was made to them because they wanted to pay the amount due in a lump sum, I consider it to be likely that the loan was affordable for them;
- if Mr N and Ms C felt that the loan was unaffordable for them, I consider that it would be reasonable to expect them to have contacted Vacation Finance about that soon after the loan was made to them and then cancelled, but I've seen no evidence to show that they complained about the affordability of the loan or the affordability assessment that it had conducted before their representative's July 2021 claim letter;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr N and Ms C, that the loan was mis-sold to them or that Vacation Finance has acted incorrectly in connection with the loan;
- Mr N and Ms C had the right to withdraw from the purchase 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 the purchase agreement within the withdrawal period;
- if Mr N and Ms C had been unduly pressured into entering into the purchase agreement and didn't want to buy the membership credits, I consider that it would be reasonable to expect them to have contacted the holiday company or Vacation Finance about that undue pressure but I've seen no evidence to show that they complained about any undue pressure before their representative's July 2021 claim letter – and I've seen no evidence to show that they complained about any undue pressure when they chose to pay the amount due in a lump sum and cancel the loan;
- I'm not persuaded that there's enough evidence to show that Mr N and Ms C were unduly pressured into buying the credits in March 2018 or entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr N and Ms C's representative says that the terms of the agreement are so egregious as to be unfair – but it hasn't provided a copy of the agreement 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 N and Ms C entered into in March 2018 were 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 N and Ms C 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 N and Ms C and Vacation Finance;

- having considered all that's been said and provided by Mr N and Ms C and their representative, I'm not persuaded that there's enough evidence to show that Mr N and Ms C'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 N and Ms C and Vacation Finance in these circumstances;
- I sympathise with Mr N and Ms C for the issues that they've had with their 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 N and Ms C any of the money that they paid for the membership credits, 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 N and Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Ms C to accept or reject my decision before 25 December 2023.

Jarrold Hastings
Ombudsman