

## **The complaint**

Mr H complains that Vacation Finance Limited, trading as VFL Finance Solutions, won't refund to him the money that he paid for some holiday club membership credits. He's being represented in his complaint by a claims management company.

## **What happened**

Mr H had bought holiday products from a holiday club at least four times between November 2009 and August 2014. He then bought 30,000 holiday club membership credits from the holiday company in July 2019. The membership price was £41,910, Mr H paid a deposit of £1,388 and he entered into a fixed sum loan agreement with Vacation Finance for a loan of £40,522. He agreed to make 120 monthly payments of £526.57 to Vacation Finance.

Mr H's representative made claims to Vacation Finance in January 2022 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 credits were mis-sold to Mr H and, but for the misrepresentations made to him, he wouldn't have purchased them 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 credits were marketed as an investment. It said that the membership credits were sold to Mr H under extreme sales pressure, a proper affordability check wasn't undertaken and Mr H'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 H's product was mis-sold or misrepresented to him at the time of purchase. It also said that it lent to him in a responsible manner and didn't uphold any of the claims.

Mr H wasn't satisfied with its response so a complaint was made to this service. His complaint form says that Vacation Finance paid a commission to the holiday company which wasn't declared to him; the holiday company failed to conduct a proper assessment of his ability to afford the loan; the holiday company unduly pressured him into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure him; the product was misrepresented and the holiday company marketed and sold the product as an investment in breach of the Timeshare Regulations; the holiday company was in liquidation so was in breach of contract; and he wasn't provided with key information necessary for him to make an informed decision regarding the purchase; all rendering the loan agreement unfair under section 140A, and it said that the claim should also be considered under section 75.

Our investigator didn't recommend that Mr H's complaint should be upheld. She said that the purchase was for a single item with a cash price of £41,910 which wasn't within the limits for a claim under section 75 so section 75 didn't apply to this purchase. She said that she hadn't seen enough to suggest that the relationship between Mr H 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 she'd seen that no commission was paid to the holiday company by

Vacation Finance in relation to this purchase and that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr H.

Mr H's representative, on behalf of Mr H, says that Mr H doesn't accept our investigator's recommendation and has requested that this matter be referred to an ombudsman for a decision. It has provided an addendum containing Mr H's additional arguments which says, in summary and amongst other things, that: the product was sold to Mr H as an investment and he wouldn't have purchased the upgrades unless they were an investment; the holiday company represented to Mr H that trading-in his existing products for the membership credits was the only method of realising his investment on the 2014 and earlier purchases; the re-sale scheme would be open for members five years following the start of a membership but the holiday company's resale programme opened in 2015 and is now discontinued; 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 H wouldn't have purchased the membership credits and traded-in his existing products.

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

- Mr H says that he'd bought holiday products from the holiday company in November 2009, August 2012, August 2013 and August 2014 but I've not been provided with any of the contractual documentation for those purchases and his complaint only relates to the purchase that he made in July 2019 and which he paid for, in part, using a loan provided by Vacation Finance;
- Mr H's representative says that Mr H traded-in those products in July 2019 for 30,000 membership credits and he entered into a membership application agreement with the holiday company at that time for the purchase – the agreement shows that the membership price was £41,910 and that he paid a deposit of £1,388 but I've not been provided with the terms and conditions that are referred to in that agreement or any of the other contractual documentation that it's likely that Mr H would have also signed with the holiday company at that time;
- Mr H also entered into a loan agreement with Vacation Finance in July 2019 for a loan of £40,522 and he agreed to make 120 monthly payments of £526.57 to Vacation Finance – and he also received pre-contract credit information about the loan from Vacation Finance;
- Mr H's representative made claims to Vacation Finance in January 2022 under sections 75 and 140A and a complaint was then made to this service – Mr H also provided a statement in support of his complaint;
- 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;
- one of the criteria for a claim under section 75 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 not exceeding £100 or more than £30,000;

- our investigator said that the purchase price wasn't within the limits for a claim under section 75 as the membership application agreement shows that the membership price was £41,910 which would have exceeded the £30,000 limit – but the agreement also shows that Mr H was buying 30,000 membership credits so the cash price for each credit would be about £1.40 which would be less than the £100 limit – I don't consider that Mr H's claim relates to a single item to which the holiday company has attached a cash price exceeding £100 but not more than £30,000 so I find that he's unable to make a claim under section 75;
- although I can't make a finding in these circumstances on a breach of contract claim under section 75, I understand that the holiday company went into liquidation in May 2020, but I also understand that a new management company has been appointed to provide the services in connection with the membership credits that Mr H had bought from the holiday company in July 2019 and that the membership credits are available for him to use;
- Mr H says that there was an unfair relationship between him and Vacation Finance because it paid a commission to the holiday company which wasn't declared to him; the holiday company failed to conduct a proper assessment of his ability to afford the loan; the holiday company unduly pressured him into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure him; the product was misrepresented and the holiday company marketed and sold the product as an investment in breach of the Timeshare Regulations; the holiday company is in liquidation so is in breach of contract; and he wasn't provided with key information necessary for him to make an informed decision regarding the purchase;
- I'm not determining the outcome of Mr 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 that claim was fair and reasonable in the circumstances;
- 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 in connection with Mr H's loan;
- Vacation Finance said in its January 2022 final response letter to Mr H's representative that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mr H and that he was up to date with all instalment payments which showed that affordability was clearly not an issue;
- it hasn't provided any other information about the affordability assessment that it conducted but neither Mr H nor his representative has provided any evidence to show that the loan wasn't affordable for Mr H when it was made to him in July 2019 or that he's had any difficulty in making the monthly payments since then;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr H, that the loan was mis-sold to him or that Vacation Finance has acted incorrectly in connection with the loan;
- Mr H says that he'd bought holiday products from the holiday company in November 2009, August 2012, August 2013 and August 2014 so I would expect him to have been prepared for the sales tactics that might be used by the holiday company before he went into the sales presentation in July 2019 and that, if he didn't want to buy the membership credits, he would have made that clear to the holiday company at that time;
- Mr H had the right to withdraw from the membership application agreement and from the loan agreement within fourteen days without giving any reason but I've seen no

evidence to show that he contacted either the holiday company or Vacation Finance to withdraw from the membership application agreement or the loan agreement within the withdrawal periods;

- I'm not persuaded that there's enough evidence to show that Mr H was unduly pressured into buying the membership credits in July 2019 or entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against him;
- Mr H's representative's January 2022 claim letter says that it was represented to Mr H by the holiday company before his July 2019 purchase that: his current product was unsellable as part of the re-sale scheme and that he was required to purchase the membership credits if he was to sell his product at a profit; the holiday company was ceasing to trade in timeshare apartments; the membership credits were available at a special price but only if purchased on that day; and the membership credits were marketed and sold to Mr H as an investment;
- the claim letter says that those were false and misleading representations made to induce Mr H 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 H before his July 2019 purchase;
- Mr H's complaint form says that the membership credits were misrepresented to him and he also provided a statement in support of his complaint in which he says: *"In July 2019 I purchased ... 30,000 [membership credits] ... They didn't say that the [membership credits] would be easier to sell but I was told that the 30 000 [membership credits] I had was the maximum you could ever get and it was worth £170 000 if I had bought these myself. I thought that after I used all of these [membership credits] I would be done with the membership, however I am now concerned that that is not the case. The maintenance fees have increased, this is something that I just had to accept. However, I do feel that for the amount of money I have spent with [the holiday company] over the years, I should have been treated as a more valued customer";*
- Mr H's representative has provided an addendum containing Mr H's additional arguments in response to our investigator's recommendation which says that the product was sold to Mr H as an investment but neither Mr H nor his representative has provided a detailed account of the circumstances in which it was represented to Mr H that the membership credits were an investment, the conversations that took place, the information that was provided to Mr H before his July 2019 purchase or any documentary or other evidence to show that it was represented to him that the membership credits were an investment;
- I understand that the membership credits can be used for accommodation and experiences and Mr H says: *"I thought that after I used all of these [membership credits] I would be done with the membership";* 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 they were marketed or sold to Mr H as an investment;
- the addendum containing Mr H's additional arguments says that the re-sale scheme would be open for members five years following the start of a membership but the resale programme opened in 2015 and is now discontinued – there's no reference in the documents that Mr H has provided from the time of sale to show that the holiday company had said that a resale scheme would be available after five years – and Mr H's purchase was made in July 2019 so, on that basis, any such re-sale scheme

wouldn't be available until July 2024 – and I've seen no evidence to show any steps that Mr H has taken to try to re-sell his membership credits;

- I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the membership credits to Mr H in any other way, that they were mis-sold to him or that he was induced into buying them by any such misrepresentations;
- Mr H'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 H entered into in July 2019 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 H 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 H and Vacation Finance;
- Mr H'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 H's additional arguments says that the holiday company failed to provide the necessary information required by the regulations;
- neither Mr H nor his representative has identified the information that it says was necessary for him to make an informed decision regarding the purchase but wasn't provided to him by the holiday company and I don't consider that they've provided all of the documentation that would have been provided to Mr H at the time of the purchase;
- Mr H says that he'd made other purchases from the holiday company between November 2009 and August 2014 and I consider that it would be reasonable to expect him to have been aware of the information that he needed before he made a decision to buy the membership credits in July 2019;
- having considered all of the information and evidence that Mr H and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr H'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 H and Vacation Finance in these circumstances;
- I sympathise with Mr H for the issues that he's had with his credits but I consider that Vacation Finance's response to his section 140A claim 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 H any of the money that he's paid under the loan agreement, to cancel the loan, to pay him any compensation or to take any other action in response to his complaint.

### **My final decision**

My decision is that I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 29 December 2023.

Jarrold Hastings  
**Ombudsman**