

The complaint

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

What happened

Mr L and his wife entered into a membership application agreement to buy 6,000 level one holiday club membership credits from a holiday company in June 2018. The membership price was £18,360, they paid a deposit of £2,745 and Mr G took out a loan of £15,606 from Vacation Finance. He agreed to make 120 monthly repayments of £202.79 to Vacation Finance.

Mr L's representative made claims, on behalf of Mr L, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in April 2022. The representative's letter to Vacation Finance included claims that: the membership credits were mis-sold to Mr L and his wife and, but for the misrepresentations made to them, they 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 Mr L and his wife 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 provided a detailed response to those claims 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 Mr L and his wife at the time of purchase, that it had lent to Mr L in a responsible manner and didn't uphold any of the claims. Mr L wasn't satisfied with its response so a complaint was made to this service.

Mr L's 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, unduly pressured him and his wife into entering into the membership application agreement and him into entering into the loan and used aggressive commercial practices to pressure them; the membership credits were misrepresented to them; 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 they weren't provided with key information necessary for them to be able to make an informed decision regarding their purchase, in breach of the Timeshare Regulations; all rendering the loan unfair pursuant to section 140A; and it said that the claim should also be considered under section 75.

Our investigator didn't recommend that Mr L's complaint should be upheld. She 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. She said that she hadn't seen enough to suggest that the relationship between Mr L and Vacation Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the

relationship was unfair. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr L.

Mr L's representative said that Mr L wasn't accepting our investigator's recommendation and that it would like the matter referred to an ombudsman for a decision. It has provided an addendum containing Mr L's additional arguments which says, in summary and amongst other things, that: it was represented to Mr L and his wife that the membership credits would give them easy access to a wide range of luxury holidays and were sold to them as an investment that was extremely desirable and could easily be resold at a profit; Mr L and his wife have never used the membership credits as whenever they tried to book, there was nothing available; they understood that the resale scheme would be open for members five years following the start of their membership but the 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 L and his wife wouldn't have purchased the membership credits.

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 L's complaint shouldn't be upheld for these reasons:

- Mr L has provided a summary of a membership application agreement which shows that he and his wife bought 6,000 level one holiday club membership credits from the holiday company in June 2018 but I've not been provided with a copy of the membership application agreement or any of the other documents that I consider it to be likely that they would have signed with the holiday company at that time;
- the summary shows that the membership price was £18,360, that they paid a deposit of £2,745 and that the monthly payment was £202.79 – and Mr L has also provided a copy of an account statement from February 2021 which shows that Vacation Finance lent £15,606 to Mr L and that he agreed to make 120 monthly repayments of £202.79 to Vacation Finance – but neither Mr L nor Vacation Finance has provided a copy of the loan agreement or any other documents from that time relating to the loan;
- Mr L's representative, on behalf of Mr L, made claims to Vacation Finance in April 2022 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 April 2022 letter says that it was represented to Mr L by the holiday company that: there were benefits of becoming members of the holiday club; the membership credits could be sold at a profit as part of the holiday company's re-sale scheme; and the membership credits were available for a greatly reduced discount price but only if purchased on that day;

- neither Mr L nor his representative has provided the documents that Mr L and his wife signed in June 2018 or 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 L and his wife before their June 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr L and his wife that the membership credits were an investment, that the membership credits were misrepresented to them by the holiday company or that they were 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 April 2022 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 Mr L and his wife's use of their membership credits has been adversely impacted by the liquidation of the holiday company;
- the addendum provided in response to our investigator's recommendation says that Mr L and his wife have never used their membership credits but I'm not persuaded that there's 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 April 2022 letter also says that Mr L's relationship with Vacation Finance was unfair and Mr L's 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, unduly pressured him and his wife into entering into the membership application agreement and him into entering into the loan and used aggressive commercial practices to pressure them; and they weren't provided with key information necessary for them to be able to make an informed decision regarding their 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 in relation to the loan that it made to Mr L;
- Vacation Finance says that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mr L and that, in October 2022, he'd paid all instalments on time - but it hasn't provided any further information about the affordability assessment that it conducted;
- Mr L's representative says that Mr L's credit rating was quite poor, that he advised the holiday company that a loan application probably wouldn't go through and his application was rejected but the application was put through again and was accepted - but neither Mr L nor his representative has provided any detailed information about Mr L's financial situation in June 2018 when the loan was made to him;

- the loan was made to Mr L in June 2018 but I've seen no evidence to show that he complained to Vacation Finance about the affordability checks that it had conducted until his representative's April 2022 letter – if the loan was unaffordable for him I consider that it would be reasonable to expect him to have contacted Vacation Finance about that issue sooner than he did;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr L in June 2018 when it was made to him, that Vacation Finance didn't assess the affordability of the loan for him, that the loan was mis-sold to him or that Vacation Finance has acted incorrectly in connection with the loan;
- Mr L and his wife had the right to withdraw from the membership application agreement and Mr L had the right to withdraw from the loan 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 membership application agreement or the loan agreement within the applicable withdrawal periods;
- Mr L and his wife bought the membership credits in June 2018 but I've seen no evidence to show that they complained to either the holiday company or Vacation Finance about the undue pressure that Mr L claims was applied to them until Mr L's representative's April 2022 letter – if they'd 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 Mr L to have contacted either the holiday company or Vacation Finance about that issue sooner than he did;
- I'm not persuaded that there's enough evidence to show that Mr L and his wife were unduly pressured into entering into the membership application agreement or that Mr L was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr L's complaint form says that the Timeshare Regulations require the holiday company to provide him and his wife with sufficient information about the proposed contract to enable to them to make an informed decision about whether to enter into it, but it didn't do so;
- neither Mr L nor his representative has identified the information that Mr L and his wife required to make an informed decision regarding the purchase but that wasn't provided to them by the holiday company - they haven't provided the documentation that would have been provided to them at the time of the purchase and 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 April 2022 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Mr L nor his 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 Mr L and his wife would have 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 Mr L and his wife 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 L and Vacation Finance;

- having carefully considered all of the information and evidence that Mr L and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr L'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 L and Vacation Finance in these circumstances;
- I sympathise with Mr L for the issues that he and his wife have had with their membership credits, but I consider that Vacation Finance's response to the claims that had been made to it was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Vacation Finance to refund to Mr L any of the money that he's paid under the loan agreement, to cancel the loan agreement, 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 L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 February 2024.

Jarrold Hastings
Ombudsman