

The complaint

Mr and Mrs P complain that Vacation Finance Limited, trading as VFL Finance Solutions, won't refund to them the money that they paid for some holiday club membership credits. They're being represented in their complaint by a claims management company.

What happened

Mr and Mrs P bought a holiday product from a holiday company in December 2017. Mr and Mrs P's representative says that the purchase price was £24,667 and that they used a loan from Vacation Finance to pay £17,267 of that amount. Vacation Finance says that the loan was repaid in June 2018.

Mr and Mrs P then entered into a membership application agreement in November 2018 to buy 4,000 level two holiday club membership credits from the holiday company. The membership price was £10,000, they paid a deposit of £3,000 and they entered into a fixed sum loan agreement with Vacation Finance for a loan of £7,000. They agreed to make 120 monthly payments of £90.96 to Vacation Finance.

Mr and Mrs P's representative, on behalf of Mr and Mrs P, made claims under sections 75 and 140A of the Consumer Credit Act 1974 to Vacation Finance about the November 2018 purchase in May 2021. It said, in summary and amongst other things, that: the membership credits were mis-sold to Mr and Mrs P and, but for the misrepresentations made to them, they wouldn't have purchased them nor entered into the loan agreement; the holiday company is in liquidation and can't provide the service sold so is in breach of contract; the terms of the agreement are so egregious as to be unfair; the payment of commission was hidden from view; the membership credits were marketed as an investment in contravention of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 and were sold to Mr and Mrs P under extreme sales pressure; no affordability checks were carried out on Mr and Mrs P's ability to afford the loan; and their relationship with Vacation Finance is unfair.

Vacation Finance provided a response to Mr and Mrs P's claims but the response related to the December 2017 purchase and loan. Mr and Mrs P weren't satisfied with its response so complained to this service. Their complaint form says: 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; the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure them; the membership credits were misrepresented to them; the holiday company marketed and sold the 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; all rendering the loan agreement unfair under section 140A; and it says that their complaint should also be considered under section 75.

Our investigator wrote to Vacation Finance and said that its final response addresses its stance on the finance provided for Mr and Mrs P's purchase in December 2017 but, from the claim letter sent, Mr and Mrs P seem to be making their claims about their November 2018 purchase. She asked it to provide its response to the claims made. No further response was received from Vacation Finance so our investigator assessed the complaint on the information that she had received.

She didn't recommend that Mr and Mrs P's complaint should be upheld as she didn't think that it would be unfair or unreasonable for Vacation Finance to turn down their claims. 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 and Mrs P 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 and Mrs P.

Mr and Mrs P's representative says that Mr and Mrs P don't agree with the investigation in relation to their 2018 purchase and have asked for their complaint to be referred to an ombudsman. It has provided an addendum containing submissions on behalf of Mr and Mrs P which says, in summary and amongst other things, that: the product was sold to Mr and Mrs P as an investment; the holiday company represented to them that the monies they would receive from selling the holiday product that they'd bought in December 2017 would effectively cover the whole purchase price of the membership credits in 2018; they understood that the resale scheme would be open for members five years following the start of their membership but existing members who exchanged for membership credits could access the scheme within one year of their first year of occupancy but the resale programme opened in 2015 and is now discontinued; the holiday company appears to have gone into administration; 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 and Mrs P wouldn't have purchased the membership credits and traded-in their existing product.

Similar claims were also made to Vacation Finance about their December 2017 purchase and a complaint was then made to this service. That complaint has been dealt with separately.

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

- Mr and Mrs P used a loan from Vacation Finance to pay for part of the purchase price of a holiday product that they bought from the holiday company in December 2017 and Vacation Finance says that the loan was repaid in June 2018 – Mr and Mrs P have made a complaint to this service about Vacation Finance's response to claims that they made to it under sections 75 and 140A about that purchase and that complaint has been dealt with separately so in this decision I'm only considering their complaint about Vacation Finance's response to the claims that they've made to it about their November 2018 purchase;
- Mr and Mrs P's representative has provided a copy of the membership application agreement that Mr and Mrs P entered into in November 2018 but I've not been

provided with a copy of the terms and conditions that are referred to in that agreement;

- I've also not been provided with a copy any of the other contractual documentation that it's likely that Mr and Mrs P would have signed with the holiday company at that time;
- Mr and Mrs P also entered into a loan agreement with Vacation Finance that they signed in November 2018 which shows that the cash price was £10,000 and an advance payment of £3,000 was made so the loan amount was £7,000;
- Mr and Mrs P's representative made claims to Vacation Finance in May 2021 under sections 75 and 140A and a complaint was then made to this service: 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 and Mrs P'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;
- the May 2021 claim letter says that it was represented to Mr and Mrs P by the holiday company before their November 2018 purchase that: the membership credits would be an excellent investment that could be sold at a profit whenever they wished as part of the holiday company's re-sale scheme; they would make a significant profit from the sale of the membership credits; and the membership credits were available to them at a special price which was only available to them that day;
- Mr and Mrs P says that the holiday company told them that it was ending its present manner of working and was converting to a points system, they could convert their holiday product into membership credits and, at the end of a four year period, they could sell their remaining membership credits and the holiday company's representative advised that he would guarantee that they could get at least as much for them as what they had paid;
- the claim letter says that those were false and misleading representations made to induce Mr and Mrs P into entering into the membership application agreement and Mr and Mrs P say that they soon discovered that several parts of the deal weren't available to them because of their age and that it was considerably more difficult to access than they had been led to believe which left them extremely disappointed;
- the claim 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 and Mrs P before their November 2018 purchase;
- other than the information described above, none of Mr and Mrs P and their representative has provided a detailed account of the circumstances in which it was represented to Mr and Mrs P that the membership credits were an investment, the conversations that took place, the information that was provided to them before their November 2018 purchase or any documentary or other evidence to show that it was represented to them that the membership credits were an investment;
- I understand that the membership credits can be used for accommodation and experiences and 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 the membership credits were misrepresented to Mr and Mrs P as an investment, or that they were marketed or sold to them as an investment in breach of the Timeshare Regulations;

- Mr and Mrs P say that they were told that they could sell their remaining membership credits at the end of a four year period – they bought their membership credits in November 2018 so, on that basis, the earliest that they would be able to sell them was November 2022, about 18 months after their representative's claim letter was sent to Vacation Finance, and I've seen no evidence to show any steps that Mr and Mrs P have taken to try to re-sell their membership credits since then;
- there's no reference in the membership application agreement that Mr and Mrs P's representative has provided to show that the holiday company had said that a resale scheme would be available and Mr and Mrs P haven't provided any other evidence to support their claim that the holiday company's representative guaranteed that they could sell their membership credits for at least as much as they paid for them – and if any guarantees had been given to them by the holiday company on which they were relying, I consider that it would be reasonable to expect them to have asked for any such guarantees to be confirmed in writing;
- none of Mr and Mrs P and their representative has provided a detailed account of the circumstances in which the other alleged misrepresentations were made, the conversations that took place or the information that was provided to them and which caused the membership credits to have been misrepresented to them;
- I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the membership credits to Mr and Mrs P, that they were mis-sold to them or that they were induced into buying them by any such misrepresentations;
- the claim letter and Mr and Mrs P's complaint form also say that the holiday company is in liquidation and can't provide the service sold so is in breach of contract - 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 and that they are available for Mr and Mrs P to use;
- I consider that the liquidation of the holiday company could be a breach of contract for which Vacation Finance might have liability under section 75, but I consider the appointment of the new management company to have been a suitable remedy for any such breach of contract and I've seen no evidence to show that Mr and Mrs P's use of their membership credits has been adversely impacted by the liquidation of the holiday company;
- I'm not persuaded that there's enough evidence to show that there's been any other breach of contract, or any breach of any applicable regulation by the holiday company for which Vacation Finance would be liable under section 75 in these circumstances;
- as well as claiming that the membership credits were misrepresented to Mr and Mrs P and that there's been a breach of contract, the May 2021 claim letter makes other claims, including that: the terms of the agreement are so egregious as to be unfair; the payment of commission was hidden from view; the membership credits were sold to Mr and Mrs P under extreme sales pressure; no affordability checks were carried out on Mr and Mrs P's ability to afford the loan; and their relationship with Vacation Finance is unfair;
- Mr and Mrs P's complaint form says the membership credits were misrepresented to them, the holiday company marketed and sold the credits as an investment in breach

of the Timeshare Regulations, and the holiday company is in liquidation so is in breach of contract – but it also says 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; the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement 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;

- Mr and Mrs P'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 membership application agreement that Mr and Mrs P entered into in November 2018 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 membership application agreement have been applied or operated unfairly against Mr and Mrs P and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the agreement created an unfair relationship between Mr and Mrs P and Vacation Finance;
- Mr and Mrs P's representative says that the payment of commission was hidden from view and Mr and Mrs P's complaint form says that Vacation Finance paid a commission to the holiday company which wasn't declared to Mr and Mrs P, but I've not been provided with any evidence to show what commission, if any, was paid by Vacation Finance to the holiday company;
- from what this service has seen across the industry, if commission was ever paid it tended to be low and of less than 15% and I'm satisfied that Vacation Finance wouldn't have breached any duty in making any such payment – nor was it under any regulatory duty to disclose the amount of commission paid in these circumstances - and I don't consider that the level of commission that was normally paid in this type of situation was sufficiently high to mean that Vacation Finance should have appreciated that not disclosing any commission to Mr and Mrs P risked the relationship being unfair under section 140A;
- Mr and Mrs P's representative says that no affordability checks were carried out on Mr and Mrs P's ability to afford the loan and Mr and Mrs P's complaint form says that the holiday company failed to conduct a proper assessment of their ability to afford the loan, but none of Mr and Mrs P and their representative has provided detailed information about Mr and Mrs P's financial situation in November 2018 or other evidence to show that they couldn't afford a loan of £7,000 with a monthly repayment of £90.96;
- Vacation Finance had lent to Mr and Mrs P in December 2017 and it said that they'd successfully paid a number of instalments on time then paid the remaining balance in June 2018, only six months after the loan was taken out, and I'm not persuaded that there's enough evidence to show that the loan that Vacation Finance made to Mr and Mrs P in November 2018 wasn't affordable for them or was mis-sold to them;
- Mr and Mrs P's representative says that the membership credits were sold to Mr and Mrs P under extreme sales pressure and Mr and Mrs P's complaint form says that

the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure them - but Mr and Mrs P have made similar claims about their December 2017 purchase and if they'd been subject to undue pressure and aggressive commercial practices by the holiday company in December 2017 that weren't acceptable to them, I consider that it would be reasonable to expect them not to have then entered into a membership application agreement to purchase the membership credits from the holiday company in October 2018;

- Mr and Mrs P had bought a holiday product from the holiday company in December 2017 so I would expect them to have been prepared for the sales tactics that might be used by the holiday company before they went into the sales presentation in November 2018 and that, if they didn't want to buy the membership credits, they would have made that clear to the holiday company at that time;
- Mr and Mrs P had the right to withdraw from the membership application agreement and 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 either of those agreements within the withdrawal periods;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs P were unduly pressured into entering into the membership application agreement or the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr and Mrs P's representative has also referred to breaches by the holiday company of the Timeshare Regulations and the Consumer Protection from Unfair Trading Regulations 2008 – and the addendum containing submissions on behalf of Mr and Mrs P says that the holiday company failed to provide the necessary information required by the Timeshare Regulations;
- none of Mr and Mrs P and their representative has identified the information that was necessary for Mr and Mrs P to make an informed decision regarding the purchase but wasn't provided to them by the holiday company and I don't consider that they've provided all of the documentation that would have been provided to Mr and Mrs P at the time of the purchase;
- Mr and Mrs P had made a purchase from the holiday company in December 2017 and I consider that it would be reasonable to expect them to have been aware of the information that they needed before they made a decision to buy the membership credits in November 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;
- having considered all of the information and evidence that Mr and Mrs P and their representative have provided, I'm not persuaded that there's enough evidence to show that Mr and Mrs P'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 and Mrs P and Vacation Finance in these circumstances;
- Vacation Finance hasn't responded to Mr and Mrs P's claims about their November 2018 purchase and hasn't provided any information to this service about their complaint so I can't say that its response to their claims was fair and reasonable – but if it had properly considered their claims I consider that it would have been fair and reasonable for it not to have upheld them; and
- I sympathise with Mr and Mrs P for the issues that they've had with their membership credits and the financial loss and emotional distress to which they've referred, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Vacation Finance to refund to them any of the money that they've paid under the loan

agreement, to cancel their loan, 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 and Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 10 January 2024.

Jarrold Hastings
Ombudsman