

The complaint

Mr and Mrs B complain that Vacation Finance Limited won't refund to them the money that they paid for a holiday club membership. They're being represented in their complaint by a claims management company.

What happened

I issued a provisional decision on this complaint in June 2023 in which I described what had happened as follows:

"Mr and Mrs B had bought holiday products from the holiday company, including purchases in April 2011, May 2012, and October 2017. They then entered into a membership application agreement with the holiday company in September 2018 to buy 23,288 holiday club membership credits. The purchase price of the credits was £16,500, they made a payment of £4,900 and they entered into a fixed sum loan agreement with Vacation Finance for the balance of £11,550. They also exchanged two existing holiday products. They agreed to make 120 monthly repayments of £150.09 to Vacation Finance.

Mr and Mrs B's representative made claims to Vacation Finance in January 2019 under sections 75 and 140A of the Consumer Credit Act 1974. It said that the membership was mis-sold to Mr and Mrs B and, but for the misrepresentations made to them, they wouldn't have purchased it nor entered into the loan agreement. It said that the holiday company was now in liquidation so can't provide the service sold and is in breach of contract. It also said that the terms of the agreement are so egregious as to be unfair and the payment of commission was hidden from view.

Vacation Finance didn't respond to those claims so a complaint was made to this service. The complaint form says that: Vacation Finance paid a commission to the holiday company which wasn't declared to Mr and Mrs B; the holiday company failed to conduct a proper assessment of their ability to afford the loan, unduly pressured them into entering into the agreements and used aggressive commercial practices to pressure them; and the product was misrepresented to them; all rendering the agreement unfair pursuant to section 140A and it said that the claim should also be considered under section 75. Mr and Mrs B have made other complaints to this service relating to their April 2011, May 2012, and October 2017 purchases and those complaints are being dealt with separately.

Our investigator recommended that Mr and Mrs B's complaint should be upheld. She thought that the holiday company had misrepresented the credits as something that would help them recoup their investment by being re-sold easily in the future and she said that the evidence suggested that that couldn't have been the case. She recommended that Vacation Finance should: cancel the loan and refund all loan payments with interest; amend any adverse markers on Mr and Mrs B's credit file; pay them the £4,950, with interest; reimburse maintenance fees; and either procure Mr and Mrs B's release from their obligations to the holiday company or agree to take over their points and/or indemnify them for any future maintenance costs.

Vacation Finance hasn't responded to those recommendations so this complaint has been passed to me for a decision. Mr and Mrs B's representative has raised its serious concerns about the way that the finance was sold to Mr and Mrs B".

I said in my provisional decision: *"I don't consider that Mr and Mrs B's complaint should be upheld for these reasons:*

- 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 B'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;*
- Vacation Finance hasn't responded to Mr and Mrs B's claims or our investigator's recommendations - so I can't say that its response to their claims has been fair or reasonable;*
- I've been provided with a copy of the membership application agreement that Mr and Mrs B signed in September 2018 (but not the terms and conditions that are referred to in it) and the loan agreement that they also signed in September 2018 but I've not been provided with the other documents that it's likely that they would have also signed at that time;*
- Mr and Mrs B have provided a statement in which they say that, throughout their contact with the holiday company, it was emphasised that improving the type of accommodation, view and time of year would increase the marketing potential for rental and the future resale value and that they were led to believe that transferring to the credits was the best way to ensure a return on their investment;*
- they also say that they decided to seek a return on their investment and put their best property up for resale in January 2019 but they've had no advice or support from the holiday company;*
- Mr and Mrs B's representative says that it was represented to Mr and Mrs B that the credits were worth money, they could sell their credits and that the reason to change to the credits was because it was the way forward for everyone and the old system would not be working;*
- neither Mr and Mrs B nor their representative has provided any documentary or other evidence in support of Mr and Mrs B's claim that the credits were sold to them as an investment and they acknowledge that they were told that they would have more options as they weren't tied to one level of accommodation so could spend more credits on a luxury apartment or less on a more modest one and that there were many more experiences – and they quoted from the holiday company's handbook, as follows: "[the credits] offer you access to an amazing selection of luxury hotels and resorts, supercars, motor yachts and more - all without the hassle and expense of ownership";*
- they say that they decided to seek a return on their investment, retaining their best property to put up for resale in January 2019 – but the credits didn't give them an interest in any property that could be sold and I'm not persuaded that it's likely that the holiday company would have guaranteed that they'd be able to sell their credits and I don't consider that they've provided enough evidence to show the steps that*

they've taken since January 2019 to try to resell their credits;

- I'm not persuaded that there's enough evidence to show that the holiday company sold the credits to Mr and Mrs B as an investment or that it guaranteed that they'd be able to sell them;*
- I consider that the credits are worth money because Mr and Mrs B have paid money for them and they can be used for the accommodation and experiences referred to in the handbook and I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the reasons to change to credits to Mr and Mrs B;*
- I'm not persuaded that there's enough evidence to show that the credits were misrepresented or mis-sold to Mr and Mrs B by the holiday company or that they were induced into entering into the membership application agreement 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 would be a breach of contract for which Vacation Finance would 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 membership that Mr and Mrs B had bought from the holiday company in September 2018 and that the credits are available for them to use;*
- I've seen no evidence to show that Mr and Mrs B'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 and Mrs B would be entitled to terminate their agreement in these circumstances;*
- Mr and Mrs B's representative says that there was an unfair relationship between Mr and Mrs B and Vacation Finance because it paid a commission to the holiday company which wasn't declared to Mr and Mrs B; the holiday company failed to conduct a proper assessment of their ability to afford the loan; unduly pressured them into entering the agreements and used aggressive commercial practices to pressure them; and the product was misrepresented to them;*
- I've already explained why I'm not persuaded that the credits were misrepresented to Mr and Mrs B and I've not been provided with any evidence to show what commission, if any, was paid by Vacation Finance to the holiday company - but, from what this service has seen across the industry, if commission was ever paid it tended to be low and 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 any commission paid in these circumstances - and I don't consider that the level of any 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 B risked the relationship being unfair under section 140A;*
- I'm not persuaded that there's enough evidence to show that Mr and Mrs B were unduly pressured into buying the credits in September 2018 or entering into the loan agreement or that the holiday company used unacceptably aggressive sales practices against them;*
- Mr and Mrs B's complaints relating to their April 2011, May 2012, and October 2017 purchases include claims that the holiday company unduly pressured them into entering into those agreements and used aggressive commercial practices to pressure them - 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 September 2018 and that, if they didn't want to buy the credits, they would have made that clear to the holiday company at that time;

- Mr and Mrs B's representative says that the holiday company failed to conduct a proper assessment of Mr and Mrs B's ability to afford the loan and, as Vacation Finance hasn't responded to their claims, it hasn't provided any evidence about its assessment of the affordability of the loan for Mr and Mrs B;*
- Mr and Mrs B say that this has caused them financial anxiety as they're now retired but their loan account statement shows that between October 2018 (when their first payment was made) and February 2021 (the date of the statement) they made 25 repayments of £150.91 and I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for them in September 2018 when it was made to them or that Vacation Finance shouldn't have made the loan to them;*
- Mr and Mrs B's representative says that the terms of the agreement are so egregious as to be unfair - but I've not been provided with copies of all of the documents that Mr and Mrs B would have signed in September 2018 and it would be for a court to determine whether or not any of the terms in those documents were unfair;*
- 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 and Mrs B 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 and Mrs B and Vacation Finance;*
- I'm not persuaded that there's enough evidence to show that Mr and Mrs B'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 B and Vacation Finance in these circumstances;*
- although Vacation Finance didn't respond to Mr and Mrs B's claims, I consider that it would have been fair and reasonable for it not to have upheld their claims if it had properly considered them; and*
- I sympathise with Mr and Mrs B for the issues that they've had with their credits and the other difficulties that they've described, 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 the loan, to pay them any compensation or to take any other action in response to their complaint.*

Mr and Mrs B have referred to the financial anxiety that they've been caused and, if they're struggling to make their monthly loan repayments, I suggest that they contact Vacation Finance and explain to it their financial situation. It's required to respond to any financial difficulties that they're experiencing positively and sympathetically".

Subject to any further comments or evidence that I received from any of Mr and Mrs B, their representative and Vacation Finance, my provisional decision was that I didn't intend to uphold this complaint. Vacation Finance hasn't provided any further comments or evidence but Mr and Mrs B's representative has made detailed further submissions in response to my provisional decision. It says, in summary and amongst other things, that:

- the credits were sold to Mr and Mrs B as an investment that was extremely desirable and could easily be resold at a profit – which was consistent with representations made by the holiday company in previous purchases which had initially been represented as an investment but at sales meetings following those purchases they were advised that the product currently owned was not as desirable as had been represented and as a consequence would prove difficult to sell so they were induced to trade in their existing product;
- the representations made by the holiday company in relation to the previous purchases which led Mr and Mrs B to form the opinion that they were purchasing an investment applied equally to representations made by the holiday company immediately prior to the purchase of the credits in September 2018;
- Mr and Mrs B traded in their existing products (sold to them as investments) having been induced to do so on the basis that it would make it easier to sell what had previously been represented as an investment;
- it agrees with our investigator's reasoning in relation to the mis-selling of the credits as investments and the difficulty purchasers then faced if they elected to try and sell their credits;
- the holiday company engaged in misleading commercial practices which caused Mr and Mrs B to take a transactional decision that they wouldn't have otherwise done;
- the closure of the holiday company's re-sale scheme as a consequence of the liquidation of the holiday company is a clear example of breach of contract; and
- my provisional decision fails to take into consideration numerous other complaints made to this service in relation to this product and the accompanying supporting testimony of the complainants.

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'm not persuaded that I should change the findings that I set out in my provisional decision. I set out in my provisional decision the reasons that I'm not persuaded that there's enough evidence to show that the holiday company sold the credits to Mr and Mrs B as an investment or that it guaranteed that they'd be able to sell them. I don't consider that their representative's response to my provisional decision has provided enough further evidence to show that the credits were misrepresented or mis-sold to Mr and Mrs B by the holiday company or that they were induced into entering into the membership application agreement by any such misrepresentations.

The membership application agreement shows that the purchase price of the credits that Mr and Mrs B bought in September 2018 was £16,500 and that they exchanged 1,616 platinum points and 1,506 silver points. Vacation Finance would have no liability under sections 75 and 140A arising from the sale of the platinum and silver points to Mr and Mrs B because they weren't paid for using credit provided by Vacation Finance. I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the reasons to change to credits to Mr and Mrs B.

Mr and Mrs B's representative says that the holiday company's resale scheme has been closed as a consequence of the liquidation of the holiday company but there's no reference in the documents that Mr and Mrs B signed in September 2018 and which they've provided in support of their complaint to the holiday company agreeing to offer a re-sale scheme. I don't consider that Mr and Mrs B have provided enough evidence to show the steps that

they've taken since January 2019 to try to resell their credits. I'm not persuaded that there's enough evidence to show that the resale scheme was misrepresented to Mr and Mrs B or that there's been a breach of contract relating to the resale scheme.

I said in my provisional decision that I wasn't persuaded that there was enough evidence to show that Mr and Mrs B were unduly pressured into buying the credits in September 2018 or entering into the loan agreement or that the holiday company used unacceptably aggressive sales practices against them. I'm also not persuaded that there's enough evidence to show that the holiday company engaged in misleading commercial practices or that it has breached the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 or the Consumer Protection from Unfair Trading Regulations 2008.

I'm not persuaded that there's enough evidence to show that Mr and Mrs B'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 B and Vacation Finance in these circumstances. Although Vacation Finance didn't respond to Mr and Mrs B's claims, I consider that it would have been fair and reasonable for it not to have upheld their claims if it had properly considered them.

I sympathise with Mr and Mrs B for the issues that they've had with their credits and the other difficulties that they've described, 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 the 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 B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 5 September 2023.

Jarrold Hastings
Ombudsman