

The complaint

Mr and Mrs L complain that Vacation Finance Limited 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 L say that they'd owned holiday products provided by a holiday company since 2004 and they then bought 20,000 holiday club membership credits from the holiday company in May 2018. The membership price was £45,130, they made an advance payment of £7,050 and they entered into a fixed sum loan agreement with Vacation Finance for a loan of £38,080. They agreed to make 120 monthly payments of £494.83 to Vacation Finance.

Mr and Mrs L's representative, on behalf of Mr and Mrs L, 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 credits were mis-sold to Mr and Mrs L and, but for the misrepresentations made to them, they 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 and Mrs L under extreme sales pressure, no affordability checks were carried out on their ability to afford the loan and their relationship with Vacation Finance was unfair.

Vacation Finance responded to those claims in detail and set out the reasons that it didn't uphold any of the claims. It said that it hadn't seen or been presented with any evidence which would lead it to conclude that Mr and Mrs L'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 and that they paid off the full amount of the loan three months after it was taken out.

Mr and Mrs L 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; 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 the membership credits were misrepresented to them; all rendering the loan agreement unfair under section 140A. A client impact statement was also provided to this service.

Our investigator didn't recommend that Mr and Mrs L's complaint should be upheld. She said that the purchase was for a single item with a cash price of £45,130 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 and Mrs L 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 and Mrs L.

Mr and Mrs L's representative says that Mr and Mrs L don't agree with our investigator's recommendation and has requested that this complaint be referred to an ombudsman for a decision. It has provided an addendum containing Mr and Mrs L's additional arguments which says, in summary and amongst other things, that: the product was sold to Mr and Mrs L as an investment; the holiday company represented to Mr and Mrs L that trading-in their existing products for the membership credits was the only method of realising their investment on their 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 and Mrs L wouldn't have purchased the membership credits and traded-in their existing product.

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

- Mr and Mrs L say that they'd owned holiday products from the holiday company since 2004 but I've not been provided with any of the contractual documentation for the purchases that they'd made and their complaint only relates to the purchase that they made in May 2018 and which they paid for, in part, using a loan provided by Vacation Finance;
- Mr and Mrs L's representative says that Mr and Mrs L traded in their existing product in May 2018 for 20,000 membership credits and they entered into a membership application agreement with the holiday company at that time for the purchase – the agreement shows that the membership price was £45,130 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 and Mrs L would have also signed with the holiday company at that time;
- Mr and Mrs L also entered into a loan agreement with Vacation Finance in May 2018 - it shows that the cash price was £45,130, they made an advance payment of £7,050 and the loan amount was £38,080 and they agreed to make 120 monthly payments of £494.83 to Vacation Finance;
- Mr and Mrs L's representative made claims to Vacation Finance in July 2021 under sections 75 and 140A and a complaint was then made to this service – a client impact statement in support of Mr and Mrs L's complaint was also provided;
- 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 £45,130 which would have exceeded the £30,000 limit – but the agreement also shows that Mr and Mrs L were buying 20,000 membership credits so the cash price for each credit would be about £2.26 which would be less than the £100 limit – I don't consider that Mr and Mrs L'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 they're 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 and Mrs L had bought from the holiday company in May 2018 and that the membership credits are available for them to use;
- Mr and Mrs L say that there was an unfair relationship between them 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; 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 the membership credits were misrepresented to them;
- I'm not determining the outcome of Mr and Mrs L'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 and Mrs L's loan;
- Vacation Finance said in its final response letter to Mr and Mrs L's representative that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mr and Mrs L and they paid off the full amount of the loan three months after it was taken out which it says clearly demonstrates that they were fully capable of affording the loan – but it hasn't provided any other information about the affordability assessment that it conducted;
- Mr and Mrs L say that they took money from a pension fund and used a health insurance payment to pay for the purchase so as to save on loan costs which depleted the pension fund and they provided a copy of their bank statement for the period from January to June 2018;
- I'm not persuaded that the bank statement shows that the loan wasn't affordable for them and neither Mr and Mrs L nor their representative has provided any other evidence to show that the loan wasn't affordable for them when it was made to them in May 2018;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr and Mrs L, that the loan was mis-sold to them or that Vacation Finance has acted incorrectly in connection with the loan;
- Mr and Mrs L say that they'd bought other holiday products from the holiday company 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 May 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 L 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 they 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 and Mrs L were unduly pressured into buying the membership credits in May 2018 or entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr and Mrs L's representative's July 2021 claim letter says that it was represented to Mr and Mrs L by the holiday company before their May 2018 purchase that: their current product was unsellable as part of the re-sale scheme and that they would be required to purchase the membership credits if it was their intention to sell their product at a profit; the holiday company was ceasing to trade in timeshare apartments; benefits of the membership credits included that there would be no fixed time period at which they would be required to access their holiday; the membership credits would be an excellent investment; the annual maintenance fees payable would increase greatly if they didn't convert to membership credits; and the membership credits were available for a greatly reduced discount price but only if purchased on that day;
- the claim letter says that those were false and misleading representations made to induce Mr and Mrs L 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 and Mrs L before their May 2018 purchase;
- Mr and Mrs L's complaint form says that the membership credits were misrepresented to them and they also provided a client impact statement in support of their complaint in which they say that they were told by the holiday company's representative that: *"The best way out would be to change to [membership credits] as we could sell 2,000 points each year for about £7 each as these are much easier to sell"*;
- Mr and Mrs L's representative has provided an addendum containing Mr and Mrs L's additional arguments in response to our investigator's recommendation which says that the membership credits were marketed and sold to Mr and Mrs L as an investment but none of Mr and Mrs L and their representative has provided a detailed account of the circumstances in which it was represented to Mr and Mrs L that the membership credits were an investment, the conversations that took place, the information that was provided to Mr and Mrs L before their May 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 they were marketed or sold to Mr and Mrs L as an investment;
- the addendum containing Mr and Mrs L'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 and Mrs L have 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 and Mrs L's purchase was made in May 2018 so, on that

basis, any such re-sale scheme wouldn't have been available until May 2023 – and I've seen no evidence to show any steps that Mr and Mrs L have taken to try to re-sell their membership credits;

- I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the membership credits to Mr and Mrs L in any other way, that they were mis-sold to them or that they were induced into buying them by any such misrepresentations;
- Mr and Mrs L'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 and Mrs L entered into in May 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 documents have been applied or operated unfairly against Mr and Mrs L 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 L and Vacation Finance;
- Mr and Mrs L'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 and Mrs L's additional arguments says that the holiday company failed to provide the necessary information required by the regulations;
- none of Mr and Mrs L and their representative has identified the information that was necessary for them 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 and Mrs L at the time of the purchase;
- Mr and Mrs L say that they'd made other purchases from the holiday company 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 May 2018;
- having considered all of the information and evidence that Mr and Mrs L and their representative have provided, I'm not persuaded that there's enough evidence to show that Mr and Mrs 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 and Mrs L and Vacation Finance in these circumstances;
- I sympathise with Mr and Mrs L for the issues that they've had with their membership credits and the impact of these events that has been described in their complaint form and the client impact statement, but I consider that Vacation Finance's response to their claim under section 140A 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 and Mrs L any of the money that they paid under the loan agreement, 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 L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 29 December 2023.

Jarrold Hastings
Ombudsman