

The complaint

Mr and Mrs H complain that Vacation Finance Limited, trading as VFL Finance Solutions, won't refund to them the money that they paid to acquire a vacation week from a holiday company. They're being represented in their complaint by a claims management company.

What happened

Mr and Mrs H have had holiday products from a holiday company since 2010. They entered into a membership application agreement with the holiday company in August 2017 to acquire another vacation week. The membership application fee was £20,000. They paid £6,000 of that fee by bank transfer and they entered into a fixed sum loan agreement with Vacation Finance for a loan of £14,000. They agreed to make 120 monthly repayments of £187.55 to Vacation Finance. They relinquished their occupancy rights for the additional vacation week for 2018 and 2019 for a relinquishment amount of £5,000 (which was reflected in the purchase price shown on the membership application agreement).

Mr and Mrs H's representative made claims, on Mr and Mrs H's behalf, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in July 2020. It said that: the product was mis-sold and misrepresented to Mr and Mrs H; the contract between them and the holiday company was breached; commission was paid between Vacation Finance and the holiday company which wasn't disclosed to Mr and Mrs H which created a breach of fiduciary duty and an unfair relationship; and the loan agreement was unaffordable.

Vacation Finance didn't provide a substantive response to those claims so Mr and Mrs H complained to this service. Their complaint form says that: the holiday company and Vacation Finance failed to conduct a proper assessment of their ability to afford the loan; Vacation Finance paid a commission to the holiday company which wasn't declared to them and the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement; all rendering the loan agreement unfair pursuant to section 140A.

Vacation Finance then provided this service with a detailed explanation as to why it didn't consider that Mr and Mrs H's claims should be upheld. It said that a final response hadn't been provided in response to those claims because it had requested further information from their representative but never received a reply.

Our investigator didn't recommend that Mr and Mrs H's complaint should be upheld. She wasn't persuaded that there was a misrepresentation that played an important part in their decision to purchase the product. She said that she hadn't seen enough to suggest that the relationship between Mr and Mrs 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 Mr and Mrs H still had the option to use the product and she hadn't seen anything to suggest that the contract was breached in any way. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr and Mrs H.

Mr and Mrs H's representative, on behalf of Mr and Mrs H, says that it doesn't agree with our investigator's recommendation and wishes for this matter to be referred to an ombudsman

for further investigation. It says that an unregulated credit intermediary was used by Vacation Finance and the product was sold as an investment. It also says that non-payment of maintenance fees resulted in the cancellation of the membership but not the finance agreement and there are significant hidden charges and liabilities found within the documents which give rise to an unfair relationship and it has provided a generic submission from counsel about the holiday company and the unfair terms that it uses.

It has also raised its serious concerns about the way that the finance was sold to Mr and Mrs H and has referred to a decision issued by this service on a complaint relating to a fractional holiday ownership product in which it says that the voluminous documentation for the product was reviewed and the debtor-creditor relationship was considered to be unfair. It says that the same voluminous documents and the same unfair charges exist in the product that was sold to Mr and Mrs H so their relationship with Vacation Finance is unfair.

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

- Mr and Mrs H signed the membership application agreement in August 2017 to buy another vacation week - they also signed other documents including the holiday company's terms and conditions, a separate standard form of the withdrawal notice that could be given, a credit application, the fixed sum loan agreement, a declaration of fair sales practices and a statement of compliance;
- Mr and Mrs H's representative made claims to Vacation Finance in July 2020 and Mr and Mrs H then made a complaint to this service – the claim letter referred to claims under sections 75 and 140A, including that the points were misrepresented to Mr and Mrs H, but their complaint form only referred to claims under section 140A and didn't refer to a misrepresentation made by the holiday company;
- 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 H'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 July 2020 letter said that Mr and Mrs H were advised that the product was of some substance, but it's clear that the product is worthless and has no merit, and it was represented to them that the purchase would be an investment, the product would increase in value and, after a period of a few years, they would be able to sell the product at a considerable profit;
- the letter said that Mr and Mrs H had provided a comprehensive witness statement which was enclosed with the letter but I've not been provided with a copy of a witness statement and Vacation Finance says that no witness statement was enclosed with the claim letter that was sent to it;

- none of Mr and Mrs H and their representative has provided 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 them;
- Mr and Mrs H acquired another vacation week under the membership application agreement and the declaration of fair sales practices that they signed says: *"I/We understand that this is a holiday-based membership and I/we believe that I/we will be able to use and enjoy it"*; and the statement of compliance that they also signed says: *"We also understand that the membership price paid does not necessarily reflect the market value of our membership"*;
- I'm not persuaded that there's enough evidence to show that the holiday company misrepresented to Mr and Mrs H that the product was of some substance or the value of the product;
- the declaration of fair sales practices that they signed also says: *"I/We agree that I/we have not entered into this purchase purely for financial gain"*; and the statement of compliance that they also signed says: *"The primary purpose of our Membership is to access holiday accommodation and is not a financial investment for a return"*; and I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr and Mrs H that the product was an investment;
- I'm not persuaded that there's enough evidence to show that the product was misrepresented to Mr and Mrs H by the holiday company or that they were induced into entering into the membership application agreement by any such misrepresentations;
- the July 2020 letter also says that the holiday company has ceased to trade so has committed a repudiatory breach of contract – but Vacation Finance says that the holiday clubs are now operated by a newly appointed club manager and full use of their product remains available to Mr and Mrs H;
- 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 consider the appointment of the new club manager company to have been a suitable remedy for any breach of contract, I've seen no evidence to show that Mr and Mrs H's use of their vacation week has been adversely impacted by the liquidation of the holiday company and I'm not persuaded that Mr and Mrs H would be entitled to terminate their agreement in these circumstances;
- Mr and Mrs H's representative says that commission was paid between Vacation Finance and the holiday company which wasn't disclosed to Mr and Mrs H which created a breach of fiduciary duty and an unfair relationship but Vacation Finance says that no commission was paid to the holiday company;
- I've not been provided with any other evidence to show that Vacation Finance paid a commission to the holiday company and I'm not persuaded that there's been a breach of any fiduciary duty in these circumstances;
- Mr and Mrs H's representative says that the loan agreement was unaffordable for Mr and Mrs H and their complaint form says that the holiday company and Vacation Finance failed to conduct a proper assessment of their ability to afford the loan - but none of Mr and Mrs H and their representative had provided detailed evidence about Mr and Mrs H's financial position in August 2017 or to show that the loan wasn't affordable for them at that time;
- Mr and Mrs H signed a credit application which showed that they were homeowners and that Mr H was employed with a gross annual income of £51,900 and the statement of compliance that they signed says: *"Having carefully considered our*

financial commitments, we confirm we are able to meet the financial obligations being undertaken by us in respect of the Membership Application and any financial commitments and repayments in any related finance agreement”;

- Vacation Finance says that it followed its usual process and conducted an appropriate affordability assessment for Mr and Mrs H and it has described that process – it says that Mr and Mrs H advised a combined annual income of £51,900, they exceeded its minimum credit score requirement, they had a calculated monthly disposable amount of £968 (which they signed to confirm was a reasonable estimate) and the monthly payment for the loan of £187.55 was deemed affordable;
- Vacation Finance had agreed in August 2017 that, if the balance of Mr and Mrs H’s loan was settled in full within twelve months, the interest payable would be waived – it says that Mr and Mrs H maintained their monthly payments and then settled the balance of the loan in full in July 2018 so the interest was waived;
- I’m not persuaded that enough evidence has been provided to show that the loan wasn’t affordable for Mr and Mrs H when it was made to them in August 2017 or that the loan was mis-sold to them;
- Mr and Mrs H’s complaint form says that the holiday company unduly pressured Mr and Mrs H into entering into the membership application agreement and the loan agreement – but Mr and Mrs H signed the holiday company’s declaration of fair sales practices in August 2017 which says: *“I/We agree that the presentation has been conducted in a friendly and helpful manner”*; and: *“I/We confirm that we have not been pressurised or coerced into agreeing to this purchase”*;
- Mr and Mrs H had signed the holiday company’s right of withdrawal form which said that they had the right to withdraw from the membership application agreement within 14 calendar days without giving any reason, so if they were concerned about the way that the product had been sold to them and didn’t want to acquire it, I consider that it would be reasonable to expect them to have contacted either the holiday company or Vacation Finance within the withdrawal period to withdraw from the membership application agreement and the loan agreement – but I’ve seen no evidence to show that they did so;
- I’m not persuaded that there’s enough evidence to show that Mr and Mrs H were unduly pressured into entering into the membership application agreement and the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mr and Mrs H’s representative has provided a generic submission from counsel about the holiday company and the unfair terms that it uses but it would be for a court to determine whether or not any of the terms in those agreements 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 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 and Mrs H and Vacation Finance;
- Mr and Mrs H’s representative has referred to a decision issued by this service on a complaint relating to a fractional holiday ownership product in which it says the

voluminous documentation for the product was reviewed and the debtor-creditor relationship was considered to be unfair – it says that the same voluminous documents and the same unfair charges exist in the product that was sold to Mr and Mrs H so their relationship with Vacation Finance is unfair;

- that decision related to a fractional holiday ownership product which was sold as an investment – Mr and Mrs H bought a vacation week from the holiday company and, for the reasons set out above, I don't consider that it was sold to them as an investment;
- both fractional and non-fractional products were often sold in similar ways and may have had similar contractual documentation but the operation and effect of the contractual documentation would be significantly different for a fractional product than for a non-fractional product;
- Mr and Mrs H's representative said in response to our investigator's recommendation that an unregulated credit intermediary was used by Vacation Finance but that didn't form part of the claim that was made to Vacation Finance or the complaint that was made to this service so I can't make any finding on that issue in this decision – but I can see that the credit intermediary was identified on the loan agreement and that that credit intermediary was authorised by the Financial Conduct Authority as an appointed representative of Vacation Finance in August 2017 when Mr and Mrs H entered into the loan agreement;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs 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 and Mrs H and Vacation Finance in these circumstances;
- Vacation Finance didn't issue a substantive response to Mr and Mrs H's claims because it says that it had requested a copy of the witness statement that was referred to in their representative's July 2020 letter but never received a reply - it then provided this service with a detailed response to those claims and I consider that the reasons that it gave for not upholding Mr and Mrs H's claims were fair and reasonable; and
- I sympathise with Mr and Mrs H for the issues that they've had with their holiday product 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 to the holiday company, 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 H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 17 October 2023.

Jarrold Hastings
Ombudsman