

The complaint

Mr H and Mrs J 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've being represented in their complaint by a claims management company.

What happened

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

"Mr H and Mrs J had bought a holiday product from a holiday company in October 2015, the price of which was £18,450. They upgraded that product in April 2017 and paid a further £18,500 to the holiday company. I understand that they traded in the upgraded product for some membership credits in October 2019 and agreed to pay another £8,500 to the holiday company. They made an advance payment of £1,275 and entered into a fixed sum loan agreement with Vacation Finance for a loan of £7,225. They agreed to make 120 monthly payments of £93.89 to Vacation Finance.

Mr H and Mrs J's representative made claims to Vacation Finance in September 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 credits were mis-sold to Mr H and Mrs J 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 was marketed as an investment. It said that the membership was sold to them under extreme sales pressure, a proper affordability check wasn't undertaken and Mr H and Mrs J's relationship with Vacation Finance was unfair.

Vacation Finance responded to those claims in detail and said that it hadn't seen or been presented with any evidence which would lead it to conclude that Mr H and Mrs J'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 didn't uphold any of their claims.

Mr H and Mrs J 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 credit; and the holiday company unduly pressured them into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure them; all rendering the loan agreement unfair under section 140A.

Our investigator recommended that Mr H and Mrs J's complaint should be upheld. She thought that the holiday company had misrepresented the October 2019

purchase as something that would increase their return on investment and make the product easier to sell at a later date but she said that the evidence suggested that that couldn't have been the case. She said that, if it weren't for that, they wouldn't have made the purchase or taken out the loan.

She recommended that Vacation Finance should: cancel the loan and refund all loan payments made; pay Mr H and Mrs J an additional £1,275 (being the cash paid toward the transaction); refund any maintenance fees paid for the years in which the product wasn't utilised; add interest to all of those payments; and remove any adverse information from Mr H and Mrs J's credit reports in relation to the loan.

Vacation Finance hasn't responded to our investigator's recommendation so I've been asked to issue a decision on this complaint".

I said in my provisional decision: *"I consider that Mr H and Mrs J's complaint shouldn't be upheld for these reasons:*

- I understand that Mr H and Mrs J bought a holiday product from the holiday company in October 2015, that they upgraded that product in April 2017 and that they traded in the upgraded product for some membership credits in October 2019 – but I've not been provided with any of the contractual documentation for those transactions, other than the loan agreement with Vacation Finance that they entered into in October 2019;*
- I consider it to be likely that Mr H and Mrs J would have entered into a membership application agreement to buy the credits in October 2019 and that they would also have signed other documents at that time, but I've not been provided with any of those documents;*
- Mr H and Mrs J's representative made claims to Vacation Finance in September 2021 under sections 75 and 140A and it provided an impact statement from Mr H and Mrs J in which they described the way that the credits were sold to them in October 2019;*
- 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 H and Mrs J'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;*
- Mr H and Mrs J's representative's September 2021 claim letter says that it was represented to Mr H and Mrs J that they had to convert their existing holiday product to the credits, that they would never be offered that level of membership at that price again and that the credits were an investment;*
- other than the impact statement, none of Mr H, Mrs J 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 Mr H and Mrs J before their October 2019 purchase or any documentary or other evidence in support of Mr H and Mrs J's claims that they had to convert their existing holiday product to the credits, that they would never be offered that level of membership at that price again and that the credits were an investment;*

- *I understand that the credits can be used for accommodation and experiences and I'm not persuaded that it's likely that the credits would increase in value or 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 H and Mrs J as an investment so I don't consider that there's been any breach of regulation as claimed by their representative;*
- *nor am I persuaded that there's enough evidence to show that the holiday company misrepresented to Mr H and Mrs J that they had to convert their existing holiday product to the credits or that they would never be offered that level of membership at that price again;*
- *I'm not persuaded that there's enough evidence to show that the credits were misrepresented or mis-sold to Mr H and Mrs J by the holiday company or that they were induced into buying them 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 could be a breach of contract for which Vacation Finance might 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 credits that Mr H and Mrs J had bought from the holiday company in October 2019 and that the credits are available for them to use;*
- *I've seen no evidence to show that Mr H and Mrs J'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 H and Mrs J would be entitled to terminate their agreement in these circumstances;*
- *I'm not persuaded that there's enough evidence to show that there's been any other breach of contract or regulation by the holiday company for which Vacation Finance would be liable under section 75;*
- *Mr H and Mrs J's representative says that there was an unfair relationship between Mr H and Mrs J 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; and the holiday company unduly pressured them into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure them;*
- *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 H and Mrs J's loan;*
- *Vacation Finance said in its January 2022 final response letter to Mr H and Mrs J's representative that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mr H and Mrs J and that they were up to date with all instalment payments which showed that affordability was clearly not an issue;*
- *it hasn't provided any other information about the affordability assessment that it conducted but none of Mr H, Mrs J and their representative has provided any evidence to show that the loan wasn't affordable for them when it was made to them in October 2019 or that they've had any difficulty in making the monthly payments since then;*
- *I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr H and Mrs J, that the loan was mis-sold to them or that Vacation Finance has acted incorrectly in connection with the loan;*

- *Mr H and Mrs J say that they'd bought holiday products from the holiday company in October 2015 and April 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 October 2019 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 H and Mrs J had the right to withdraw from the purchase 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 purchase agreement or the loan agreement within the withdrawal periods;*
- *I'm not persuaded that there's enough evidence to show that Mr H and Mrs J were unduly pressured into buying the credits in October 2019 or entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;*
- *Mr H and Mrs J's representative says that the terms of the agreement are so egregious as to be unfair – but it hasn't provided a copy of the agreement 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 H and Mrs J entered into in October 2019 were 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 H and Mrs J 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 H and Mrs J and Vacation Finance;*
- *I'm not persuaded that there's enough evidence to show that Mr H and Mrs J'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 H and Mrs J and Vacation Finance in these circumstances;*
- *I sympathise with Mr H and Mrs J for the issues that they've had with their credits but I consider that Vacation Finance's response to the claims that had been made to it 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 H and Mrs J 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".*

Subject to any further comments or evidence that I received from any of Mr H and Mrs J, their representative and Vacation Finance, my provisional decision was that I didn't intend to uphold this complaint. None of Mr H and Mrs J, their representative and Vacation Finance has responded to my provisional decision.

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.

As none of Mr H and Mrs J, their representative and Vacation Finance has responded to my provisional decision, I see no reason to change my provisional decision.

My final decision

My decision is that I don't uphold Mr H and Mrs J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs J to accept or reject my decision before 5 February 2024.

Jarrold Hastings
Ombudsman