

The complaint

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

What happened

Mr and Mrs B had bought a holiday product from a holiday company in May 2016. The price was £18,000 which they paid using a loan from a finance provider. They say that they paid off the loan in October 2017. They entered into a membership application agreement in October 2017 to acquire a vacation week from the holiday company. The membership application price was £35,000 and they say that they traded in the holiday product that they'd bought in May 2016 and that they made a bank transfer of £10,500 (which was deferred by three months). They also entered into a fixed sum loan agreement with Vacation Finance which shows that the cash price was £35,000 and that an advance payment of £10,500 was made so the loan amount was £24,500. Mr and Mrs B agreed to make 120 monthly payments of £318.37 to Vacation Finance but the loan was repaid in February 2018.

Mr and Mrs B entered into another membership application agreement in October 2018 to acquire another vacation week from the holiday company. The membership application price was £42,000 and they entered into a fixed sum loan agreement with Vacation Finance for a loan of £7,000 and they say that they entered into a separate loan agreement with another finance provider for a loan of £35,000. They agreed to make 120 monthly payments of £90.96 to Vacation Finance.

Mr and Mrs B complained to Vacation Finance in February 2021 regarding the miss-selling of the October 2018 loan and they included a document detailing their dealings with the holiday company and how they were sold the holiday products. They proposed that they hand back the membership certificate for the vacation week that they'd acquired in October 2018 and write-off the money that they'd already paid for the loan and that Vacation Finance should terminate the loan agreement. Vacation Finance said that it was, in principle, happy to meet with those proposals but there was additional finance with another finance provider and it suggested that they discuss their options with the new operating company of the holiday club. Mr and Mrs B say that they made the same complaint and proposal to the other finance provider but they didn't pursue it any further as they were in discussions with an adviser about exiting their memberships and were instructed not to have any further communications with their finance providers.

Mr and Mrs B's representative, on behalf of Mr and Mrs B, made separate claims to Vacation Finance in January 2022 about the October 2017 and October 2018 loans. It said that the claims were made under sections 75 and 140A of the Consumer Credit Act 1974 and that the vacation weeks were mis-sold to Mr and Mrs B and, but for the misrepresentations made to them, they wouldn't have purchased them nor entered into the loan agreements. It also said that the holiday company was in liquidation and couldn't provide the services sold so was in breach of contract. The letters also included claims that: the terms of the agreements are so egregious as to be unfair; the payment of commission was hidden from view; the memberships were marketed as investments in contravention of the Timeshare, Holiday

Products, Resale and Exchange Contracts Regulations 2010 and were sold to Mr and Mrs B under extreme sales pressure; proper affordability checks weren't undertaken and Mr and Mrs B's relationship with Vacation Finance is unfair.

Vacation Finance issued detailed response letters to those claims in February 2022 and said that it hadn't seen or been presented with any evidence which would lead it to conclude that Mr and Mrs B's products were mis-sold or misrepresented to them at the times of the purchases. It also said Mr and Mrs B fully paid off the October 2017 loan in February 2018 and were fully up to date with their instalment payments for the October 2018 loan so it's clear that affordability wasn't an issue for them and it didn't uphold any of their complaints.

Mr and Mrs B weren't satisfied with its response so they made two complaints to this service – one about the October 2017 loan and the other about the October 2018 loan. They also provided a statement in which they set out their response to Vacation Finance's final response letters. Their complaint forms says that: Vacation Finance paid commissions to the holiday company which weren't declared to them; the holiday company failed to conduct proper assessments of their ability to afford the loans; the vacation weeks were misrepresented to them; the holiday company unduly pressured them into entering into the purchase agreements and the loan agreements and used aggressive commercial practices to pressure them; 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 informed decisions regarding their purchases; all rendering the loan agreements unfair under section 140A; and they say that their claims should also be considered under section 75.

Our investigator didn't recommend that Mr and Mrs B's complaint should be upheld. She said that the purchases were for single items with cash prices of £35,000 and £42,000 which weren't within the limits for a claim under section 75 so section 75 didn't apply to the purchases. She said that she hadn't seen enough to suggest that the relationship between Mr and Mrs B 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 the purchases. She didn't think that the checks carried out by Vacation Finance before it agreed to lend to Mr and Mrs B in October 2017 and October 2018 were reasonable and proportionate but she wasn't persuaded that more detailed checks would have given it a reason to think that the lending was likely to have been unsustainable and unaffordable for them.

Mr and Mrs B's representative says that Mr and Mrs B aren't accepting our investigator's recommendation and would like the matter referred to an ombudsman for a decision. They described their February 2021 proposal to Vacation Finance and explained why they didn't pursue it any further. Mr and Mrs B's representative has provided a document containing detailed submissions from it and Mr and Mrs B in response to our investigator's recommendations which says: the memberships were sold to Mr and Mrs B as investments that were extremely desirable and could easily be resold at a profit; Mr and Mrs B were responsible for paying maintenance charges and failure to pay them would result in termination of the membership with no refund; there's no viable secondary market for timeshares; the holiday company had a responsibility to give Mr and Mrs B sufficient information for them to make an informed contractual decision, including the value on the open market of the products being purchased along with their likely value on the open market in the future; and our investigator has failed to properly assess Mr and Mrs B's claims under sections 75 and 140A and, had she done so, they would have been upheld. It also described the reasons that they consider that the lending to Mr and Mrs B was irresponsible.

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

- Mr and Mrs B had bought a holiday product from the holiday company in May 2016 but that was paid for using a loan from a finance provider that wasn't Vacation Finance and they say that they paid off the loan in October 2017 so that loan doesn't form part of their complaint;
- Mr and Mrs B say that they traded in that holiday product for a vacation week from the holiday company in October 2017 and the membership application agreement that they signed shows that they acquired a vacation week each year at a specified club and membership level during medium season, with a sea view and a maximum occupancy of four – it also shows that the membership application fee was £35,000;
- they say that as well as trading in the holiday product, they made a bank transfer of £10,500 (which they say was deferred for three months) and they entered into a loan agreement with Vacation Finance which shows that the cash price was £35,000, an advance payment of £10,500 was made and the loan amount was £24,500;
- Mr and Mrs B entered into another membership application agreement in October 2018 to acquire another vacation week from the holiday company and the membership application agreement that they signed shows that they acquired a vacation week each year at a specified club and membership level during high season with a maximum occupancy of two and that the membership application fee was £42,000;
- they entered into a fixed sum loan agreement with Vacation Finance for a loan of £7,000 and they say that they entered into a separate loan agreement with another finance provider for a loan of £35,000 – the loan agreement shows that the cash price was £42,000, that they made an advance payment of £35,000 and that the amount of the loan from Vacation Finance was £7,000;
- Mr and Mrs B's representative, on behalf of Mr and Mrs B, made claims to Vacation Finance in January 2022 under sections 75 and 140A about both loans - 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;
- the cash price for the vacation week that Mr and Mrs B acquired in October 2017 was £35,000 and the cash price for the vacation week that they acquired in October 2018 was £42,000 – both of those amounts are more than the £30,000 maximum limit for a claim under section 75 so I don't consider that Mr and Mrs B's claims relate 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 about those acquisitions;

- 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 vacation weeks that Mr and Mrs B had acquired and that they are available for them to use;
- Mr and Mrs B's complaint forms say that Vacation Finance paid commissions to the holiday company which weren't declared to them; the holiday company failed to conduct proper assessments of their ability to afford the loans; the vacation weeks were misrepresented to them; the holiday company unduly pressured them into entering into the purchase agreements and the loan agreements and used aggressive commercial practices to pressure them; 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 informed decisions regarding their purchases; all rendering the loan agreements unfair under section 140A;
- although I find that Mr and Ms B are unable to make claims under section 75, they are able to make claims under section 140A so in this decision I'm considering whether or not Vacation Finance's responses to Mr and Mrs B's section 140A claims were fair and reasonable in the circumstances (I'm not determining the outcome of the claims that they've made under section 140A as only a court would be able to do that);
- 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 either of Mr and Mrs B's loan;
- Vacation Finance said in its February 2022 final response letters to Mr and Mrs B's representative that it followed its usual process and conducted appropriate affordability assessments before the loans were made to Mr and Mrs B but it hasn't provided any other information about those affordability assessments – and it says that the October 2017 loan was repaid in February 2018 and that Mr and Mrs B were fully up to date with their instalment payments for the October 2018 loan at that time;
- Mr and Mrs B have provided bank account, credit card account and savings account statements, copies of their credit reports and a detailed explanation of their financial situation – they say that they re-mortgaged their house in December 2017 to pay-off their May 2016 loan which provided an additional £53,000 and they used that to pay £22,320 to Vacation Finance in February 2018 as the final payment on the October 2017 loan and £10,500 was paid to the holiday company as the deferred payment – and the re-mortgage resulted in their monthly mortgage payment increasing from £357.70 to £626.37;
- Mr B says that he drew down £21,495.27 from his pension plan in November 2019 to help clear their debts and that he took out a personal loan for £18,500 in August 2020 to ease some of their financial pressures and that they re-mortgaged again in May 2021 to clear outstanding loans and credit card bills which had built up due to the financial constraints of their loans which were costing them £448 each month - which provided them with £31,290 but resulted in their monthly mortgage payment increasing to £884.25;
- if Mr and Mrs B weren't able to afford the loan that they'd taken out in May 2016, I consider that it would be reasonable to expect them not to have entered into the membership application agreement to acquire a vacation week in October 2017 at a total cost of £35,500 – but they repaid the May 2016 loan in December 2017 and repaid the October 2017 loan in February 2018;

- if Mr and Mrs B weren't able to afford the loans that they'd taken out in May 2016 and October 2017, I consider that it would be reasonable to expect them not to have entered into the membership application agreement to acquire another vacation week in October 2018 at a total cost of a further £42,000;
- I've carefully considered all of the information that Mr and Mrs B have provided about their financial situation but I don't consider that it shows that they couldn't afford the loans when they were made to them, that the loan agreements were mis-sold to them or that Vacation Finance lent to them irresponsibly;
- Mr and Mrs B's representative's January 2022 claims letters both say that it was represented to Mr and Mrs B that: they should consider making another purchase of a more premium product which would be easier to sell as part of the holiday company's re-sale scheme and make a higher profit for them; and the product was available at a special price but only if purchased on that day;
- Mr and Mrs B said in the document detailing their dealings with the holiday company and how they were sold the holiday products which they included with their February 2021 letter to Vacation Finance that the discussions in October 2017 included the rental programme and they came away with the expectation that they could put the vacation week on the rental programme from 2019 and to get the full price, expected in the region of £4,000 to £6,000, they should ensure that they emailed their request in January 2018 – and that they were told in October 2018 that the sales price for the unit that they were acquiring was expected to be in the region of £90,000;
- Mr and Mrs B said in response to Vacation Finance's final response letters that the holiday company was very clever at promoting the sales as investments and the majority of the time that they were with its representatives was going through sales figures and investment figures rather than the benefits of the memberships but all of the figures shown to them were removed and they weren't allowed to take them with them;
- Mr and Mrs B have provided the first page of the membership application agreements that they signed in October 2017 and 2018 but not the terms and conditions that are referred to in those agreements – and the October 2017 agreement is clearly shown as comprising of four pages but they've not provided pages two to four of it;
- I consider it to be likely that Mr and Mrs B would also have signed other documents with the holiday company in October 2017 and October 2018 but I've not been provided with any of those documents – the only other documents from those times that I have seen are the loan agreements with Vacation Finance that they signed in October 2017 and October 2018;
- other than the information described above, none of Mr and Mrs B 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 and Mrs B before they entered into the agreements or any documentary or other evidence in support of Mr and Mrs B's claims about the representations that were made to them;
- our investigator said that she hadn't seen enough to suggest that the relationship between Mr and Mrs B and Vacation Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair, and in responding to those recommendations, I don't consider that Mr and Mrs B and their representative have provided further evidence to show that the vacation weeks were misrepresented to Mr and Mrs B;

- I'm not persuaded that there's enough evidence to show that the vacation weeks 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 agreements by any such misrepresentations;
- nor am I persuaded that there's enough evidence to show that the vacation weeks were marketed or sold to Mr and Mrs B as investments so I don't consider that there's been any breach of regulation as claimed by their representative;
- Mr and Mrs B had bought a holiday product from the holiday company in May 2016 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 2017 and that, if they didn't want to acquire the vacation week, they would have made that clear to the holiday company at that time;
- their complaint form relating to the October 2017 loan 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 (and the same complaint is made in the complaint form relating to the October 2018 loan), but if that was the case I consider that it would be reasonable to expect them not to have then entered into another membership application agreement to acquire another vacation week from the holiday company in October 2018;
- Mr and Mrs B had the right to withdraw from the membership application agreements and from the loan agreements within fourteen days without giving any reason but they say that they didn't make use of the fourteen day cooling off period as they believed that they had made a good investment;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs B were unduly pressured into acquiring the vacation weeks in October 2017 and October 2018 or entering into the loan agreements or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr and Mrs B's complaint form says that they weren't provided with key information necessary for them to be able to make informed decisions regarding their purchases and the submission made in response to our investigator's recommendation says that the holiday company had a responsibility to give them information about the value on the open market of the products being purchased and their likely future value on the open market – but I'm not persuaded that the holiday company was required to give them those values;
- none of Mr and Mrs B and their representative has identified any other information that was necessary for them to make an informed decision regarding the purchases but that 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 B by the holiday company at the times of their acquisitions);
- Mr and Mrs B's representative says that the terms of the agreement are so egregious as to be unfair and the submission made in response to our investigator's recommendation says that Mr and Mrs B were responsible for paying maintenance charges and failure to pay them would result in termination of the membership with no refund – but it hasn't provided a copy of the terms and conditions or identified which of the terms and conditions 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 B entered into in October 2017 and October 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 agreements 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 agreements created an unfair relationship between Mr and Mrs B and Vacation Finance;
- Mr and Mrs B said in their response to Vacation Finance's final response letters that any advance payment by a consumer is prohibited during the withdrawal period but they made an advance payment of £10,500 relating to the vacation week that they acquired in October 2017 – although they agreed to make an advance payment in October 2017, they've said in the evidence that they've provided that the advance payment was deferred and that they didn't pay it until after they'd re-mortgaged their house in December 2017 so I'm not persuaded that there's enough evidence to show that the holiday company acted incorrectly in connection with the advance payment;
- Mr and Mrs B proposed to Vacation Finance in February 2021 that they hand back the membership certificate for the vacation week that they'd acquired in October 2018 and write-off the money that they'd already paid for the loan and that Vacation Finance should terminate the loan agreement - it said that it was, in principle, happy to meet with those proposals but there was additional finance with another finance provider and it suggested that they discuss their options with the new operating company of the holiday club;
- Mr and Mrs B say that they made the same complaint and proposal to the other finance provider but they didn't pursue it any further as they were in discussions with an adviser about exiting their memberships and were instructed not to have any further communications with their finance providers;
- their representative then made claims to Vacation Finance about the October 2017 and October 2018 loans under sections 75 and 140A and it said that it didn't uphold any of their complaints;
- I don't consider that Vacation Finance's statement that it was, in principle, happy to meet with Mr and Mrs B's proposals shows that the relationship between Mr and Mrs B and Vacation Finance was unfair, that their complaint about its response to their sections 140A claim should be upheld or that it would be fair or reasonable in these circumstances for me to require it to accept those proposals;
- having considered all of the information and evidence that Mr and Mrs B and their representative have provided, 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;
- I sympathise with Mr and Mrs B for the issues that they've had with their vacation weeks but I consider that Vacation Finance's response to the claims that had been made to it was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Vacation Finance to refund to Mr and Mrs B any of the money that they've paid under the loan agreements, to cancel the October 2018 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 Mr and Mrs B to accept or reject my decision before 8 January 2024.

Jarrold Hastings
Ombudsman