

## **The complaint**

Mr and Mrs W 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 legal adviser.

## **What happened**

Mr and Mrs W entered into a membership application agreement to buy a holiday club membership from a holiday company in September 2017. The membership application fee was £48,000. Mr and Mrs W also entered into a fixed sum loan agreement with Vacation Finance for a loan of £33,600 (the loan agreement shows that the cash price was £48,000 and they made an advance payment of £14,400 so the loan amount was £33,600). Mr and Mrs W agreed to make 120 monthly repayments of £436.62 to Vacation Finance.

Mr and Mrs W's then representative made claims, on behalf of Mr and Mrs W, to Vacation Finance in May 2021. Vacation Finance responded to those claims in October 2021 and said that it hadn't seen or be presented with any evidence which would lead it to conclude that Mr and Mrs W's holiday club membership was mis-sold or misrepresented to them at the time of purchase, it had lent to them in a responsible manner and it didn't uphold any of the claims. The claims responded to included that Mr and Mrs W had been pressurised to enter into the contract, the membership had been misrepresented to Mr and Mrs W, the holiday company had breached the contract, Vacation Finance had paid a commission to the holiday company and proper affordability checks weren't carried out before the loan was offered to Mr and Mrs W.

Mr and Mrs W appointed a legal adviser as their new representative in January 2022. Their new representative made claims, on behalf of Mr and Mrs W, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in July 2022. The representative's letter to Vacation Finance included claims about misrepresentation, an unauthorised credit intermediary, the agreement being unenforceable, its unfair terms and breach of contract.

Vacation Finance didn't issue a substantive response to those claims so Mr and Mrs W complained to this service. Their new representative also provided additional arguments, including information about irresponsible lending, undisclosed commissions and unfair terms.

Our investigator said that the claims made by Mr and Mrs W's new representative appeared to be the same as the claims made to Vacation Finance in May 2021, other than a specific point about how the loan was brokered which didn't appear to have been raised as part of the previous claims. As the complaint about Vacation Finance's response to the claims wasn't brought to this service until December 2022, he felt that he could only consider the part of the complaint that relates to how the loan was brokered. He didn't think that he could consider any of the other points raised as they looked to have formed part of the previous claims and he wasn't aware of any exceptional circumstances that would've prevented Mr and Mrs W from contacting this service within six months of Vacation Finance's final response letter.

He said that it was his understanding that the holiday company was regulated by the Financial Conduct Authority from April 2016 and the sale took place in September 2017 so the broker looked to have been regulated when the loan agreement was setup. He didn't agree that there had been a breach of regulation as alleged and he said that he couldn't see anything else that made him think that the complaint should be upheld.

Mr and Mrs W's new representative says that it has never received a final response from Vacation Finance and the only communication received from it regarding Mr and Mrs W's claims was a letter in August 2022 which said that it would conduct a full review and a full and final response would be issued. The new representative says that Mr and Mrs W's previous representative didn't inform Vacation Finance that it no longer represented Mr and Mrs W and Mr and Mrs W were unaware of the final response so they couldn't have filed the complaint within the six month time limit and this should be considered exceptional circumstances. It says that the October 2021 final response was sent to Mr and Mrs W's previous representative, not to Mr and Mrs W, and at that time Mr and Mrs W had already contracted another claims company.

Mr and Mrs W have provided additional documentation about their financial situation, including credit reports, an income and expenditure form, bank statements and income and tax information.

### **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.

I've issued a separate decision in which I've set out the reasons that I'm unable to consider most of the issues about which Mr and Mrs W have complained. In this decision I'm setting out my findings on Mr and Mrs W's complaint that the holiday company wasn't authorised to carry on regulated activity such as credit brokering.

Mr and Mrs W signed the loan agreement in September 2017 and the credit intermediary was identified on the loan agreement. That company was authorised by the Financial Conduct Authority to act as an appointed representative of Vacation Finance in September 2017 when the loan was made to Mr and Mrs W. I'm satisfied that it had the required authorisation to act as a credit intermediary at that time and I'm not persuaded that there's enough evidence to show that it wasn't authorised to arrange the loan for Mr and Mrs W.

I sympathise with Mr and Mrs W for the issues that they've have had with their membership, 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 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 W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 29 February 2024.

Jarrod Hastings  
**Ombudsman**