

## **The complaint**

Ms S complains that Vacation Finance Limited, trading as VFL Finance Solutions, won't refund to her the money that she paid for some holiday club membership credits. She's being represented in her complaint by a claims management company.

## **What happened**

Ms S's representative says that Ms S had bought holiday products from the holiday company three times between April 2011 and November 2017. She then entered into a membership application agreement to buy 12,150 level three holiday club membership credits from the holiday company in July 2018. She traded in her existing holiday product and agreed to pay a membership price of £16,000. She also entered into a fixed sum loan agreement with Vacation Finance for a loan of £11,200. Ms S made loan repayments of £291.08 in October 2018, £2,000 in March 2019 and £5,000 in September 2019 and Vacation Finance says that the loan was then cancelled in November 2021.

Ms S's representative made claims, on behalf of Ms S, 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 that: the membership credits were mis-sold to Ms S and, but for the misrepresentations made to her, she wouldn't have purchased them nor entered into the loan agreement; the holiday company was in liquidation so can't provide the service sold and is in breach of contract; the membership credits were sold to Ms S as an investment, contrary to the Timeshare Regulations, and under extreme sales pressure; the terms of the agreement are so egregious so as to be unfair and the payment of commission was hidden from view; and the holiday company didn't undertake a proper affordability check.

Vacation Finance respond to those claims in detail in October 2022 and said that it hadn't seen nor been presented with any evidence which would lead it to conclude that the membership credits were mis-sold or misrepresented to Ms S at the time of purchase, that it had lent to her in a responsible manner and didn't uphold any of the claims. Ms S wasn't satisfied with its response so complained to this service.

Her complaint form says that: Vacation Finance paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure her; the membership credits were misrepresented to her; the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations; the holiday company is in liquidation so is in breach of contract; and she wasn't provided with key information necessary for her to be able to make an informed decision regarding her purchase, in breach of the Timeshare Regulations; all rendering the loan agreement unfair pursuant to section 140A; and it said that the claim should also be considered under section 75.

Our investigator didn't recommend that Ms S's complaint should be upheld. He wasn't persuaded that there was a misrepresentation at the time of sale or that there had been a

breach of contract for which Vacation Finance was likely to be jointly liable. He said that he hadn't seen enough to suggest that the relationship between Ms S and Vacation Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Ms S.

Ms S's representative says that it disagrees with our investigator's recommendation and that Ms S wishes for her complaint to be referred to an ombudsman. Ms S's representative has provided an addendum which says, in summary and amongst other things, that:

- the membership credits were sold to Ms S as an investment that that was extremely desirable and could easily be resold at a profit;
- Ms S had bought holiday products from the holiday company three times between April 2011 and November 2017 and the upgrades and associated loans were wholly unnecessary unless they were being purchased on the basis that they were an investment as well as a holiday product;
- it was represented to Ms S that purchasing the membership credits and trading her existing product was the only method of realising her investment on her 2017 purchase;
- the sales agreement shows that the membership credits can't be sold by a member directly but rather through a market made available by the holiday company but its resale programme opened in 2015 and is now discontinued;
- the Timeshare Regulations prohibited the holiday company from marketing or selling the membership credits as an investment; and
- the holiday company had a responsibility under the Timeshare Regulations to give Ms S sufficient information for her to make an informed contractual 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.

Having done so, I agree with our investigator that Ms S's complaint shouldn't be upheld for these reasons:

- I understand that Ms S had bought holiday products from the holiday company three times between April 2011 and November 2017 and that she then entered into a membership application agreement in July 2018 to trade in her existing holiday product and to buy 12,150 level three holiday club membership credits;
- Ms S's representative has provided a summary of the membership application agreement but not a copy of the agreement or any of the other documents that I consider it to be likely that Ms S would have signed with the holiday company at that time;
- Ms S also entered into a loan agreement in July 2018 for a loan of £11,200 from Vacation Finance but none of Ms S, her representative and Vacation Finance has provided a copy of the loan agreement – Ms S's representative has provided a loan account statement which shows that Ms S made loan repayments of £291.08 in October 2018, £2,000 in March 2019 and £5,000 in September 2019 and Vacation Finance says that the loan was then cancelled in November 2021;
- Ms S's representative made claims to Vacation Finance in July 2022 about the membership application agreement that Ms S had entered into in July 2018 and Ms S

then made a complaint to this service in November 2022 – the representative's letter to Vacation Finance in July 2022 included claims under sections 75 and 140A;

- 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 those claims as only a court would be able to do that but I'm considering whether or not Vacation Finance's response to them was fair and reasonable in the circumstances;
- the July 2022 letter says that it was represented to Ms S by the holiday company in July 2018 that: her current holiday product was unsellable as part of the re-sale scheme and that she was required to purchase membership credits if she was to sell her holiday product at a profit; the holiday company was ceasing to trade in timeshare apartments; and the membership credits were available at a special price but only if purchased on that day – and further information about the alleged misrepresentations was contained in the addendum that was provided by Ms S's representative in response to our investigator's recommendation;
- neither Ms S nor her 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 Ms S before her July 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Ms S that the membership credits were an investment, that the membership credits were misrepresented to her by the holiday company or that she was induced into entering into the membership application agreement by any such misrepresentations;
- nor am I persuaded that there's enough evidence to show that the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations;
- the July 2022 letter also says that the holiday company is in liquidation so can't provide the service sold and is in breach of contract but Vacation Finance says that the holiday club is now operated by a newly appointed club manager and full use of their memberships remains available to all members who continue to make payment of the annual fees;
- 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 consider the appointment of the new club manager to have been a suitable remedy for any breach of contract, and I've seen no evidence to show that Ms S's use of her membership credits has been adversely impacted by the liquidation of the holiday company;
- I'm not persuaded that there's enough evidence to show that there's been any breach of contract by the holiday company for which Vacation Finance would be liable under section 75;
- the July 2022 letter also says that Ms S's relationship with Vacation Finance was unfair and Ms S's complaint form says that: Vacation Finance paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her into entering into the membership application agreement and the loan agreement and

used aggressive commercial practices to pressure her; and she wasn't provided with key information necessary for her to be able to make an informed decision regarding her purchase, in breach of the Timeshare Regulations;

- 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 the loan that it made to Ms S;
- Vacation Finance says that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Ms S but it hasn't provided any further information about the affordability assessment that it conducted;
- it also says that a number of large down payments were made by Ms S prior to the loan being cancelled in November 2021, confirming that affordability was not an issue for her – and the loan account statement dated in February 2020 shows that Ms S made loan repayments of £291.08 in October 2018, £2,000 in March 2019 and £5,000 in September 2019;
- neither Ms S nor her representative has provided any detailed information about Ms S's financial situation in July 2018 when the loan was made to her and Vacation Finance says that Ms S never reached out to it to inform it that she had encountered any financial difficulties but, upon payment not being received, it cancelled the loan without instituting any actions against Ms S for non-payment of the loan;
- the loan was made to Ms S in July 2018 and was cancelled in November 2021 but I've seen no evidence to show that she complained to Vacation Finance about the affordability checks that it had conducted or the affordability of the loan until her representative's July 2022 letter – if the loan was unaffordable for her I consider that it would be reasonable to expect her to have contacted Vacation Finance about that issue sooner than she did;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Ms S in July 2018 when it was made to her, that Vacation Finance didn't assess the affordability of the loan for her, that the loan was mis-sold to her or that Vacation Finance has acted incorrectly in connection with the loan;
- Ms S had the right to withdraw from the membership application agreement and the loan agreement within fourteen days without giving any reason but I've seen no evidence to show that she contacted either the holiday company or Vacation Finance to withdraw from either the membership application agreement or the loan agreement within the applicable withdrawal periods;
- Ms S signed those agreements in July 2018 but I've seen no evidence to show that she complained to either the holiday company or Vacation Finance about the undue pressure that she claims was applied to her until her representative's July 2022 letter – if she had been unduly pressured into signing the membership application agreement and didn't want to buy the membership credits, I consider that it would be reasonable to expect her to have contacted either the holiday company or Vacation Finance about that issue sooner than she did;
- I'm not persuaded that there's enough evidence to show that Ms S was unduly pressured into entering into the membership application agreement or the loan agreement or that the holiday company used unacceptably aggressive commercial practices against her;
- Ms S's complaint form says that the Timeshare Regulations require the holiday company to provide Ms S with sufficient information about the proposed contract to enable her to make an informed decision about whether to enter into it, but it didn't do so;

- neither Ms S nor her representative has identified the information that Ms S required to make an informed decision regarding the purchase but that wasn't provided to her by the holiday company - and they haven't provided all of the documentation that would have been provided to Ms S at the time of the purchase;
- Ms S had made three purchases from the holiday company between April 2011 and November 2017 so I consider that it would be reasonable to expect her to have been aware of the information that she needed before she made a decision to buy the membership credits in July 2018 and I'm not persuaded that there's enough evidence to show that there's been a breach of the Timeshare Regulations as alleged;
- the July 2022 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Ms S nor her representative has provided a copy of the membership application agreement or the other documents that were signed by Ms S in July 2018 and they haven't said which of the terms they consider to be unfair;
- it would be for a court to determine whether or not any of the terms in any of those documents 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 Ms S 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 Ms S and Vacation Finance;
- having carefully considered all of the information and evidence that Ms S and her representative have provided, I'm not persuaded that there's enough evidence to show that Ms S'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 Ms S and Vacation Finance in these circumstances;
- I sympathise with Ms S for the issues that she's had with her membership credits 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 Ms S any of the money that she paid under the loan agreement, to pay her any compensation or to take any other action in response to her complaint.

### **My final decision**

My decision is that I don't uphold Ms S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 13 March 2024.

Jarrold Hastings  
**Ombudsman**