

The complaint

Mr and Mrs W have complained that Vacation Finance Limited (“VFL”) needed to pay compensation arising out of the sale of a holiday product bought using a VFL loan.

What happened

In November 2016, Mr and Mrs W took out a membership with a holiday product supplier (“the Supplier”). The membership cost £15,400 and was paid for in part by Mr and Mrs W borrowing £10,760 from VFL over ten years.

In June 2021, Mr and Mrs W, with the help of a professional representative (“PR”), wrote to VFL setting out problems they said there were with the sale of the membership. PR set out a number of issues and concerns that it argued VFL was responsible for under the operation of ss.75 and 140A of the Consumer Credit Act 1974 (“CCA”). Those concerns included:

- The Supplier is now in liquidation, so it can’t supply the services under the membership. This amounted to a breach of contract that VFL was jointly liable to answer a claim for under s.75 CCA.
- PR said that Mr and Mrs W attended meeting with the Supplier whilst on a promotional holiday. This meeting turned into an aggressive sales presentation that lasted several hours.
- The Supplier explained that Mr and Mrs W should consider buying timeshare membership as it was an investment that could be sold at a profit through the Supplier’s resale scheme. This was a breach of Reg.14(3) of The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (“the Timeshare Regulations”) prohibition on selling timeshares as investments.
- It was also said that the price was only available on the day, which was an aggressive commercial practice under The Consumer Protection from Unfair Trading Regulations 2008 (“CPUTR”).
- The following year, Mr and Mrs W were told a more desirable product existed, so the Supplier’s representations at the time of sale were false and so VFL was jointly liable to answer for those too as part of a misrepresentation claim under s.75 CCA.
- Mr and Mrs W’s timeshare has not been sold and so they’ve had to pay increasing maintenance fees. This isn’t something they expected as they thought they’d be able to sell their timeshare at a profit.
- The payment of commission by VFL to the Supplier had been hidden from Mr and Mrs W.
- No credit checks were carried out when deciding to lend to Mr and Mrs W.
- All of this gave rise to an unfair debtor-creditor relationship as set out in s.140A CCA.

In February 2023 PR referred a complaint to our service on Mr and Mrs W’s behalf, noting that VFL hadn’t responded to the earlier letter.

One of our investigators considered the complaint, but didn’t think VFL needed to do anything to answer the concerns raised. She thought that there didn’t appear to be any actionable misrepresentation or breach of contract and that there wasn’t enough to say there was an unfair debtor-creditor relationship. Finally, she said there was nothing to suggest that

the lending was unaffordable for Mr and Mrs W.

PR, on behalf of Mr and Mrs W, disagreed. In doing so, it reiterated what had been said before with the complaint was first made. As Mr and Mrs W disagreed with our investigator, the complaint was passed to me for a 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.

When deciding complaints, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

"(1) relevant:

- (a) law and regulations;*
- (b) regulators' rules, guidance and standards;*
- (c) codes of practice; and*

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."

Where I need to make a finding of fact based on the evidence, I make my decision on the balance of probabilities. In other words, when I make a finding that something happened, that's because I think it's more likely than not that that thing did happen.

Having considered everything, I don't think that this complaint should be upheld.

Is VFL jointly liable for the Supplier's misrepresentations?

Under s.75 CCA, VFL could be liable to answer a claim about the Supplier's misrepresentations and Mr and Mrs W have complained that VFL didn't properly deal with their claim. What Mr and Mrs W said happened is contained in the letter of claim that was sent to VFL. In summary, they said:

- In 2016, they attended a meeting at the Supplier's property overseas. This turned into an aggressive sales presentation lasting several hours.
- They were told the timeshare membership was a great investment they would be able to sell later at a profit. This was the reason they bought the product.
- Mr and Mrs W were also told that the price offered was only available on that day.
- At a sales presentation the following year, they were told there was a different product they should buy that had a better resale value, so what they'd been told before wasn't true.
- They had hoped to sell their timeshares in the future and make a financial return on them, but they're concerned this isn't possible. They were also unhappy that the annual maintenance bills had increased.

I've thought about whether there is anything in what PR alleged that could amount to a misrepresentation that VFL needed to answer. I've looked at PR's letter of claim, a response to our investigator's view and some of the documents available from the time of sale. The amount of evidence is, therefore, limited in its scope.

PR hasn't set out much detail about what Mr and Mrs W were told when they came to buy a membership from the Supplier in 2016. So it's not clear to me what the alleged

misrepresentations were, especially when no such representations were set out in Mr and Mrs W's own words. For example, it's not clear why Mr and Mrs W would have believed that their timeshare, that gave a right to use holiday accommodation for a number of years, was likely to be able to be sold for a profit later on. Based on the evidence available, on balance, I can't say that the Supplier misrepresented anything and it follows that I can't say VFL should have accepted liability for any of the alleged misrepresentations of the Supplier.

Is VFL jointly liable for the Supplier's breach of contract?

The Supplier is now insolvent and Mr and Mrs W have argued that this means there was a breach of contract. But I understand that the holiday club is now being run by a different business and Mr and Mrs W haven't pointed to anything they were entitled to under their membership that they're no longer able to get. So, it also follows that I can't see that there was any breach of the membership agreement by the Supplier's insolvency or for any other reason.

Was commission paid to the Supplier by VFL?

This was an allegation made by PR on Mr and Mrs W's behalf. PR hasn't set out why it believes any commission was paid and I am aware from other complaints that VFL has said it didn't pay any commission to suppliers. Based on what I've seen, I can't say that any commission was paid.

Did VFL carry out the right checks before lending to Mr and Mrs W?

PR said that VFL didn't undertake the right checks of Mr and Mrs W's ability to repay the loan. However, in any complaint about lending there are a number of matters to consider. First, a lender had to undertake reasonable and proportionate checks to make sure a prospective borrower was able to repay any credit in a sustainable way. Secondly, if such checks were not carried out, it is necessary to determine what the right sort of checks would have shown. Finally, if the checks showed that the repayment of the borrowing was not sustainable, did the borrower lose out?

Here, even if the right checks weren't carried out, I have not seen enough to persuade me that the lending was not affordable for Mr and Mrs W. So I'm not persuaded that the complaint should be upheld on this basis.

Was VFL party to an unfair debtor-creditor relationship?

PR say that the problems with the Supplier's sale gave rise to an unfair debtor-creditor relationship as defined by s.140A CCA. When considering a complaint about this, I'm able to look at both the actions and agreements between Mr and Mrs W and VFL, but also the agreement with the Supplier funded by the loan and what VFL said at the time it was entered into.

Many of the allegations I've set out above could, if proven, have given rise to an unfair debtor-creditor relationship. For example, the Supplier's alleged misrepresentations or granting an unaffordable loan. But as I wasn't persuaded to uphold this complaint on the basis of those allegations, I also don't think they could give rise to an unfair debtor-creditor relationship.

PR has pointed to regulations it says were breached during the sale (CPUTRs and the Timeshare Regulations). But again, based on what has been put forward by PR, I can't say there is enough evidence for me to conclude there were any breaches of those regulations at the time of the sale, or, if there were, why that might have caused an unfairness in this

case. So I can't see any reason why there was an unfair debtor-creditor relationship between VFL and Mr and Mrs W.

My final decision

I don't uphold Mr and Mrs W's complaint against Vacation Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 22 March 2024.

Mark Hutchings
Ombudsman