

## **The complaint**

Mr and Mrs L complain that Vacation Finance Limited won't refund to them the money that they paid for some holiday club membership credits. They're being represented in their complaint by a claims management company.

## **What happened**

Mr and Mrs L had made nine purchases of holiday products from a holiday company between 2005 and 2017 and they entered into a membership application agreement in June 2018 to buy 33,413 level five holiday club membership credits from the holiday company. They exchanged two existing holiday products and agreed to pay a membership price of £55,199 of which £7,500 was paid as a deposit. They also entered into a fixed sum loan agreement with Vacation Finance for a loan of £47,699 and agreed to make 120 monthly repayments of £619.83 to Vacation Finance but Vacation Finance says that Mr and Mrs L paid off the full amount of the loan in September 2018.

Mr and Mrs L's representative made claims, on behalf of Mr and Mrs L, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in March 2021. The representative's letter to Vacation Finance included claims that: the membership credits were mis-sold to Mr and Mrs L and, but for the misrepresentations made to them, they 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 Mr and Mrs L as an investment under high 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 didn't respond to those claims so Mr and Mrs L complained to this service. Their complaint form says 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 loan, unduly pressured them into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure them; the membership credits were misrepresented to them; 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 they weren't provided with key information necessary for them to be able to make an informed decision regarding their 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.

This service sent a copy of their complaint form to Vacation Finance and it said that it hadn't received the letter that Mr and Mrs L's representative had sent to it in March 2021. It then provided a detailed response to those claims 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 Mr and Mrs L at the time of purchase, that it had lent to them in a responsible manner and didn't uphold any of the claims.

Our investigator didn't recommend that Mr and Mrs L's complaint should be upheld as she didn't think that Vacation Finance had acted unfairly. She said that she hadn't seen enough to suggest that the relationship between Mr and Mrs L 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 the cash price of the membership credits was outside of the limits for a valid section 75 claim so she considered whether there had been a breach of contract under section 75A of the Consumer Credit Act – but she wasn't persuaded that there had been a breach of contract. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr and Mrs L.

Mr and Mrs L didn't agree with our investigator's recommendation and asked for this matter to be referred to an ombudsman for a decision. Mr and Mrs L's representative has provided submissions which say, in summary and amongst other things, that:

- the membership credits were marketed and sold to Mr and Mrs L as an investment that was extremely desirable and could easily be resold at a profit;
- the holiday company represented to them that their existing holiday product wasn't selling and that the resales department was closing so to protect their investment they should consider making a purchase of membership credits which were the only product capable of being sold either on the open market or back to the holiday company;
- Mr and Mrs L had made nine purchases of holiday products from the holiday company between 2005 and 2017 and they thought that those products were purchased as investments;
- holiday products tend to be overvalued by sales agents and there's no functioning resale market for them;
- the Timeshare Regulations prohibited the holiday company from marketing or selling the membership credits as an investment;
- the holiday company misrepresented the membership credits to Mr and Mrs L and, were it not for the misrepresentations, they wouldn't have purchased them nor traded in an existing holiday product;
- Mr and Mrs L say: *"What was crucial to our decision to purchase the [membership credits] is that we were effectively given no option other than to buy points. We were sat down and advised that [the holiday company was] no longer selling timeshares which would mean we wouldn't be able to sell our existing timeshare. We were told that every ... timeshare owner was simply trading in their existing timeshare and transferring over to the points, and we would have to do likewise if we wanted to continue to go on holiday and sell the timeshare somewhere down the line, which we did. We would have had no reason at all to trade in our existing product which we were happy with accommodation wise if we had not believed that everyone was requiring to transfer to [membership credits]"*; and
- the holiday company engaged in misleading commercial practices which caused Mr and Mrs L to take a transactional decision that they wouldn't have otherwise done.

### **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 L's complaint shouldn't be upheld for these reasons:

- Mr and Mrs L had bought holiday products from the holiday company nine times between 2005 and 2017 and they then signed the membership application agreement in March 2018 to buy 33,413 holiday club membership credits - they also signed other documents with the holiday company at that time including the terms and conditions, a standard information form, an exchange contract, an initial disclosure document and a separate standard form of the withdrawal notice that could be given to withdraw from the agreement;
- Mr and Mrs L also signed the loan agreement in March 2018 for a loan of £47,699 from Vacation Finance and they also received pre-contact credit information and a loan explanation document;
- Mr and Mrs L's representative, on behalf of Mr and Mrs L, made claims to Vacation Finance in March 2021 and Mr and Mrs L then made a complaint to this service – the representative's letter to Vacation Finance 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;
- one of the criteria for a claim under section 75 is that section 75 doesn't apply to a claim which relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000;
- the membership application agreement shows that the membership price was £55,199 which is more than the single item upper limit of £30,000 and Mr and Mrs L had purchased 33,413 membership credits so the price of each credit could be about £1.65 but that would be less than the single item lower limit of £100 – so I consider that section 75 doesn't apply to Mr and Mrs L's purchase;
- our investigator considered Mr and Mrs L's claim under section 75A which says that if the debtor under a linked credit agreement has a claim against the supplier in respect of a breach of contract the debtor may pursue that claim against the creditor ... if the debtor has taken reasonable steps to pursue his claim against the supplier but has not obtained satisfaction for his claim – and the upper limit for a claim under section 75A is £60,260 and I consider that Mr and Mrs L might be able to make a claim to Vacation Finance under section 75A for breach of contract by the holiday company;
- I'm not determining the outcome of any claim under section 75A or 140A in this decision as only a court would be able to do that but I'm considering whether or not Vacation Finance's response to the claims that had been made to it was fair and reasonable in the circumstances;
- the March 2021 letter 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 75A - 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 Mr and Mrs L's use of their membership credits has been adversely impacted by the liquidation of the holiday company;

- the March 2021 letter also says that the maintenance fees have increased substantially since the purchase and are unaffordable and Mr and Mrs L weren't advised of this at the point of sale – but the annual membership renewal fee was described in the terms and conditions and standard information form that they signed;
- 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 75A in these circumstances;
- the March 2021 letter also says that Mr and Mrs L's relationship with Vacation Finance was unfair and Mr and Mrs L's complaint form says 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 loan, unduly pressured them into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure them; the membership credits were misrepresented to them; and they weren't provided with key information necessary for them to be able to make an informed decision regarding their 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 relation to the loan that it made to Mr and Mrs L;
- Vacation Finance says that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mr and Mrs L and they paid off the full amount of the loan in September 2018 which shows that they were fully capable of affording the loan – but it hasn't provided any further evidence about the affordability assessment that was made;
- neither Mr and Mrs L nor their representative has provided any detailed information about Mr and Mrs L's financial situation in June 2018 when the loan was made to them or to show that the loan wasn't repaid in September 2018;
- the loan was made to Mr and Mrs L in June 2018 and was fully repaid in September 2018 but I've seen no evidence to show that they complained to Vacation Finance about the affordability checks that it had conducted until their representative's March 2021 letter – if the loan was unaffordable for them or they had other concerns about the loan I consider that it would be reasonable to expect them to have contacted Vacation Finance about those issues sooner than they did;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr and Mrs L in June 2018 when it was made to them, that Vacation Finance didn't assess the affordability of the loan for them, that the loan was mis-sold to them or that Vacation Finance has acted incorrectly in connection with the loan;
- Mr and Mrs L had signed the separate standard form of the withdrawal notice that could be given to withdraw from the membership application agreement and which says: *"The consumer has the right to withdraw from this contract within 14 calendar 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 membership application agreement within the withdrawal period;
- the loan explanation document says: *"If you change your mind you can withdraw from the agreement within 14 days beginning on the day after you sign the agreement"*; but I've seen no evidence to show that Mr and Mrs L contacted Vacation Finance to withdraw from the loan agreement within that period;

- Mr and Mrs L signed those agreements in June 2018 but I've seen no evidence to show that they complained to either the holiday company or Vacation Finance about the undue pressure that they claim was applied to them until their representative's March 2021 letter – if they 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 them to have contacted either the holiday company or Vacation Finance about that issue sooner than they did;
- I'm not persuaded that there's enough evidence to show that Mr and Mrs L were unduly pressured into entering into the membership application agreement or the loan agreement or that the holiday company used unacceptably aggressive or misleading commercial practices against them;
- the March 2021 letter, Mr and Mrs L's complaint form and their representative's submissions in response to our investigator's recommendation say that the membership credits were misrepresented to Mr and Mrs L – and the submissions include Mr and Mrs L's description of what they say that they were told before they bought the membership credits in June 2018 – but neither Mr and Mrs L nor 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 L before their June 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr and Mrs L that the membership credits were an investment, that the membership credits were misrepresented to them by the holiday company or that they were 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;
- Mr and Mrs L's complaint form says that the Timeshare Regulations require the holiday company to provide Mr and Mrs L with sufficient information about the proposed contract to enable them to make an informed decision about whether to enter into it, but it didn't do so;
- neither Mr and Mrs L nor their representative has identified the information that Mr and Mrs L required to make an informed decision regarding the purchase but that wasn't provided to them by the holiday company;
- Mr and Mrs L had made nine purchases of holiday products from the holiday company between 2005 and 2017 and I consider that it would be reasonable to expect them to have been aware of the information that they needed before they made a decision to buy the membership credits in June 2018 – and I'm not persuaded that there's enough evidence to show that there's been a breach of the Timeshare Regulations in these circumstances;
- the March 2021 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Mr and Mrs L nor their representative has 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 the membership application agreement or the other documents that Mr and Mrs L entered into with the holiday company 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 Mr and Mrs L 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 and Mrs L and Vacation Finance;
- having carefully considered all of the information and evidence that Mr and Mrs L and their representative have provided, I'm not persuaded that there's enough evidence to show that Mr and Mrs L'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 L and Vacation Finance in these circumstances;
- Vacation Finance says that it didn't receive the March 2021 letter from Mr and Mrs L's representative and it didn't respond to it so I can't say that its response to their claims was fair and reasonable – but if it had responded to the claims (as it did when this service sent a copy of Mr and Mrs L's complaint form to it) I consider that it would have been fair and reasonable for it not to have upheld their claims; and
- I sympathise with Mr and Mrs L for the issues that they've had with their membership credits, 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 paid under 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 L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 19 March 2024.

Jarrold Hastings  
**Ombudsman**