

The complaint

Mr and Mrs H complain that Vacation Finance Limited, trading as VFL Finance Solutions, 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 H's representative says that Mr and Mrs H had bought holiday products from a holiday company in March 2012 and March 2015 and they entered into a membership application agreement to buy 15,000 level 3 holiday club membership credits from the holiday company in November 2018. The purchase price was £32,000, they paid a deposit of £5,036 and they exchanged two existing holiday products. The balance due from them was £26,964 and they also entered into a fixed sum loan agreement with Vacation Finance for a loan of that amount. They agreed to make 120 monthly repayments of £350.39 to Vacation Finance but it says that, sometime later, affordability became an issue for them so it cancelled the loan.

Mr and Mrs H's representative made claims, on behalf of Mr and Mrs H, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in January 2023. The representative's letter to Vacation Finance included claims that: the membership credits were mis-sold to Mr and Mrs H 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; they were pressured into entering into the loan; 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 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 H at the time of purchase, that it had lent to them in a responsible manner and didn't uphold any of the claims. It also said that, sometime after the loan was made to Mr and Mrs H, affordability became an issue for them and it cancelled the loan.

Mr and Mrs H weren't satisfied with its response so they 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.

Our investigator didn't recommend that Mr and Mrs H's complaint should be upheld. He said that the cash price of the membership credits was outside of the limits for a valid section 75 claim so he considered whether there had been a breach of contract under section 75A of the Consumer Credit Act – but he wasn't persuaded that there had been a breach of contract. He said that he hadn't seen enough to suggest that the relationship between Mr and Mrs H 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 Mr and Mrs H.

Mr and Mrs H didn't accept our investigator's recommendation and their representative says that it would like the matter referred to an ombudsman for a decision. It has provided an addendum containing additional submissions which says, in summary and amongst other things, that:

- the membership credits were marketed and sold to Mr and Mrs H as an investment that was extremely desirable and could easily be resold at a profit;
- it was represented to Mr and Mrs H that they should consider making a purchase of membership credits which would be easier to sell as part of the holiday company's resale scheme and make a higher profit for them and that the membership credits were available at a special price but only if purchased on that day;
- they were subjected to aggressive commercial practices in breach of the Consumer Protection from Unfair Trading Regulations 2008;
- Mr and Mrs H had also bought holiday products from the holiday company in March 2012 and March 2015;
- it's very likely that the holiday company did sell the membership credits as more than a holiday product and its resale programme is now discontinued and the holiday company appears to have gone into administration;
- the Timeshare Regulations prohibited the holiday company from marketing or selling the membership credits as an investment;
- the holiday company had a responsibility under the Timeshare Regulations to give Mr and Mrs H wife sufficient information for them to make an informed contractual decision (such as the value on the open market of the product being purchased along with its likely value on the open market in the future) but failed to provide the necessary information; and
- the lending 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 H's complaint shouldn't be upheld for these reasons:

- Mr and Mrs H had bought holiday products from the holiday company in March 2012 and March 2015 and they then signed the membership application agreement in November 2018 to buy 15,000 level three holiday club membership credits;
- Mr and Mrs H's representative has provided a copy of that membership application agreement but not the terms and conditions that are referred to in it or any of the other documents that I consider it to be likely that they would have also signed with the holiday company at that time;

- Mr and Mrs H also signed the loan agreement in November 2018 for a loan of £26,964 from Vacation Finance, but it says that the loan has been cancelled;
- Mr and Mrs H's representative made claims to Vacation Finance in January 2023 about the membership application agreement that Mr and Mrs H had entered into in November 2018 and Mr and Mrs H 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 purchase price was £32,000 which is more than the single item upper limit of £30,000 and Mr and Mrs H had purchased 15,000 membership credits so the price of each credit could be about £2.13 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 H's purchase;
- our investigator considered Mr and Mrs H'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 – the upper limit for a claim under section 75A is £60,260 and I consider that Mr and Mrs H would have been 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 January 2023 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 H's use of their 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 75A in these circumstances;
- the January 2023 letter also says that Mr and Mrs H's relationship with Vacation Finance was unfair and Mr and Mrs H'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; the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations and they weren't provided with key information necessary for them 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 relation to the loan that it made to Mr and Mrs H;
- Vacation Finance says that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mr and Mrs H but it hasn't provided any further information about the affordability assessment that it conducted;
- it also says that, sometime after the loan was made to Mr and Mrs H, affordability became an issue for them so it cancelled the loan and released them of all their responsibilities to pay back the loan (and it says that despite Mr and Mrs H having defaulted in their payments, no legal action was ever instituted by it);
- neither Mr and Mrs H nor their representative has provided any detailed information about Mr and Mrs H's financial situation in November 2018 when the loan was made to them, or about any difficulties that they experienced in making their monthly loan repayments to Vacation Finance, or to show that the loan hasn't been cancelled by Vacation Finance;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr and Mrs H in November 2018 when it was made to them, that Vacation Finance didn't assess the affordability of the loan for them, that it lent to them irresponsibly or that it has acted incorrectly in connection with the loan;
- Mr and Mrs H 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 they contacted either the holiday company or Vacation Finance to withdraw from either of those agreements within the applicable withdrawal period;
- Mr and Mrs H signed those agreements in November 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 January 2023 letter – if they'd 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 H were unduly pressured into entering into the membership application agreement or the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- the January 2023 letter says that it was represented to Mr and Mrs H by the holiday company that: their existing holiday product was unsellable and that they were required to purchase some membership credits if they intended to sell their product at a profit; the holiday company was ceasing to trade in timeshare apartments and

was starting a membership credits system instead; and the membership credits were available at a special price but only if purchased on that day;

- the January 2023 letter and the addendum provided in response to our investigator's recommendation describe the alleged misrepresentations that were made to Mr and Mrs H by the holiday company but neither Mr and Mrs H 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 H before their November 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr and Mrs H 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 or that there's been a breach by the holiday company of the Consumer Protection from Unfair Trading Regulations;
- Mr and Mrs H's complaint form and the addendum provided by their representative say that the Timeshare Regulations required the holiday company to provide Mr and Mrs H 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;
- I don't consider that the holiday company was required to inform Mr and Mrs H of the value on the open market of the membership credits or their likely value on the open market in the future - and I don't consider that Mr and Mrs H and their representative have provided all of the documentation that would have been provided to Mr and Mrs H at the time of the purchase;
- Mr and Mrs H had made purchases from the holiday company in March 2012 and March 2015 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 November 2018 and I'm not persuaded that there's enough evidence to show that there's been a breach of the Timeshare Regulations;
- the January 2023 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Mr and Mrs H 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 H 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 H 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 H and Vacation Finance;
- having carefully considered all of the information and evidence that Mr and Mrs H and their representative have provided, I'm not persuaded that there's enough evidence to show that Mr and Mrs H'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 H and Vacation Finance in these circumstances;

- I sympathise with Mr and Mrs H for the issues that they've had with their membership credits and any financial difficulties that they've experienced, 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 H 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 H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 20 March 2024.

Jarrold Hastings

Ombudsman