

The complaint

Mr J complains that Vacation Finance Limited won't refund to him the money that he paid for some holiday club membership credits. He's being represented in his complaint by a claims management company.

What happened

Mr J and his wife entered into a membership application agreement to buy 8,000 level two holiday club membership credits from a holiday company in October 2018. The membership price was £14,000, they paid a deposit of £4,200 and I understand that Mr J entered into a fixed sum loan agreement with Vacation Finance for a loan to pay the balance of £9,800 – though I've not been provided with a copy of the loan agreement. The membership application agreement says that the monthly loan repayment was £127.35.

Mr J's representative made claims, on behalf of Mr J, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in February 2023. The representative's letter to Vacation Finance included claims that: the membership credits were mis-sold to Mr J and his wife and, but for the misrepresentations made to them, they wouldn't have purchased them and Mr J wouldn't have 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 J and his wife as an investment, contrary to the Timeshare Regulations, and using high pressure sales practices; 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 responded to those claims in detail 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 J and his wife at the time of purchase, that it had lent to Mr J in a responsible manner and didn't uphold any of the claims. Mr J wasn't satisfied with its response so a complaint was made to this service.

Mr J's complaint form says that: Vacation Finance paid a commission to the holiday company which wasn't declared to him; the holiday company failed to conduct a proper assessment of his ability to afford the loan, unduly pressured him and his wife into entering into the membership application agreement and him into entering into 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 J's complaint should be upheld. He said that he hadn't seen enough to suggest that the relationship between Mr J and Vacation Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He wasn't persuaded that there was a misrepresentation at the time of sale or

that there had been a breach of contract. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr J.

Mr J didn't accept our investigator's recommendation and his representative says that it would like the matter referred to an ombudsman for a decision. It has provided a submission containing Mr J's additional arguments which say, in summary and amongst other things, that:

- the membership credits were marketed and sold to Mr J and his wife as an investment that was extremely desirable and could easily be resold at a profit;
- it was represented to Mr J and his wife that the membership credits were available at a special price but only if purchased on that day and they were subjected to aggressive commercial practices in breach of the Consumer Protection from Unfair Trading Regulations 2008;
- 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;
- Mr J and his wife had bought a holiday product from the holiday company in December 2017;
- the holiday company misrepresented the membership credits to Mr J and his wife and, were it not for the misrepresentation, they wouldn't have purchased them;
- 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 J and his wife sufficient information for them to make an informed contractual decision; and
- Vacation Finance has failed to demonstrate adequate oversight of the broker of the loan and it was irresponsible for it to have lent to Mr J.

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 J's complaint shouldn't be upheld for these reasons:

- Mr J and his wife had bought a holiday product from the holiday company in December 2017 and they then signed the membership application agreement in October 2018 to buy 8,000 level two holiday club membership credits;
- Mr J's representative's February 2023 letter to Vacation Finance says that Mr J and his wife believed that they were trading in the holiday product that they'd purchased in December 2017 but subsequently found out that that wasn't the case – but I've seen no evidence to show that the holiday company had agreed to accept a trade-in and Mr J's representative's submission in response to our investigator's recommendation says that a complaint about the loan that was taken out to pay for that product was successful;
- the membership application agreement refers to terms and conditions but I've not been provided with them or any of the other documents that I consider it to be likely that Mr J and his wife would also have signed with the holiday company in October 2018;

- Mr J's representative made claims to Vacation Finance in February 2023 about the membership application agreement that Mr J and his wife had entered into in October 2018 and Mr J 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;
- 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 February 2023 letter says that it was represented to Mr J and his wife 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 for a greatly reduced discount price but only if purchased on that day;
- neither Mr J nor his 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 J and his wife before their October 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr J and his wife 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;
- the February 2023 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 Mr J and his wife'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 75 in these circumstances;
- the February 2023 letter also says that Mr J's relationship with Vacation Finance was unfair and Mr J's complaint form says that: Vacation Finance paid a commission to the holiday company which wasn't declared to him; the holiday company failed to

conduct a proper assessment of his ability to afford the loan, unduly pressured him and his wife into entering into the membership application agreement and him into entering into the loan agreement and used aggressive commercial practices to pressure 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 connection with the loan that it made to Mr J;
- Vacation Finance said in June 2023 that it followed its usual process and conducted an appropriate affordability assessment before the loan was made to Mr J and that he'd successfully paid all instalments without any issues - but it hasn't provided any further information about the affordability assessment that it conducted;
- the February 2023 letter says that since entering into the loan agreement with Vacation Finance, Mr J is really struggling financially as having two loans to pay is a huge burden each month but neither Mr J nor his representative has provided any detailed information about Mr J's financial situation in October 2018 when the loan was made to him or about the financial difficulties that he's experienced since then;
- the loan was made to Mr J in October 2018 but I've seen no evidence to show that he complained to Vacation Finance about the affordability checks that it had conducted until his representative's February 2023 letter – if he was struggling financially and the loan was unaffordable for him I consider that it would be reasonable to expect him to have contacted Vacation Finance about that issue sooner than he did;
- Vacation Finance said in June 2023 that, should Mr J's financial position have changed, he was more than welcome to contact it in order to discuss an amicable solution, but I've seen no evidence to show that he's done so;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr J in October 2018 when it was made to him, that Vacation Finance didn't assess the affordability of the loan for him, that Vacation Finance lent to him irresponsibly or that it has acted incorrectly in connection with the loan;
- Mr J and his wife had the right to withdraw from the membership application agreement within fourteen days without giving any reason and Mr J had the right to withdraw from the loan agreement within fourteen days without giving any reason but I've seen no evidence to show that Mr J 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;
- Mr J signed those agreements in October 2018 but I've seen no evidence to show that he complained to either the holiday company or Vacation Finance about the undue pressure that he claims was applied to him and his wife until his representative's February 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 Mr J to have contacted either the holiday company or Vacation Finance about that issue sooner than he did;
- I'm not persuaded that there's enough evidence to show that Mr J and his wife were unduly pressured into entering into the membership application agreement or that Mr J was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;

- Mr J's complaint form says that the Timeshare Regulations require the holiday company to provide Mr J and his wife 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 J nor his representative has identified the information that Mr J and his wife required to make an informed decision regarding the purchase but that wasn't provided to them by the holiday company - and I don't consider that they've provided all of the documentation that would have been provided to Mr J and his wife at the time of the purchase;
- Mr J and his wife had made a purchase from the holiday company in December 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 October 2018 so I'm not persuaded that there's enough evidence to show that there's been a breach of any of those regulations as alleged;
- the February 2023 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Mr J nor his 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 J and his wife 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 J and his wife 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 J and Vacation Finance;
- having carefully considered all of the information and evidence that Mr J and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr J'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 J and Vacation Finance in these circumstances;
- I sympathise with Mr J for the issues that he and his wife have had with their membership credits and the financial struggles to which his representative has referred, 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 J any of the money that he's paid under the loan agreement, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 1 April 2024.

Jarrold Hastings

Ombudsman