

## **The complaint**

Mr N and Mrs T complain about the sale of a timeshare. They say that Vacation Finance Limited (who I'll call Vacation Finance) financed the purchase and that they therefore have claims against it.

Mr N and Mrs T have brought their complaint through a representative, so references to their submissions and arguments include those made on their behalf.

## **What happened**

I issued a provisional decision on this complaint in February 2024. An extract from that provisional decision is set out below.

*In May 2019 Mr N and Mrs T bought a timeshare with a company I will call "Az". The purchase was funded through a fixed sum loan with Vacation Finance.*

*Mr N and Mrs T complained to Vacation Finance in November 2022. Their claim was detailed but in essence they said they had a claim under sections 75 and 140A of the Consumer Credit Act 1974 (CCA) as the agreement had been misrepresented to them, there had been a breach of contract, and there had been an unfair relationship. They also said that Vacation Finance hadn't performed adequate checks to ensure that the agreement was affordable for them, and that the credit broker was not licensed to broker the finance agreement. They were also concerned that the supplier was in liquidation and that they would, therefore, be unable to make use of the timeshare product.*

*Vacation Finance didn't uphold Mr N and Mrs T's complaint, so they escalated it to this Service.*

*Our investigator considered what had happened but wasn't persuaded there was sufficient evidence to support the complaint.*

*Mr N and Mrs T didn't agree and, in particular, they provided financial information from around the time of sale that they said demonstrated they didn't have sufficient funds available to them to be able to sustainably afford the finance that was provided. Mr N and Mrs T asked for a decision by an ombudsman.*

## **What I've provisionally 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.*

*I'm issuing a provisional decision here as I can see we didn't respond to all of the issues. I'm not currently expecting to uphold the complaint.*

*I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry*

*practice at the relevant time.*

*The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.*

### **The claim under the CCA**

*When something goes wrong and the payment was made with a fixed sum loan, as was the case here, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.*

*From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.*

*Section 56 of the CCA is relevant in the context of section 140A of the CCA that Mr N and Mrs T also rely on, as the pre-contractual acts or omissions of the credit broker or supplier will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mr N and Mrs T and the lender.*

*It's not for me to decide the outcome of a legal claim Mr N and Mrs T may have under sections 75 or 140A but I'm required to take the provisions into account when deciding whether the lender was reasonable to reject their claims.*

### **The claim under section 75 of the CCA**

*Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.*

*Mr N and Mrs T say the agreement was misrepresented to them as an investment and that they were promised it would increase in value.*

*The purchase agreement explains that Mr N and Mrs T paid for membership of a timeshare club in which they purchased Vendor credits to use each year giving them occupation rights. I've not seen any evidence that would lead me to conclude that Mr N and Mrs T were given false information that the timeshare membership they were buying was an investment. It appears from the Standard Information form that a resale program would be in place from 2024 but would be subject to "offer and demand". I don't think that suggests there was any promise the timeshare could be resold or that it would appreciate in value.*

*I don't, therefore, think I have sufficient evidence the timeshare product was misrepresented as an investment or that Mr N and Mrs T were likely to have been promised they could sell it back at any time.*

*Mr N and Mrs T say that Az is in liquidation. That may mean they have a claim for breach of contract. It seems that liquidation proceedings were started in Spain in or around December 2020. But those concerned sales companies, which are no longer operating. I understand,*

*however, that the holiday club is still operating and that, subject to members fulfilling their obligations in respect of management fees, for example, facilities remain available. The liquidation of the sales companies does not constitute a breach of contract.*

*I don't, therefore, think Vacation Finance were unreasonable to reject Mr N and Mrs T's section 75 claim.*

### **Broker authorisation**

*Mr N and Mrs T argue that the broker wasn't authorised by the Financial Conduct Authority to arrange the credit agreement on Vacation Finance's behalf. They say this breached the General Prohibition (section 19 of the Financial Services and Markets Act (2000)).*

*However, our records indicate that the broker was authorised at the time of sale.*

*So, I don't uphold this part of Mr N and Mrs T's complaint.*

### **The claim under section 140A of the CCA**

*Section 140A CCA looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement (taken together with any related agreement).*

*I do not consider it likely that a court would conclude that the lender's acts and/or omissions, or those of the supplier or credit broker as agents of the lender, generated an unfair debtor – creditor relationship.*

*Mr N and Mrs T's representative says that a termination provision in their timeshare agreement meant they would forfeit the entire purchase price if they missed payments. I've not seen that Mr N and Mrs T experienced any loss as a result of that clause and I am not persuaded that the mere existence of a potentially unfair foreclosure term in their purchase agreement, when it wasn't operated unfairly, would likely lead a court to find the debtor-creditor relationship was unfair on this occasion.*

*One of the main aims of both the Timeshare, Holiday Products, Resale and Exchange Contract Regulations 2010 and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR's) was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. If a supplier's disclosure and/or the terms of a bargain didn't recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may amount to unfairness under S.140A.*

*Mr N and Mrs T suggest that Vacation Finance paid Az a commission, but Vacation Finance have explained that no commission was received so, I don't think there was any unfairness. And, even if I'm wrong about that and a commission was paid, Az wasn't acting as an agent of Mr N and Mrs T but as the supplier of contractual rights they obtained under the purchase agreement. And, in relation to the loan, based on what I've seen, I don't think it was Az's role to make an impartial or disinterested recommendation or to give Mr N and Mrs T advice or information on that basis. I think it's unlikely a court would find that the failure to disclose any commission, if indeed any was paid in this case, created an unfair relationship under s.140A.*

*Overall, I don't think Vacation Finance were wrong to reject the claim under s140A.*

### **Was the loan irresponsible?**

*Mr N and Mrs T says that Vacation Finance was in breach of its obligations to carry out an adequate credit assessment to determine whether they could afford to repay the loan.*

*However, when considering a complaint about unaffordable lending, a large consideration is whether the borrowing was likely to prove unaffordable in practice and whether the complainant has actually lost out due to any failings on the part of the lender. So even if I was persuaded that the lender did not do appropriate checks (and I make no such finding), for me to say it needed to do something to put things right, I would need to see that the credit granted by them was likely to be unaffordable and that Mr N and Mrs T suffered a loss as a result.*

*Mr N has provided a copy of his bank statements from around the time of sale, and he's provided an income and expenditure calculation that appears to be an assessment of his and Mrs T's current income and outgoings, not those at the time of sale. The bank statements don't show the income or some of the expenses he's detailed, so it seems there must be another account. I also note that Mrs T has not provided any bank statements. I'm not persuaded on that information that there is sufficient to suggest the credit provided by Vacation Finance wasn't sustainably affordable for Mr N and Mrs T.*

*I am not, therefore, persuaded that Vacation Finance were unreasonable to reject that element of Mr N and Mrs T's complaint.*

### ***My provisional decision***

*For the reasons I've given above, I'm not expecting to uphold this complaint.*

### **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.

No further comments or evidence was provided so I have seen no reason to change my provisional decision.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs T to accept or reject my decision before 17 April 2024.

Phillip McMahon  
**Ombudsman**