

## **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 entered into a membership application agreement to buy 39,000 level five holiday club membership credits from a holiday company in August 2018. The membership price was £20,000, they paid a deposit of £6,000 and entered into a fixed sum loan agreement with Vacation Finance for a loan of £14,000. They agreed to make 120 monthly payments of £181.92 to Vacation Finance but they repaid the loan in October 2018.

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 July 2020. 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; the membership credits were sold to Mr and Mrs H as an investment, contrary to the Timeshare Regulations, and under extreme 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 until January 2023. It then provided a detailed response to them 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 H at the time of purchase, that it had lent to them in a responsible manner and that it didn't uphold any of the claims. Mr and Mrs H weren't satisfied with its response so a complaint was made to this service.

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; 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 as he didn't think that Vacation Finance's decision to turn down the claims was unfair or unreasonable. He wasn't persuaded that there was a misrepresentation at the time of sale or that the holiday company had breached the 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 said that they would like the matter referred to an ombudsman for a decision. It has provided an addendum containing Mr and Mrs H's additional arguments which says, in summary and amongst other things, that: the membership credits were sold to Mr and Mrs H as an investment that was extremely desirable and could easily be resold at a profit; they already owned an existing holiday product that had been previously sold to them by the holiday company as a highly desirable product which could be easily sold at a profit and it was represented that they should consider making another purchase of a more premium product which would be easier to sell as part of the holiday company's re-sale scheme and make a higher profit for them; it was represented to them that the membership credits were available at a special price but only if purchased on that day; since entering into the agreements, Mr and Mrs H's circumstances have changed; the resale programme opened in 2015 and is now discontinued; the holiday company breached the Timeshare Regulations and misrepresented the membership credits as something that could be re-sold easily in the future; and, were it not for the representations, Mr and Mrs H wouldn't have purchased the membership credits.

### **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 four times between June 2009 and July 2016 and they entered into a membership application agreement in August 2018 to buy 39,000 level five holiday club membership credits from the holiday company;
- Mr and Mrs H have provided a summary of the membership application agreement and an annex from the agreement but they haven't provided a copy of the whole membership application agreement or the other documents that I consider it to be likely that they would have signed with the holiday company at that time;
- Mr and Mrs H also signed the loan agreement in August 2018 for a loan of £14,000 from Vacation Finance and pre-contract credit information about that loan - they agreed to make 120 monthly payments of £181.92 to Vacation Finance but Vacation Finance says that the loan was repaid in October 2018;
- Mr and Mrs H's representative made claims to Vacation Finance in July 2020 about the membership application agreement that Mr and Mrs H had entered into in August 2018 and Mr and Mrs H then made a complaint to this service – the representative's letter 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 July 2020 letter says 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 and it described the representations that were made to them by the holiday company, including that: this was an amazing opportunity only available on that day for them to purchase the membership credits that would give them a lot more options; they would be able to use the membership credits to access a huge choice of holidays at luxury resorts worldwide through a third party; they would be able to sell their membership credits in the future at a profit; purchasing the membership credits was too good an opportunity to miss; and they were only available to purchase at a reduced price on that day;
- the letter said that Mr and Mrs H were told that they would be able to book motorhomes, boats and cruises and that it was represented to them that they would be of a very high standard but that was false and misleading as when they booked boats they were very old and tired and not at all what they had been promised;
- the letter also said that Mr and Mrs H were unable to use the membership credits in the manner that had been represented to them and that they established that if they wished to use the third party's service they would have to pay large additional sums which wasn't explained to them prior to entering into the membership application agreement;
- the summary of the membership application shows that Mr and Mrs H agreed to buy 39,000 level five holiday club membership credits from the holiday company in August 2018 for a membership price of £20,000 but I've not been provided with all of the documents that Mr and Mrs H entered into with the holiday company at that time so I can't see what was agreed between them;
- none of Mr and Mrs H and 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 August 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;
- the July 2020 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 membership 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 and Mrs H's use of their membership credits has been adversely impacted by the liquidation of the holiday company;

- Mr and Mrs H's representative has described issues that Mr and Mrs H have had with their use of their membership credits but I'm not persuaded that there's enough evidence to show that there's been a breach of the membership application agreement or any other breach of contract by the holiday company for which Vacation Finance would be liable under section 75;
- the July 2020 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; 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;
- 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 and that they paid off the full amount of the loan in October 2018 showing that they were fully capable of affording the loan - but it hasn't provided any further information about the affordability assessment that it conducted;
- none of Mr and Mrs H and their representative has provided any detailed information about Mr and Mrs H's financial situation in August 2018 when the loan was made to them – or to show that the loan wasn't repaid in October 2018;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr and Mrs H in August 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 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 Mr and Mrs H 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 and Mrs H signed those agreements in August 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 July 2020 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;
- Mr and Mrs H's complaint form says that the Timeshare Regulations require 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;

- none of Mr and Mrs H and their representative has identified the information that Mr and Mrs H 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 and Mrs H at the time of the purchase;
- Mr and Mrs H had made four purchases from the holiday company between June 2009 and July 2016 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 August 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 July 2020 letter also says that the terms of the agreement are so egregious so as to be unfair but I've not been provided with all of the documents that they signed in August 2018 and none of Mr and Mrs H and 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;
- there was a significant delay in Vacation Finance's response to the claims that had been made to it but it explained the reasons for the delay and apologised for any inconvenience caused and I consider that its response to those claims was fair and reasonable in the circumstances; and
- I sympathise with Mr and Mrs H 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 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 21 February 2024.

Jarrod Hastings  
**Ombudsman**