

The complaint

Mrs A and Mr M complain that Vacation Finance Limited won't refund to them the money that they paid for a holiday club membership. They're being represented in their complaint by a legal adviser.

What happened

Mrs A and Mr M entered into a membership application agreement to buy a holiday club membership from a holiday company in November 2017. The membership fee was €25,600 and they signed a loan agreement with Vacation Finance. The loan agreement shows that the cash price was €25,600, Mrs A and Mr M paid a deposit of €7,680, the loan amount was €17,920 and they were to make 120 monthly payments of €232.81 to Vacation Finance. Vacation Finance says that the loan wasn't taken and no loan account was opened. It says that all payments received from Mrs A and Mr M were used against an outstanding balance owed to the holiday company to pay off the deposit.

Mrs A and Mr M's representative made claims, on behalf of Mrs A and Mr M, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in March 2022. The representative's letter says that Mrs A and Mr M experienced the following misrepresentations: they were told that they had purchased an investment and that the product would considerably appreciate in value; they were promised a considerable return on investment and that in the short term the product would be listed for resale and sold at a profit; they were promised that the product would be sold for an amount which would not only pay off their loan but would also generate profit; they were assured that the duration of their loan agreement would only last until the product was sold; the terms and conditions of the loan weren't explained in detail; and they were rushed through the signing process and signed without reading the documents with due consideration.

The representative's letter also says that: the membership was sold as an investment, contrary to European Directive; the group of companies, including the holiday company, started liquidation proceedings in 2020; the credit intermediary was unauthorised at the time of the loan and that Vacation Finance wasn't permitted to canvass regulated borrower-lender-supplier agreements or regulated consumer hire agreements off trade premises so the credit intermediary has brokered regulated loan agreements against the restriction placed on the authorisation of Vacation Finance which should render the loan agreement unenforceable; the holiday company didn't carry out any affordability assessment, which amounts to irresponsible lending; and the contract contains a clause, which puts Mrs A and Mr M in an unfair position.

Vacation Finance said that it hadn't seen nor been presented with any evidence which would lead it to conclude that the membership was mis-sold or misrepresented to Mrs A and Mr M at the time of purchase so it didn't uphold any of the claims. Mrs A and Mr M weren't satisfied with its response so a complaint was made to this service.

Our investigator didn't recommend that Mrs A and Mr M's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale. She said that she hadn't seen enough to suggest that the relationship between Mrs A and Mr M and Vacation

Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs A and Mr M and she could see that the credit intermediary was authorised at the time of sale and had the relevant licence to arrange the loan.

Mrs A and Mr M's representative says that Mrs A and Mr M aren't happy with our investigator's recommendation and would like an ombudsman to review their complaint. It has described the reasons that it considers that Mrs A and Mr M's complaint should be upheld and says that they didn't receive sufficient information regarding the cost of the maintenance fees in order to make an informed decision and that they don't have any recollection of being advised of any commission paid by Vacation Finance to the holiday company in connection with the loan.

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 Mrs A and Mr M's complaint shouldn't be upheld for these reasons:

- Mrs A and Mrs M have provided copies of the membership application agreement, its terms and conditions and the loan agreement that they signed in November 2017 – those documents aren't in English so they've also provided translations of them by a certified court interpreter;
- I consider it to be likely that Mrs A and Mrs M would also have signed other documents about their purchase with the holiday company in November 2017 but no other documents have been provided;
- Mrs A and Mr M's representative made claims to Vacation Finance in March 2022 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;
- Vacation Finance says that the loan was never taken and no loan account was opened as all payments received from Mrs A and Mrs M were used against an outstanding balance owed to the holiday company to pay off the deposit so all allegations and claims relating to a loan agreement aren't upheld and are irrelevant;
- if Mrs A and Mr M didn't use a loan from Vacation Finance to pay part of the membership fee to the holiday company then they wouldn't be able to make claims to Vacation Finance under sections 75 and 140A about the membership application agreement and I wouldn't be able to uphold their complaint but Vacation Finance responded to those claims so I've considered whether its response was fair and reasonable in the circumstances;
- Mrs A and Mr M's representative's March 2022 letter says that Mrs A and Mr M experienced the following misrepresentations: they were told that they had

purchased an investment and that the product would considerably appreciate in value; they were promised a considerable return on investment and that in the short term the product would be listed for resale and sold at a profit; and they were promised that the product would be sold for an amount which would not only pay off their loan but would also generate profit; they were assured that the duration of their loan agreement would only last until the product was sold; the terms and conditions of the loan weren't explained in detail; and they were rushed through the signing process and signed without reading the documents with due consideration;

- I consider it to be clear from the translation of the membership application agreement that Mrs A and Mr M had bought a holiday club membership which gave them the right to use a specified vacation week until 2045;
- none of Mrs A and Mr M 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 Mrs A and Mr M before their November 2017 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs A and Mr M that the membership was an investment, that the membership was 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 sold the membership as an investment, contrary to European Directive;
- Mrs A and Mr M's representative's March 2022 letter also refers to a liquidation procedure that started in 2020 but I've seen no evidence to show that the holiday company has stopped trading or that the membership isn't available for Mrs A and Mr M to use and I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company for which Vacation Finance would be liable under section 75 in these circumstances;
- Mrs A and Mr M's representative's March 2022 letter also says that the credit intermediary was unauthorised in November 2017 and that Vacation Finance wasn't permitted to canvass regulated borrower-lender-supplier agreements or regulated consumer hire agreements off trade premises so the credit intermediary has brokered regulated loan agreements against the restriction placed on the authorisation of Vacation Finance which should render the loan agreement unenforceable;
- the credit intermediary was identified on the translation of the loan agreement and I can see that that credit intermediary was authorised by the Financial Conduct Authority in November 2017 – I can also see that Vacation Finance wasn't permitted to canvass regulated borrower-lender-supplier agreements or regulated consumer hire agreements off trade premises but I don't consider that that restriction would have prevented it, or the credit intermediary, from canvassing a debtor-creditor agreement, such as the loan agreement, to Mrs A and Mr M;
- I'm not persuaded that Mrs A and Mr M's representative has provided enough evidence to show that the credit intermediary was unauthorised in November 2017 or that it brokered the loan agreement against a restriction placed on the authorisation of Vacation Finance or that the loan agreement is unenforceable;
- the letter also says that the holiday company didn't carry out any affordability assessment, which amounts to irresponsible lending – but Vacation Finance says that the loan was never taken and no loan account was opened and it hasn't provided any information about the affordability assessment that it conducted;

- none of Mrs A and Mr M and their representative has provided any detailed information about Mrs A and Mr M's financial situation in November 2017, when any loan would have been made to them, and I'm not persuaded that there's enough evidence to show that Vacation Finance has acted incorrectly in connection with the loan;
- Mrs A and Mr M's representative's March 2022 letter says that Mrs A and Mr M were assured that the duration of their loan agreement would only last until the product was sold; the terms and conditions of the loan weren't explained in detail; and they were rushed through the signing process and signed without reading the documents with due consideration;
- I consider it to be clear from the translation of the membership application agreement that the membership would be valid until 2045 and from the translation of the loan agreement that Mrs A and Mr M had agreed that to make 120 monthly payments to Vacation Finance – so the loan was to continue for ten years;
- the translation of the loan agreement says, immediately above where they would have signed: *"This document contains the terms of the contract They describe what you consent to, your legal rights, what happens if you do not repay the loan as well as other clauses and information. Read the terms carefully before signing this contract"* – so Mrs A and Mr M had agreed that they'd read the loan agreement;
- the translation of the terms and conditions that were signed by Mrs A and Mr M say that they were entitled to revoke or terminate the membership application agreement within fourteen days without stating the reasons - but I've seen no evidence to show that they contacted the holiday company to withdraw from the membership application agreement within the withdrawal period;
- if Mrs A and Mr M didn't want to buy the membership, I consider that it would be reasonable to expect them to have contacted the holiday company or Vacation Finance soon after they'd entered into the membership application agreement but I've seen no evidence to show that they complained about any issues with the way that the membership application agreement and any loan agreement were sold to them until their representative's letter to Vacation Finance in March 2022;
- Mrs A and Mr M's representative's March 2022 letter says that the contract contains a clause, which puts Mrs A and Mr M in an unfair position because it allows the holiday company to terminate the agreement and revoke the membership if there's a failure to pay any annual membership renewal fees;
- it would be for a court to determine whether or not any of the terms in the membership application agreement, or any other documents that Mrs A and Mr M entered into with the holiday company, are unfair;
- 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 Mrs A and Mr M 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 Mrs A and Mr M and Vacation Finance;
- Mrs A and Mrs M's representative says in response to our investigator's recommendation that Mrs A and Mr M didn't receive sufficient information regarding

the cost of the maintenance fees in order to make an informed decision – but information about the annual membership renewal fee was contained in the translation of the terms and conditions that Mrs A and Mr M signed and I'm not persuaded that there's enough evidence to show that they didn't receive sufficient information about those fees in order to make an informed decision;

- Mrs A and Mrs M's representative also says in response to our investigator's recommendation that Mrs A and Mr M don't have any recollection of being advised of any commission paid by Vacation Finance to the holiday company in connection with the loan but Vacation Finance says that the loan was never taken and no loan account was opened and it hasn't provided any information about any commission that it paid to the holiday company in relation to Mrs A and Mr M's loan;
- from what this service has seen across the industry, if commission was ever paid it tended to be low and of less than 15% and I'm satisfied that Vacation Finance wouldn't have breached any duty in making any such payment – nor was it under any regulatory duty to disclose the amount of any commission paid in these circumstances - and I don't consider that the level of any commission that was normally paid in this type of situation was sufficiently high to mean that Vacation Finance should have appreciated that not disclosing any commission to Mrs A and Mr M risked the relationship being unfair under section 140A;
- having carefully considered all of the information and evidence that Mrs M and Mr A and their representative have provided, I'm not persuaded that there's enough evidence to show that Mrs A and Mr M'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 Mrs A and Mr M and Vacation Finance in these circumstances;
- I sympathise with Mrs A and Mr M for the issues that they've had with their membership but I consider that Vacation Finance's response to the claims that had been made to it was fair and reasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Vacation Finance to refund to Mrs A and Mr M any of the money that they've paid for the membership, 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 Mrs A and Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr M to accept or reject my decision before 21 February 2024.

Jarrold Hastings
Ombudsman