DRN-4364329

The complaint

Mr and Mrs F have complained that Vacation Finance Limited ("VFL") needed to pay compensation arising out of the sale of a holiday product bought using a VFL loan.

What happened

In June 2019, Mr and Mrs F took out an agreement with a holiday product supplier ("the Supplier"). Under the agreement, they purchased 26,325 credits or points, which could be used toward taking holidays, at a cost of £21,000. To pay for this, Mr and Mrs F paid a deposit of £3,150 and then borrowed £17,850 from VFL over ten years.

In June 2021, Mr and Mrs F, with the help of a professional representative ("PR"), wrote to VFL setting out problems they said there were with the sale of the timeshare. PR set out a number of issues and concerns that it argued VFL were responsible to answer under the operation of ss.75 and 140A of the Consumer Credit Act 1974 ("CCA"). Those concerns included:

- The Supplier are now in liquidation, so it cannot supply the services under the timeshare. This amounted to a breach of contract and therefore VFL was jointly liable to answer a claim under s.75 CCA.
- PR said that Mr and Mrs F were on holiday and met with the Supplier. At the time they were frustrated that an existing timeshare they held had not been sold, despite it being placed for sale.
- Mr and Mrs F said this previous timeshare had been sold to them as an investment that could be sold later at a profit.
- The Supplier explained that it was no longer selling timeshare apartments, but it now sold membership to a points-based system where points could be exchanged to book holidays in different locations.
- The Supplier said that under the new system there were no maintenance fees for five years and the offer to change to the new system for the stated price was only available that day.
- As the system was changing, Mr and Mrs F felt they didn't have much of a choice but to buy points.
- The representations that were made were false and therefore VFL was jointly liable to answer a misrepresentation claim under s.75 CCA.
- In particular, annual management fees increased in subsequent years and the timeshare was not able to be sold.
- The payment of commission by VFL to the Supplier had been hidden from Mr and Mr F.
- No credit checks were carried out when deciding to lend to Mr and Mrs F.
- The sale breached The Consumer Protection from Unfair Trading Regulations 2008 ("CPUTR") and the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations").
- All of this gave rise to an unfair debtor-creditor relationship as set out in s.140A CCA.

In October 2022, VFL sent its response to PR. It explained that it had taken some time to

reply as the Supplier had entered into liquidation and it now had to speak with the new operator of the holiday club. VFL said it disputed that there was enough evidence to back up any of the allegations made about how the Supplier came to sell the timeshare.

With respect to the specific allegations made, VFL said it was true that the Supplier was only selling points-based memberships and that they could stay at different locations. But VFL said this didn't mean Mr and Mrs F were told they had to buy this product or that their old timeshare was obsolete. Further, there were no maintenance fees to be paid for five years and none were charged, so it wasn't right that the fees had increased as alleged.

VFL thought Mr and Mrs F had the chance to read the contractual documents, but, in any event, there was a fourteen-day withdrawal period in which the timeshare could have been cancelled had Mr and Mrs F changed their minds. VFL also said that the timeshare was being operated by a new operator, so members still had full use of timeshare as set out in the agreement.

VFL also said that it had not paid any commission to the Supplier and it had undertaken affordability checks to make sure Mr and Mrs F could afford the loan.

One of our investigators considered the complaint, but didn't think VFL needed to do anything to answer the concerns raised. He thought there was not enough evidence to conclude that the timeshare had been sold as an investment or that Mr and Mrs F were charged maintenance fees as alleged. Our investigator thought that there did not appear to be any actionable misrepresentation or breach of contract and that there was not enough to say there was an unfair debtor-creditor relationship. Finally, he said there was nothing to suggest that the lending was unaffordable for Mr and Mrs F.

PR, on behalf of Mr and Mrs F, disagreed. It argued that the membership had been sold to Mr and Mrs F as an investment, as had their earlier purchases from the Supplier. PR said that they had bought five products from the Supplier, each time being told the product they held was no longer desirable and so they needed to buy a new one to be able to sell it in the future. They set out the purchases that had been made and said that the Supplier had been 'churning'. PR argued that the Supplier misrepresented membership and points as something that could be easily resold in the future when that was not the case. It also said that the Supplier didn't provide the information it needed to under the Timeshare Regulations. As Mr and Mrs F disagreed with our investigator, the complaint was passed to me for a decision.

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.

When deciding complaints, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

> *"(1) relevant:*
>
> > *(a) law and regulations;*
> > *(b) regulators' rules, guidance and standards;*
> > *(c) codes of practice; and*
>
> *(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."*

Where I need to make a finding of fact based on the evidence, I make my decision on the balance of probabilities. In other words, when I make a finding that something happened, that's because I think it's more likely than not that that thing did happen.

Having considered everything, I don't think there's enough evidence for me to say that this complaint should be upheld.

Is VFL jointly liable for the Supplier's misrepresentations?

Under s.75 CCA, VFL could be liable to answer a claim about the Supplier's misrepresentations and Mr and Mrs F have complained that VFL didn't properly deal with their claim. Having considered what has been said, I think Mr and Mrs F alleged the following misrepresentations were made:

- The credits were something that could be sold later at a profit.
- The Supplier was no longer selling timeshares, so Mr and Mrs F had to buy credits.
- There were no maintenance fees due for five years.
- The price for the credits was only available on the day.

PR has provided its letter of claim, a response to our investigator's view and some of the documents available from the time of sale. The amount of evidence is, therefore, limited in its scope. So I've thought about what evidence I have and whether, on balance, I think there is enough for me to say these representations were made to Mr and Mrs F and, if they were, were they untrue.

Mr and Mrs F haven't set out much detail about what they were told when they came to buy credits from the Supplier in 2019. So it's not clear to me why they say they thought these credits could be sold at a later date to generate a profit. Having read the sales documentation, I haven't seen anything that I think could have created that impression. Further, I don't think there was anything inherent in the Supplier's product that had an obvious investment element to it.

Mr and Mrs F have said that this was the fifth purchase they'd made from the Supplier, believing each previous one to be an investment too.[1] But this product seems to be quite different – rather than buying a right to stay in a specified property, Mr and Mrs F were buying credits they could exchange to use when buying holidays. So I can't see why a previous representation made about a different product would mean they would believe these credits were something that could be sold later for profit. On balance, I don't think there's enough to say this representation was made to Mr and Mrs F.

Mr and Mrs F have said they didn't feel they had much of a choice to buy credits as the previous regime was changing. But they've not said they were told they had to trade in their previous purchases or that they wouldn't be able to use them anymore. VFL has said that the Supplier did stop selling traditional timeshares, so if they were told that I can't say it was untrue. But there's not enough for me to say that Mr and Mrs F were mislead about the need for them to change their membership.

Mr and Mrs F haven't provided any evidence they were asked to pay maintenance fees in the five years after 2019, nor that any demand had increased in price. So I can't say they were misled if they were told no fees would be due for five years.

[1] Although Mr and Mrs F may have believed the previous timeshares were investments when they were bought, I note that at the time of the credit based membership was taken out, they say they were unable to sell their timeshares, so I'm not sure if they still believed this at that stage.

Again, I've not seen anything to show that the price for credits wasn't lower on the date Mr and Mrs F purchased them than on subsequent days. So, even if they were told there was a discounted price that day, I can't say that was untrue.

It follows, I can't say VFL should have accepted liability for any of the alleged misrepresentations of the Supplier.

Is VFL jointly liable for the Supplier's breach of contract?

The Supplier is now insolvent and Mr and Mrs F have argued that this means there was a breach of contract. But I understand that the holiday club is now being run by a different business and Mr and Mrs F haven't pointed to anything they were entitled to under their membership that they're no longer able to get. It follows, I can't see that there was any breach of the membership agreement by the Supplier's insolvency or for any other reason.

Was commission paid to the Supplier by VFL?

This was an allegation made by PR on Mr and Mrs F's behalf. PR hasn't set out why it believes any commission was paid and VFL has said it didn't pay any commission. Based on what I've seen, I can't say that any such commission was paid.

Did VFL carry out the right checks before lending to Mr and Mrs F?

PR said that VFL didn't undertake the right checks of Mr and Mrs F's ability to repay the loan. However, in any complaint about lending there are a number of matters to consider. First, a lender had to undertake reasonable and proportionate checks to make sure a prospective borrower was able to repay any credit in a sustainable way. Secondly, if such checks were not carried out, it is necessary to determine what the right sort of checks would have shown. Finally, if the checks showed that the repayment of the borrowing was not sustainable, did the borrower lose out?

Here, even if the right checks weren't carried out, I've not been provided with anything to show that the lending was not affordable for Mr and Mrs F. In fact they paid around £3,000 for the membership from other means and Mr and Mrs F haven't said they were otherwise heavily indebted at the time of sale. So I'm not persuaded that the complaint should be upheld on that basis.

Was VFL party to an unfair debtor-creditor relationship?

PR say that the problems with the Supplier's sale gave rise to an unfair debtor-creditor relationship as defined by s.140A CCA. When considering a complaint about this, I'm able to look at both the actions and agreements between Mr and Mrs F and VFL, but also the agreement with the Supplier funded by the loan and what VFL said at the time it was entered into.

Many of the matters I've set out above could, if proven, have given rise to an unfair debtor-creditor relationship, for example the Supplier's alleged misrepresentations or granting an unaffordable loan. But as I didn't think those allegations were made out, I also don't think they could give rise to an unfair debtor-creditor relationship.

PR has pointed to regulations it says were breached during the sale (CPUTRs and the Timeshare Regulations). But I'm not able to say that any potential breaches lead to an unfair relationship, as I can't see they influenced Mr and Mrs F's decision to take out the membership. For example, PR has said that the Supplier didn't provide all the information it needed to under Reg.12 of the Timeshare Regulations. But PR hasn't set out what

information it thinks wasn't provided, nor has it explained why such information would have been important to Mr and Mrs F at the time of sale. Instead, I think it's likely Mr and Mrs F were interested in the Supplier's credit based membership as they were long standing customers already. So I can't see any reason why there was an unfair debtor-creditor relationship between VFL and Mr and Mrs F.

My final decision

I don't uphold Mr and Mrs F's complaint against Vacation Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 5 March 2024.

Mark Hutchings
Ombudsman