

The complaint

Mr W complains that Vacation Finance Limited won't refund to him the money that he paid for a lifestyle concierge membership. He's being represented in his complaint by a claims management company.

What happened

Mr W's wife says that she and Mr W had bought holiday products in 2012 and 2013 from a holiday company and were then told that, if they took out a lifestyle concierge membership, the holiday company would be able to sell their holiday product for them. Mr W and his wife entered into a membership application form to buy a lifestyle concierge membership from a supplier in May 2016. The joining fee was £6,950, they paid a deposit of £2,125 and Mr W entered into a fixed sum loan agreement with Vacation Finance for a loan of £4,825. He agreed to make 120 monthly repayments of £60.86 to Vacation Finance.

Mr W's representative made claims, on behalf of Mr W, to Vacation Finance under sections 75 and 140A of the Consumer Credit Act 1974 in November 2021. The representative's letter to Vacation Finance included claims that: the membership was mis-sold to Mr W and his wife and, but for the misrepresentations made to them, they wouldn't have purchased it nor entered into the loan agreement; the terms of the agreement are so egregious so as to be unfair and the payment of commission was hidden from view; the membership was sold to them in a high pressured and aggressive sales meeting; and no credit and affordability checks were carried out to establish whether Mr W could afford the purchase.

I've seen no evidence to show that Vacation Finance responded to those claims and Mr W then complained to this service. His complaint form says that: Vacation Finance paid a commission to the supplier which wasn't declared to him; the supplier 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 form and him into entering into the loan agreement and used aggressive commercial practices to pressure them; the membership was misrepresented to them; and the holiday company went into liquidation in January 2020 so is in breach of contract; 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 W's complaint should be upheld as he didn't think that Vacation Finance had acted unfairly. He said that he hadn't seen enough to suggest that the relationship between Mr W 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 were any actionable misrepresentations at the time of sale and he said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr W.

Mr W's representative says that Mr W disagrees with our investigator's recommendation and it said that it would like the matter referred to an ombudsman for a decision. It attached its submissions for the ombudsman, along with supporting documents, which say, in summary and amongst other things, that: the membership was misrepresented as being a mechanism to exit Mr W and his wife's existing timeshare; even if it wasn't misrepresented, the supplier's

actions fall foul of the prohibition of unfair commercial practices in the Consumer Protection from Unfair Trading Regulations 2008; and the supplier engaged in misleading commercial practices and that caused Mr W and his wife to take a transactional decision that they wouldn't have otherwise done.

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

- Mr W's representative made claims to Vacation Finance in November 2021 about the membership application form that Mr W and his wife had entered into in May 2016 and Mr W 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;
- Mr W's wife says that she and Mr W had bought holiday products in 2012 and 2013 from the holiday company and were then told that if they took out a lifestyle concierge membership, the holiday company would be able to sell their holiday product for them so they entered into a membership application form to buy a lifestyle concierge membership from the supplier in May 2016;
- the membership application form says that the supplier would provide a concierge service to its members and that the current services and benefits were shown in Appendix A (but that appendix isn't included with the copy of the membership application form that I've seen);
- there's no reference in the membership application form to the supplier providing any relinquishment services to Mr W and his wife in connection with their existing holiday products;
- Mr W's wife's statement says that Mr W and his wife met with the holiday company in 2016 to discuss why their holiday property couldn't be sold and were advised that, if they took out the lifestyle concierge membership, the holiday company would be able to sell their holiday property for them – but the holiday company isn't the supplier and I've seen no evidence to persuade me that the supplier had agreed that it would provide any relinquishment services to them;
- the statement also says that Mr W and his wife were advised that the lifestyle concierge membership would offer them a dedicated concierge who would arrange all their holidays and flights and would be able to resource good prices and deals – and that they would have a call from their concierge who would introduce themselves and start working on their behalf to obtain those discounted deals but they never received that call and they've been advised that the holiday company has gone into liquidation and the product isn't available;

- it also says that Mr W and his wife have never used the lifestyle concierge membership and haven't been able to sell their holiday product;
- I've not been provided with any evidence to show that the supplier has stopped trading or that it isn't able to provide the concierge services to Mr W and his wife – and none of Mr W, his wife and his representative has described the efforts that Mr W and his wife have made to use their membership;
- I'm not persuaded that there's enough evidence to show that the supplier has breached the membership application form or that the supplier misrepresented the lifestyle concierge membership to Mr W and his wife or that they were induced into entering into the membership application form by any such misrepresentations;
- the November 2021 letter also says that Mr W's relationship with Vacation Finance was unfair and Mr W's complaint form says that: Vacation Finance paid a commission to the supplier which wasn't declared to him; the supplier failed to conduct a proper assessment of his ability to afford the loan; and unduly pressured him and his wife into entering into the membership application form and him into entering into the loan agreement and used aggressive commercial practices to pressure them;
- I've seen no evidence to show that Vacation Finance paid a commission to the supplier in connection with the loan that it made to Mr W and, 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 commission paid in these circumstances - and I don't consider that the level of 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 Mr W risked the relationship being unfair under section 140A;
- neither Mr W nor his representative has provided any detailed information about Mr W's financial situation in May 2016 when the loan was made to him and I've seen no evidence to show that he complained to Vacation Finance about the affordability checks that it had conducted or to say that the loan wasn't affordable for him until his representative's November 2021 letter – if 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;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr W in May 2016 when it was made to him or that Vacation Finance didn't assess the affordability of the loan for him;
- Mr W and his wife signed the membership application form in May 2016 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 Mr W's representative's November 2021 letter – if they'd been unduly pressured into signing the membership application form and didn't want to buy the membership, 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 W and his wife were unduly pressured into entering into the membership application form, that Mr W was unduly pressured into entering into the loan agreement or that the supplier used unacceptably aggressive commercial practices against them;
- nor am I persuaded that there's enough evidence to show that the supplier has breached the Consumer Protection from Unfair Trading Regulations 2008 or that it engaged in misleading commercial practices;

- the November 2021 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Mr W 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 W entered into with the supplier 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 W 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 W and Vacation Finance;
- having carefully considered all of the information and evidence that Mr W and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr W'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 W and Vacation Finance in these circumstances;
- I've seen no evidence to show that Vacation Finance responded to the claims that had been made to it so I can't say that its response to those claims was fair and reasonable – but, if it had responded to those claims, I consider that it would have been fair and reasonable for it not to have upheld them; and
- I sympathise with Mr W for the issues that he and his wife have had with their lifestyle concierge membership, their holiday products and their efforts to relinquish them, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Vacation Finance to refund to him any of the money that he's paid under the loan agreement, to cancel 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 W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 April 2024.

Jarrold Hastings
Ombudsman