

The complaint

Mr L feels that Premium Credit Limited has treated him unfairly in relation to credit provided for a holiday home pitch licence agreement.

What happened

In October 2018 Mr L entered into a Pitch Licence Agreement (the “Contract” for simplicity) for a pitch for his holiday home on a site for holiday homes. I’ll call the company Mr L had this contract with the “Pitch Provider”. The pitch was to run from October 2018 to December 2023. In order to pay for this pitch agreement he entered in a Running Account Credit agreement with Premium Credit which in essence loaned him the money for the pitch fees under the contract. And which he paid back through regular direct debit payments. Mr L also derived income from the holiday home by renting it.

In March 2020 the Pitch Provider closes the site where Mr L had his pitch, in line with Government Regulations due to the Pandemic, which means that not only could not Mr L stay at the pitch, but he could not derive income from it. However the Pitch Provider writes to Mr L to explain that the Contract hasn’t been frustrated and that the amounts due remain due and outstanding payments are accruing as the pitch is still being provided to him. Mr L’s payments to Premium Credit stop and Mr L pursues legal action against the Pitch Provider.

In November 2020 a Court Judgement is issued which concludes there has been no breach of contract by the Pitch Provider. The judge notes Mr L’s claim is without merit.

Mr L also complained to Premium Credit. Its position is that it has done nothing wrong and that there is no persuasive reason for it to take any action here. This is because under its obligations under the Consumer Credit Act 1974 it doesn’t feel it has any liability as it doesn’t feel a breach of contract or material misrepresentation has been made out against the Pitch Provider by Mr L. Mr L remained unhappy, so he brought his complaint to this service.

Our Investigator considered the matter and didn’t feel Premium Credit had done anything wrong and didn’t uphold Mr L’s complaint. Mr L felt this wasn’t fair. So, this complaint comes to me to decide.

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.

Mr L can bring a claim under Section 75 claim of the Consumer Credit Act 1974 and other relevant legislation. The general effect of section 75 is that if Mr L has a claim for misrepresentation or breach of contract against a supplier of goods or services (here the Pitch Provider), he can also bring that claim against the credit provider (here Premium Credit) provided certain conditions are met. I’ve considered these conditions (including financial limits and the required DCS relationship) and am satisfied that they are met in these particular circumstances. So the question is whether the Pitch Provider did breach the

contract or make material misrepresentations to Mr L which he relied on and which led to his detriment.

I should make very clear that this decision is not about the Pitch Provider. It doesn't fall within my remit and thus isn't within my jurisdiction to decide upon. The majority of Mr L's complaint points are about the Pitch Provider. But neither this Service nor I have the powers to settle the dispute Mr L has with the Pitch Provider.

This complaint is solely about Premium Credit and whether it has treated Mr L fairly in its consideration of his S75 claim to it under the Consumer Credit Act and whether it has fairly or unfairly concluded that there was not a breach of contract or misrepresentation by the Pitch Provider that it was responsible for. This is the crux of this issue and I cannot emphasise it enough because it appears to me that some of Mr L's arguments suggest this clear distinction isn't necessarily at the forefront of his thinking.

I do however fully appreciate that Mr L feels he has suffered substantial losses here and that he feels that these should be remediated by Premium Credit. But the question I need to consider is whether the unfairness Mr L points to that he has suffered is due to Premium Credit and if that is the case how it should remedy the matter. It is very clear to me Mr L's strength of feeling on these matters and I have kept central to my thinking the comments about him being wiped out financially by what has happened here.

I should add here that I've considered everything put forward by both parties here, and there is no shortage of arguments made or evidence put forward. I have considered it all. But for brevity and clarity I'll only address the key issues and arguments as I see them.

A court has decided that the Pitch Provider didn't breach the contract with Mr L in a court case in which Mr L was the claimant. So he is well aware of the judgement and the reasons given by the court. Accordingly I don't propose to recount large tracts of it to the parties here. I will note however that the Judge decided that the Pitch Provider hadn't breached the contract between it and Mr L. Clearly to do this the Judge had concluded what the contract between the parties was and what it contained and what the terms were. Mr L has made numerous arguments about what the contract was and that it contained more than the judge decided the contract contained. This service is an alternative dispute resolution service and has no power over a court. Furthermore if Mr L's position is that the judge has erred it is for him to pursue this through the legal processes. It is not for this service to do so. Accordingly I will not make any decision on the court judgement other than to say Premium Credit is entitled to consider it in its consideration of its stance on these matters and its position as made out to this service.

Premium Credit considered these matters and didn't feel that there was any persuasive reason to consider the Contract breached based on what happened and what it knew. It has also pointed to the Court Judgement to support its position. And considering Premium Credit's position and all the evidence I've reviewed (all that has been submitted by the parties to this service) I'm not persuaded that Premium Credit has incorrectly concluded there was no breach of the contract. So I'm not persuaded it should take any further action regarding Mr L's arguments about breach of contract. I say this because I don't think it has treated Mr L unfairly in deciding the contract hasn't been breached.

Mr L has also made arguments about being misrepresented to. I'm not persuaded by these arguments. In summary a misrepresentation is a false statement of fact which is relied upon leading to detriment. In essence there are three tests here, namely was there a false statement of fact, did Mr L materially rely on this false statement of fact and did Mr L lose out as a result of that reliance on the 'misrepresentation'.

Firstly I should note that Mr L in his original complaint form submitted to this service he made no substantial mention of material misrepresentations when he entered into the contract. At that time Mr L sought refunds and reduced fees due to the impact of the Government regulations because he felt that would be fair in the circumstances. He was not arguing he'd entered into an agreement based on a false representation of fact.

These misrepresentation arguments have come later and many of these have been made after losing his court case. I would have expected had Mr L felt he'd been misrepresented to that he'd have made these arguments from the moment he felt they were misrepresentations, so either when they were made or at least when the Pitch Provider stopped access to the Pitch and explained itself to Mr L. As at that time he'd have been aware of these and the ramifications of them. And thus I would have expected these arguments to have been far more vociferously made in the court case than that I can see were made. So considering the circumstances here I'm not persuaded by Mr L says here.

Mr L has argued that he was told things and provided documentation when he entered the contract which he feels are misrepresentations as to the agreement actually made. But as the Investigator pointed out in their assessment (with which I broadly agree with the thinking therein) if there were parts of the contract agreed which were outside the written contract (such the documents Mr L refers to or oral statements) then that would form part of the contract and would have been considered by the judge as being part of the contract or not part of the contract. I should add that some of what Mr L points to is industry guidance and that isn't either law or binding. Accordingly I'm not persuaded Premium Credit has treated Mr L unfairly on this matter of what the terms of the contract were as the judge would have considered what the contract was to reach the conclusion they did.

I've also considered Mr L's representations made latterly as to what these misrepresentations were. I note he gives very little persuasive detail of exactly what was said, who said it, when exactly they were said and what was said about why such misrepresentations (as Mr L describes them) were made (verbally or on documents) as to why those weren't in the agreed contract. And I'm not persuaded Mr L has explained satisfactorily why he didn't make these arguments in his original court claim. Because its clear he considers them material now and says he relied on them so it follows that as soon as he suffered detriment in this matter (not having access to the pitch) he would have been aware of them. Accordingly I'd have expected him to put them to the Court and the judge to decide on them. So I don't think I can give substantial weight to what Mr L says about the misrepresentations he says he's suffered as a result of.

Furthermore I'm not persuaded that Premium Credit have made a mistake in relation to considering whether Mr L has properly demonstrated causation here and that he lost out due directly to the misrepresentations he alleges that were made to him. I think it more likely the losses suffered by Mr L here are related to the arrival of the Pandemic, and because of the impact of the subsequent Government Regulations, and the decisions of the Pitch Provider that followed as a result of those Regulations that didn't breach the contract. As the Judge says:

"the actions of the Defendant were lawful and cannot give rise to a cause of action because for the Defendant to have allowed the Claimant access, such actions would have been unlawful, contrary to public policy and in the case of a corporation, ultra vires, the contracting party, as explained by the Court of Appeal in William Cory v London Corporation [1951]2K8476."

I think it likely that Mr L's losses stem from not having access to his pitch for lawful reasons and thus not having the opportunity to have enjoyment from through staying there himself or deriving income from it. So considering the matter in the round I'm not persuaded that

Premium Credit has erred in its conclusion that there were no material misrepresentations which Mr L relied upon to his detriment in what happened here.

I also note that Mr L decided to remove his holiday home from the Pitch Provider's site and exit the contract. Having considered this I can see this happened and that it happened without any further protracted legal dispute or indeed any significant added unfair losses to Mr L. and clearly it was Mr L's decision to exit due to the circumstances he found himself in. I'm not persuaded that Premium Credit has to remedy anything in relation to how the Pitch Provider liaised with Mr L during those times.

I have seen that Mr L's representative has noted that Mr L has been "*wiped out*" financially. And I'm terribly sorry to hear this. But just because this has happened it doesn't necessarily follow that Premium Credit has treated Mr L unfairly in its consideration of his claim to it.

Mr L has made many comments about feeling pressured into actions. These appear to relate to matters once the pandemic and site closures were well underway. Firstly I should add that this complaint is about Premium Credit and it in terms of what the Pitch Provider did or didn't do Premium Credit is only responsible for any breaches of contract or misrepresentations by the Pitch Provider. It isn't responsible for customer service provided by the Pitch Provider. Premium Credit is responsible for how it treated Mr L in its dealings with him and I'm not persuaded considering all of what happened it treated Mr L unfairly. Notwithstanding all of that I am well aware that the period of time Mr L points to would have likely been traumatic for him considering the circumstances.

Mr L has said the Pitch Provider has committed 'offences' in the sales process. If this was the case then the Police are the proper authority to consider those. And I can only repeat my earlier point that the Judge would have considered what the contract was in their consideration of whether it was breached or not.

Mr L has said he considers the Investigator's approach and subsequent assessment confuses the matter and that the Investigator hasn't understood the heart of the matter. I'm not persuaded by this. I've considered all the evidence here and I think the assessment issued is in line with my thoughts on this matter after having considered the whole matter afresh. I'm not persuaded that Premium Credit has treated Mr L unfairly by concluding that there has not been a breach of contract here or that there was a material misrepresentation which Mr L relied upon to his detriment.

I can well understand that Mr L has suffered terribly about how events have unfolded and I appreciate his desperation in finding some way of recovering the losses he's suffered. But neither his arguments or the evidence I've considered persuade me on balance that Premium Credit has treated him unfairly. And accordingly Mr L's complaint does not succeed. I can appreciate this isn't the decision Mr L wishes to read.

I am also aware that Mr L will be likely to not want to be bound by this decision by accepting it. And if he doesn't accept it then he is free to continue his dispute with the Premium Credit in any manner he sees fit. However this final decision brings to an end this Service's consideration of the merits of Mr L's complaint about Premium Credit Limited. And this service's involvement in the matter.

My final decision

For the above reasons I do not uphold this complaint about Premium Credit Limited. It has nothing further to do in relation to Mr L's complaint about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 April 2022.

Rod Glyn-Thomas
Ombudsman