

The complaint

Mr C complains that Tandem Personal Loans Limited won't refund to him the money that he paid for some holiday club membership credits. He's being represented in his complaint by a claims management company.

What happened

Mr C and his partner had bought a holiday product from a holiday company in November 2017 and they traded in that product and entered into a membership application agreement to buy 9,200 level two holiday club membership credits from the holiday company in May 2018. The purchase price was £18,050 and Mr C also entered into a fixed sum loan agreement with a finance provider for a loan of that amount. He agreed to make 179 monthly repayments of £184.26 and a final payment of £182.74 to the finance provider.

I understand that Mr C and his partner entered into another membership application agreement to buy some more holiday club membership credits from the holiday company in September 2018. The purchase price was £16,500 and Mr C also entered into another fixed sum loan agreement with the finance provider for a loan of that amount. He agreed to make 179 monthly repayments of £168.43 and a final payment of £169.75 to the finance provider.

Mr C's representative made claims, on behalf of Mr C, to the finance provider under sections 75 and 140A of the Consumer Credit Act 1974 in April 2021 about the May 2018 purchase. Mr C's representative then made substantially the same claims, on behalf of Mr C, to the finance provider in November 2021 about the September 2018 purchase. The claims included that: the membership credits were mis-sold to Mr C and his partner and, but for the misrepresentations made to them, they wouldn't have purchased them and Mr C wouldn't have entered into the loan agreements; the holiday company was in liquidation so can't provide the services sold and is in breach of contract; the membership credits were sold to Mr C and his partner as investments, contrary to the Timeshare Regulations, and under extreme sales pressure; the terms of the agreements are so egregious so as to be unfair and the payment of commission was hidden from view; and the holiday company didn't undertake proper affordability checks.

The finance provider responded to those claims in December 2021 and February 2022 and it explained the reasons that it was unable to uphold them. Mr C wasn't satisfied with its responses so he made two complaints to this service. His complaint form relating to the May 2018 purchase says that: the finance provider paid a commission to the holiday company which wasn't declared to him; the holiday company failed to conduct a proper assessment of his ability to afford the loan, unduly pressured him and his partner into entering into the membership application agreement and him into entering into the loan agreement and used aggressive commercial practices to pressure them; and the membership credits were misrepresented to them; all rendering the loan agreement unfair pursuant to section 140A; and it said that the claim should also be considered under section 75. It also said that the holiday company is in liquidation so is in breach of contract.

Mr C's complaint form relating to the September 2018 purchase says that: the finance provider paid a commission to the holiday company which wasn't declared to him; the

holiday company failed to conduct a proper assessment of his ability to afford the loan, unduly pressured him and his partner into entering into the membership application agreement and him into entering into 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.

Mr C's loans were transferred to another finance provider in August 2022 and they were then transferred to Tandem Personal Loans. Our investigator didn't recommend that Mr C's complaints should be upheld as he didn't think that the finance provider's decisions to turn down his claims were unfair or unreasonable. He wasn't persuaded that there were misrepresentations at the times of sale or that there had been breaches of the contracts. He said that he hadn't seen enough to suggest that the relationship between Mr C and the finance provider 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 C.

Mr C's representative, on behalf of Mr C, says that it doesn't agree with our investigator's recommendation and that it wishes for this case to be referred to an ombudsman. It has provided an addendum which says, in summary and amongst other things, that:

- the membership points were sold to Mr C and his partner as investments that could easily be resold at a profit;
- Mr C was unaware of the September 2018 loan and thought he was having his previous loan reduced;
- Mr C and his partner had bought a holiday product from the holiday company in November 2017 and it was represented to them in May 2018 that purchasing membership credits and trading in their existing product was the only method of releasing their investment and that the monies that they would receive would effectively cover the whole purchase price of the credits in 2018;
- the sales agreement shows that the membership credits can't be sold by a member directly but rather through a market made available by the holiday company – and the resale programme opened in 2015 but is now discontinued;
- the Timeshare Regulations prohibited the holiday company from marketing or selling the membership credits as an investment; and
- the holiday company had a responsibility under the Timeshare Regulations to give Mr C and his partner sufficient information for them to make an informed contractual 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.

Having done so, I agree with our investigator that Mr C's complaint shouldn't be upheld for these reasons:

- Mr C's representative says that Mr C and his partner had bought a holiday product from the holiday company in November 2017 and that they then traded in that

product towards the purchase of some membership credits in May 2018 - and they then bought more membership credits in September 2018;

- Mr C has provided a copy of the membership application agreement that he and his partner signed in May 2018 but not the terms and conditions that are referred to in that agreement or any of the other documents that I consider it to be likely that they would also have signed with the holiday company at that time;
- I've not been provided with a copy of the membership application agreement for the purchase that Mr C and his partner made in September 2018 or any of the other documents that I consider it to be likely that they would also have signed with the holiday company at that time;
- Mr C also electronically signed loan agreements in May and September 2018 for loans from the finance provider – and the finance provider has provided copies of the loan documents and also the welcome letters that were sent to Mr C after he'd entered into each of the loans;
- Mr C's representative made claims to the finance provider in April 2021 about the May 2018 purchase and then made substantially the same claims to the finance provider in November 2021 about the September 2018 purchase - the representative's letters to the finance provider 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 the finance provider's responses to them were fair and reasonable in the circumstances;
- Mr C's representative's April 2021 letter says that, before Mr C and his partner's May 2018 purchase: it was represented to them by the holiday company that they wouldn't be able to sell the holiday product which had been sold to them as an investment in November 2017 and the only way they could recover their investment was to trade in that product for membership credits; they were advised that the membership credits would allow them to go anywhere at any time by cashing-in credits, they were upgrading to a one bedroom sea view apartment and the maintenance fees would be waived for twelve months; they were advised that this was the best option for them and that it would be an investment for the future which would allow them to make a profit when they sold their credits – and the letter also says that Mr C and his partner have found availability increasingly poor, the standard of accommodation has decreased in recent years and the cost of annual maintenance has increased well above the rate of inflation;
- Mr C's representative's November 2021 letter says that, before Mr C and his partner's September 2018 purchase: they were told that the holiday company was unable to sell the membership credits that they'd bought in May 2018 and they would need to purchase more membership credits if they were to get their investment back; and it was represented to them that: the holiday company was ceasing to trade in timeshare apartments and was starting a membership credits system and that a further purchase of credits was required to bring them up to a level of credits which would allow them to cash them in at a profit in the future; the membership credits were available at a special price but only if purchased on that day; and that the

holiday company is now in liquidation so is unable to fulfil its obligations so is in breach of contract;

- Mr C wrote on the complaint form for his complaint relating to the May 2018 purchase that the holiday company lied to him, the main selling point being the ability to rent credits back to it for a cash sum, he made it clear that he couldn't afford another loan but was told that it would reduce his payments and upgrade his plan by taking points that he would never use – he also says that he was only aware that he had a second loan when he contacted his bank about his overdraft;
- Mr C has also provided a statement in which he describes the events that took place relating to his and his partner's May and September 2018 purchases;
- I've carefully considered the information in Mr C's representative's two letters and what Mr C says in his complaint form and statement but neither Mr C nor his 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 C before the purchases;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr C that the membership credits were an investment, that the membership credits were misrepresented to him and his partner by the holiday company or that they were induced into entering into the membership application agreements 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;
- both of Mr C's representative's letters to the finance provider say that the holiday company is in liquidation so can't provide the service sold and is in breach of contract but the finance provider says that the holiday club is now operated by a newly appointed management company and at no time have the rights of use and occupation of Mr C and his partner's membership been affected by the liquidation of the previous management company and the appointment of the new management company;
- I consider that the liquidation of the holiday company could be a breach of contract for which Tandem Personal Loans might be liable under section 75 - but I consider the appointment of the new management company to have been a suitable remedy for any breach of contract, and I've seen no evidence to show that Mr C and his partner's use of their membership credits has been adversely impacted by the liquidation of the holiday company;
- Mr C's representative says that Mr C and his partner have found availability increasingly poor, the standard of accommodation has decreased in recent years and the cost of annual maintenance has increased well above the rate of inflation but I'm not persuaded that there's enough evidence to show that there's been any other breach of contract by the holiday company for which Tandem Personal Loans would now be liable under section 75;
- Mr C's representative's letters also say that Mr C's relationship with the finance provider was unfair and Mr C's complaint forms says that: the finance provider paid commissions to the holiday company which weren't declared to him; the holiday company failed to conduct proper assessments of his ability to afford the loans, unduly pressured him and his partner into entering into the membership application agreements and him into entering into the loan agreements 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 September 2018 purchase, in breach of the Timeshare Regulations;

- the finance provider says that all prospective purchasers attend a compliance interview with a compliance and completions manager where every aspect of their purchase is explained to them before signing the documentation and it's an opportunity for the prospective purchaser to raise questions or queries before they confirm that they fully understand every aspect of their purchase and are happy to proceed;
- the finance provider also says that there it had no commission agreement with the holiday company so no commission was declared and I've not been provided with any evidence to show that the finance provider paid a commission to the holiday company in relation to either of the loans that it made to Mr C;
- the finance provider's December 2021 final response letter included the consumer credit search data and a screenshot of income and expenditure for Mr C in relation to the loan that was made to him in May 2018 which, it says, shows that there were full credit checks, including affordability and eligibility, and it says that the holiday company collected the personal data from Mr C on a finance application form which would have been input onto the finance provider's system remotely and Mr C's application for finance was approved;
- the finance provider hasn't provided any other information about the affordability assessments that it conducted but Mr C has provided copies of his bank and savings account statements and our investigator carried out income and expenditure assessments for both the May and September 2018 loans based on the information provided to him and he concluded that Mr C had reasonable disposable income left each month to sustainably afford the repayments of both loans;
- Mr C says that he was only aware that he had a second loan from the finance provider when he contacted his bank about his overdraft - but he'd electronically signed the loan agreement in September 2018 and the finance provider sent him a welcome letter in early October 2018 which described the new loan that he'd taken out and explained his right to withdraw from it;
- that loan was made to Mr C in September 2018 and the welcome letter said that the first payment of £168.43 would be collected from his bank account in November 2018 – so from November 2018 payments of £184.26 and £168.43 were made from his account to the finance provider and I consider that it would be reasonable to expect Mr C to have been aware of those payments and to have contacted the finance provider if he had issues with them – but I've seen no evidence to show that he contacted the finance provider about those payments until his representative's letter to it in April 2021;
- I'm not persuaded that there's enough evidence to show that the loans weren't affordable for Mr C when they were made to him, that the finance provider didn't assess the affordability of the loans for him, that the loans were mis-sold to him or that the finance provider has acted incorrectly in connection with the loans;
- Mr C and his partner had the right to withdraw from the membership application agreements and Mr C had the right to withdraw from the loan agreements within fourteen days without giving any reasons but I've seen no evidence to show that Mr C contacted either the holiday company or the finance provider to withdraw from any of those agreements within the applicable withdrawal periods;
- those agreements were signed in May and September 2018 but I've seen no evidence to show that Mr C complained to either the holiday company or the finance provider about the undue pressure that he claims was applied to him and his partner

until his representative's April 2021 letter – if they'd been unduly pressured into signing the membership application agreements and didn't want to buy the membership credits, I consider that it would be reasonable to expect him to have contacted either the holiday company or the finance provider about that issue sooner than he did;

- Mr C's complaint form relating to the May 2018 purchase says that Mr C and his partner were unduly pressured into entering into the membership application agreement – but if they'd been unduly pressured into buying membership credits in May 2018, I consider that it would be reasonable to expect them not to have then been unduly pressured into buying more membership credits from the holiday company in September 2018, only four months later;
- I'm not persuaded that there's enough evidence to show that Mr C and his partner were unduly pressured into entering into the membership application agreements or that Mr C was unduly pressured into entering the loan agreements or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr C's complaint form relating to the September 2018 purchase says that the Timeshare Regulations require the holiday company to provide Mr C and his partner 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;
- neither Mr C nor his representative has identified the information that Mr C and his partner 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 them at the time of the purchase;
- Mr C and his partner had made purchases from the holiday company in November 2017 and May 2018 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 more membership credits in September 2018 so I'm not persuaded that there's enough evidence to show that there's been a breach of the Timeshare Regulations as alleged;
- Mr C's representative's letters to the finance provider also say that the terms of the agreements are so egregious so as to be unfair but neither Mr C 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 agreements or the other documents that Mr C and his partner 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 C and his partner 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 C and the finance provider (or Tandem Personal Loans);
- having carefully considered all of the information and evidence that Mr C and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr C's relationship with the finance provider (or Tandem Personal Loans) is unfair and I don't consider it to be likely that a court would conclude that there's an

unfair relationship between Mr C and the finance provider (or Tandem Personal Loans) in these circumstances;

- I sympathise with Mr C for the issues that he and his partner have had with their membership credits and the other difficulties that he's described, but I consider that the finance provider's responses to the claims that had been made to it were fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Tandem Personal Loans to refund to Mr C any of the money that he's paid under the loan agreements, to cancel the loan agreements, to pay him any compensation or to take any other action in response to his complaints.

If Mr C is experiencing financial difficulties and can't afford the loan repayments, I suggest that he contacts Tandem Personal Loans and explains his financial situation to it. It's required to respond to any financial difficulties that he's experiencing positively and sympathetically.

My final decision

My decision is that I don't uphold Mr C's complaints.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 March 2024.

Jarrold Hastings
Ombudsman