

## The complaint

Mr B complains that Tandem Personal Loans Limited won't refund to him the money that he paid for a holiday club vacation week. His wife is also involved in his complaint and he's being represented by a claims management company.

## What happened

Mr B and his wife had bought a holiday product from a holiday company in May 2016. The price was £18,000 which they paid using a loan and Mr B says that they paid off the loan in October 2017. They then acquired a vacation week from the holiday company in October 2017 and Mr B says that they traded in the holiday product that they'd bought in May 2016. The price was £35,000, they made a bank transfer of £10,500 and entered into a fixed sum loan agreement with a finance provider for a loan of £24,500. That loan was repaid in February 2018.

Mr B and his wife then entered into a membership application agreement in October 2018 to acquire another vacation week from the holiday company. The membership application price was £42,000 and they entered into a fixed sum loan agreement with a different finance provider for a loan of £35,000. They agreed to make 179 monthly payments of £357.28 and a final payment of £358.44 to that finance provider. The remaining £7,000 was paid using another loan from the finance provider that had lent to them in October 2017. In this decision I will refer to the finance provider of the £35,000 loan as "*the Finance Provider*" and to the finance provider that lent to Mr B and his wife in October 2017 and also lent £7,000 to them in October 2018 as "*the other finance provider*".

Mr B's representative, on behalf of Mr B, made claims to the Finance Provider in January 2022 under sections 75 and 140A of the Consumer Credit Act 1974 about the October 2018 acquisition. The claims include that: the vacation week was mis-sold to Mr B and his wife and, but for the misrepresentations made to them, they wouldn't have purchased it nor entered into the loan agreement; the holiday company was in liquidation and couldn't provide the services sold so was in breach of contract; the terms of the agreement are so egregious as to be unfair; the payment of commission was hidden from view; the vacation week was marketed as an investment in contravention of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 and was sold to Mr B and his wife under extreme sales pressure; proper affordability checks weren't undertaken and Mr B's relationship with the Finance Provider is unfair.

The Finance Provider said that the purchase price of the vacation week was £42,000 which placed Mr B's claim outside the scope of section 75 as the cash price was more than £30,000. It also said that it was under no obligation to respond to or defend any matters arising from allegations made under section 140A, except for those pursuant to actions taken in a civil court having first received and responded to a letter before action.

Mr B wasn't satisfied with its response so complained to this service. His complaint form 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; the vacation week was misrepresented to him and his wife; the holiday

company unduly pressured them into entering into the purchase agreement and him into entering into the loan agreement and used aggressive commercial practices to pressure them; 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 the purchase; all rendering the loan agreement unfair under section 140A; and he says that his claim should also be considered under section 75.

The Finance Provider then transferred Mr B's loan to another finance provider in August 2022 and it provided information about the loan application that was made by Mr B in October 2018 and the reasons that the loan was assessed as affordable for him. The loan has since been transferred to Tandem Personal Loans.

Our investigator didn't recommend that Mr B's complaint should be upheld. She said that the purchase was for a single item with a cash price of £42,000 which wasn't within the limits for a claim under section 75 so section 75 didn't apply to the purchase. She said that she hadn't seen enough to suggest that the relationship between Mr B and the Finance Provider was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She said that she'd not seen any information to confirm that any commission paid to the holiday company by the Finance Provider in relation to this purchase was of an amount that would create an unfair relationship. She didn't think that the checks carried out by the Finance Provider before it agreed to lend to Mr B in October 2018 were reasonable and proportionate but she wasn't persuaded that more detailed checks would have given it a reason to think that the lending was likely to have been unsustainable and unaffordable for him.

Mr B's representative says that Mr B isn't accepting our investigator's recommendation and would like the matter referred to an ombudsman for a decision. Mr B has provided documents about the acquisition that he and his wife made in October 2018 and he says that no checks were carried out by the Finance Provider (at least not ones that were "*reasonable and proportionate*" as he and his wife weren't asked for any information about their income or outgoings and said clearly that the vacation week wasn't affordable for them). He says that their financial reports from that time show that all of their income was being spent and there was no spare money available to cover the additional loan repayments, which he says is supported by the decisions they had to take to keep on top of their finances by re-mortgaging their house and pulling-down part of his pension.

Mr B's representative has provided a document containing detailed submissions from it and Mr B in response to our investigator's recommendation which says, in summary and amongst other things, that: the vacation week was sold to Mr B and his wife as an investment that was extremely desirable and could easily be resold at a profit; Mr B and his wife were responsible for paying maintenance charges and failure to pay them would result in termination of the membership with no refund; there's no viable secondary market for timeshares; the holiday company had a responsibility to give Mr B and his wife sufficient information for them to make an informed contractual decision, including the value on the open market of the product being purchased along with its likely value on the open market in the future; and our investigator has failed to properly assess Mr B's claims under sections 75 and 140A and, had she done so, they would have been upheld. It also described the reasons that they consider that the lending to Mr B was irresponsible.

Similar claims were also made to the other finance provider about the October 2017 and October 2018 acquisitions and a complaint was then made to this service. That complaint has been dealt with separately.

## 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 B's complaint shouldn't be upheld for these reasons:

- Mr B and his wife took out a loan to buy a holiday product from the holiday company in May 2016 and they say that they paid off the loan in October 2017 and Mr B says that they traded in that holiday product for a vacation week from the holiday company in October 2017 which they paid for using a loan from the other finance provider – but that loan was repaid in February 2018 and neither of those loans form part of this complaint;
- Mr B and his wife entered into a membership application agreement in October 2018 to acquire another vacation week from the holiday company and the membership application agreement that they signed shows that they acquired a vacation week each year at a specified club and membership level during high season with a maximum occupancy of two and that the membership application fee was £42,000;
- Mr B entered into a fixed sum loan agreement with the Finance Provider for a loan of £35,000 and Mr B and his wife entered into a separate loan agreement with the other finance provider for a loan of £7,000;
- Mr B's representative, on behalf of Mr B, made claims to the Finance Provider in January 2022 under sections 75 and 140A about the £35,000 loan - 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;
- one of the criteria for a claim under section 75 is that section 75 doesn't apply to a claim that relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000;
- the cash price for the vacation week that Mr B and his wife acquired in October 2018 was £42,000 which is more than the £30,000 maximum limit for a claim under section 75 so I don't consider that Mr B's claim relate to a single item to which the holiday company has attached a cash price exceeding £100 but not more than £30,000 so I find that he's unable to make a claim under section 75 about that acquisition;
- although I can't make a finding in these circumstances on a breach of contract claim under section 75, I understand that the holiday company went into liquidation in May 2020, but I also understand that a new management company has been appointed to provide the services in connection with the vacation week that Mr B and his wife had acquired and that it's available for them to use;
- Mr B's complaint forms say 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; the vacation week was misrepresented to Mr B and his wife; the holiday company unduly pressured them into entering into the purchase agreement and the loan agreement and used aggressive commercial practices to pressure them; 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; all rendering the loan agreement unfair under section 140A;

- although I find that Mr B is unable to make a claim under section 75, he is able to make a claim under section 140A so in this decision I'm considering whether or not the Finance Provider's response to Mr B's section 140A claim was fair and reasonable in the circumstances (I'm not determining the outcome of the claim that he's made under section 140A as only a court would be able to do that);
- Mr B's representative's January 2022 claims letter says that the payment of commission was hidden from view and Mr B's complaint form says that the Finance Provider paid a commission to the holiday company which wasn't declared to him - but I've not been provided with any evidence to show what commission, if any, was paid by the Finance Provider to the holiday company;
- 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 the Finance Provider 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 the Finance Provider should have appreciated that not disclosing any commission to Mr B risked the relationship being unfair under section 140A;
- Mr B's representative's January 2022 claims letter says that proper affordability checks weren't undertaken and Mr B's complaint form says that the holiday company failed to conduct a proper assessment of his ability to afford the loan;
- the Finance Provider has provided a copy of the loan application summary that was created in October 2018 for Mr B's loan and which shows that Mr B was an employed home-owner with an annual income of £43,000 and a monthly mortgage payment of £463 and it also contained information about his other outgoings - the summary also shows that a credit search was made and that an affordability assessment was conducted;
- the finance provider to which Mr B's loan was transferred in August 2022 says that the Finance Provider calculated from Mr B's stated income of £43,000 that he had a monthly net income of £2,718 which exceeded the minimum monthly net income needed to repay the loan;
- it says that the Finance Provider used figures from the Office of National Statistics for Mr B's household expenses which were calculated at £921.85 per month, of which 74% (£682.17) was apportioned to Mr B as his wife had earnings of £12,000 per annum with a monthly net income of £961.89;
- it says that Mr B had £384 per month of active credit commitments that required a regular monthly commitment and £124.89 of minimum payments needed on revolving credit balances and that, after paying for his credit commitments, the mortgage payment, his share of the household expenses and the loan repayment of £357.28, he would be left with £706.66 of disposable income each month which passed the Finance Provider's affordability checks;
- Mr B says that he and his wife weren't asked for any information about their income or outgoings but I consider it to be more likely than not that Mr B did provide some information about his financial situation to the Finance Provider and that it used that information, with other information that it had obtained, to assess the affordability of the loan for him;
- Mr B has provided bank account, credit card account and savings account statements and copies of credit reports for him and his wife and a detailed explanation of their financial situation – he says that they re-mortgaged their house in December 2017 to pay-off their May 2016 loan which provided an additional £53,000

and they used that to pay £22,320 to the other finance provider in February 2018 as the final payment on the October 2017 loan and £10,500 was paid to the holiday company as a deferred payment – and the re-mortgage resulted in their monthly mortgage payment increasing from £357.70 to £626.37;

- Mr B says that he drew down £21,495.27 from his pension plan in November 2019 to help clear their debts and that he took out a personal loan for £18,500 in August 2020 to ease some of their financial pressures and that they re-mortgaged again in May 2021 to clear outstanding loans and credit card bills which had built up due to the financial constraints of their loans which were costing them £448 each month - which provided them with £31,290 but resulted in their monthly mortgage payment increasing to £884.25;
- if Mr B and his wife weren't able to afford the loans that they'd taken out in May 2016 and October 2017, I consider that it would be reasonable to expect them not to have entered into the membership application agreement to acquire another vacation week in October 2018 at a total cost of a further £42,000;
- I've carefully considered all of the information that Mr B has provided about his and his wife's financial situation but I don't consider that it shows that they couldn't afford a loan with a monthly repayment of £357.28 and I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr B when it was made to him in October 2018, the Finance Provider should have done more to assess the affordability of the loan for him, the Finance Provider lent to him irresponsibly, the loan was mis-sold to him or the Finance Provider has acted incorrectly in connection with the loan;
- Mr B's representative's January 2022 claims letter says that it was represented to Mr B and his wife that: they should consider making another purchase of a more premium product which would be easier to sell as part of the holiday company's re-sale scheme and make a higher profit for them; and the product was available at a special price but only if purchased on that day;
- Mr B says that he and his wife were told in October 2018 that the sales price for the unit that they were acquiring was expected to be in the region of £90,000 and that the holiday company was very clever at promoting the sale as an investment and the majority of the time that they were with its representatives was going through sales figures and investment figures rather than the benefits of the membership but all of the figures shown to them were removed and they weren't allowed to take them with them;
- in response to our investigator's recommendation, Mr B has provided a copy of the membership application agreement that he and his wife signed in October 2018 including the terms and conditions, a standard information form, an exchange contract, an initial disclosure document, a relinquishment form and a separate standard form of the withdrawal notice that could be given to withdraw from the agreement;
- Mr and Mrs B signed the standard information form which contained information about the vacation week and the costs, including the annual membership renewal fee and said that the membership would expire in December 2045;
- it also says: *"The resale facility will be available five years from the membership start date. The Resale facility will be available to be applied for on a year to year basis and is subject to demand/offer and availability"*; and the *"... Rental Program is available to be applied for on a year to year basis and is subject to demand/offer and availability"*;

- they also signed the relinquishment form to relinquish their right to use or exchange their vacation weeks until the end of 2019 and the form says: *"We agree and accept by signing this form that no guarantees other than the first one year rental are included in this agreement and that we are able to financially support this Membership purchase"*;
- other than the information described above, neither Mr B 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 B and his wife before they entered into the membership application agreement in October 2018 or any documentary or other evidence in support of his claims about the representations that were made to them;
- our investigator said that she hadn't seen enough to suggest that the relationship between Mr B and the Finance Provider was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair, and in responding to her recommendation, I don't consider that Mr B and his representative have provided further evidence to show that the vacation week that Mr B and his wife acquired in October 2018 was misrepresented to them;
- I'm not persuaded that there's enough evidence to show that the vacation week that Mr B and his wife acquired in October 2018 was misrepresented or mis-sold 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 that vacation week was marketed or sold to Mr B and his wife as an investment so I don't consider that there's been any breach of regulation as claimed by Mr B's representative;
- Mr B's representative's January 2022 claim letter says that the vacation week was sold to Mr B and his wife under extreme sales pressure and Mr B's complaint form says that the holiday company unduly pressured them into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure them - but Mr B and his wife have made the same claims to the other finance provider about their October 2017 acquisition - if they'd been subject to undue pressure and aggressive commercial practices that weren't acceptable to them in October 2017, I consider that it would be reasonable to expect them not to have then entered into a membership application agreement to acquire another vacation week from the holiday company in October 2018;
- Mr B and his wife had bought a holiday product from the holiday company in May 2016 and had acquired a vacation week from the holiday company in October 2017 so I would expect them to have been prepared for the sales tactics that might be used by the holiday company before they went into the sales presentation in October 2018 and that, if they didn't want to acquire another vacation week, they would have made that clear to the holiday company at that time;
- Mr B and his wife also signed a separate standard form of the withdrawal notice that could be given to withdraw from the membership application agreement within fourteen calendar days without giving any reason and the loan agreement clearly set out Mr B's right to withdraw from the loan agreement without giving any reason for fourteen days;
- I've seen no evidence to show that Mr B and his wife tried to withdraw from the membership application agreement or that Mr B tried to withdraw from the loan agreement during the withdrawal periods and Mr B says that they didn't make use of the fourteen day cooling off period as they believed that they had made a good investment;

- I'm not persuaded that there's enough evidence to show that Mr B and his wife were unduly pressured into acquiring the vacation week in October 2018 or that Mr B was unduly pressured into entering into the loan agreement at that time or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr B's complaint form says that he and his wife weren't provided with key information necessary for them to be able to make informed decisions regarding their purchase and the submission made in response to our investigator's recommendation says that the holiday company had a responsibility to give them information about the value on the open market of the product being purchased and its likely future value on the open market – but I'm not persuaded that the holiday company was required to give them those values;
- neither of Mr B nor his representative has identified any other information that was necessary for Mr B and his wife to make an informed decision regarding the purchase but that wasn't provided to them by the holiday company and I'm not persuaded that there's enough evidence to show that there's been a breach of regulation as alleged;
- Mr B's representative says that the terms of the agreement are so egregious as to be unfair and the submission made in response to our investigator's recommendation says that Mr B and his wife were responsible for paying maintenance charges and failure to pay them would result in termination of the membership with no refund but it hasn't identified which of the terms of the membership application agreement it considers to be unfair;
- it would be for a court to determine whether or not any of the terms in the membership application agreement 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 membership application agreement have been applied or operated unfairly against Mr B and his wife and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the agreement created an unfair relationship between Mr B and the Finance Provider or Tandem Personal Loans;
- having considered all of the information and evidence that Mr B and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr B's relationships with the Finance Provider and Tandem Personal Loans are unfair and I don't consider it to be likely that a court would conclude that those relationships are unfair;
- I consider that the Finance Provider should have responded to the claims that had been made to it under section 140A so I can't say that its response to those claims was fair and reasonable – but, if it had properly considered those claims, I consider that it would have been fair and reasonable for it not to have upheld them; and
- I sympathise with Mr B for the issues that he and his wife have had with their vacation week and the difficulties that he's described, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Tandem Personal Loans to refund to Mr B any of the money that he's paid under the loan agreement, to cancel the loan, 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 B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 January 2024.

Jarrold Hastings  
**Ombudsman**