

The complaint

Mr R complains that Tandem Personal Loans Limited won't refund to him the money that he paid for some holiday club membership points. His wife is also involved in his complaint and he's being represented by a legal adviser.

What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follows:

"Mr R and his wife had purchased a total of 268,001 membership points in a holiday club between June 2007 and June 2014. They paid a total of £25,550 for those points. They entered into a purchase agreement with the holiday company in March 2019 to purchase 32,000 more points. The purchase price of those points was £16,896.60 and Mr R entered into a fixed sum loan agreement with a finance provider, that he electronically signed in March 2019, for a loan of that amount. He agreed to make 179 monthly repayments of £172.48 and a final payment of £173.23 to the finance provider.

Mr R's representative made claims, on behalf of Mr R, to the finance provider in June 2020 under sections 75 and 140A of the Consumer Credit Act 1974. It included draft particulars of Mr R's complaint (which also included a complaint about irresponsible lending) and a witness statement from Mr R. The finance provider didn't provide a substantive response to those claims so a complaint was made to this service.

The finance provider then provided a response to Mr R's claims in which it set out the reasons that it said that it was unable to uphold his complaint, including that: Mr R and his wife had been a member of the holiday club since 2007 and had used their membership every year, usually for three weeks; the holiday company had received no complaints from them; during the compliance process they received copies of all contractual documentation which they had read and signed, including a memorandum of understanding about a "points for purchase scheme"; the release of freehold properties had been postponed due to the Covid-19 pandemic but the holiday company was prepared to put the purchase of those points on hold; and it described the responses that Mr R had given in response to a compliance monitoring call in March 2019.

Mr R's representative provided additional submissions following the finance provider's response to Mr R's claims. It also provided what it said was the holiday company's training manual.

Our investigator didn't recommend that Mr R's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale and she said that she hadn't seen enough to suggest that the relationship between Mr R and the finance provider was unfair. She also said that she wasn't persuaded that a court would reach the conclusion that the relationship was unfair and that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr R.

Mr R's loan was transferred to [another finance provider] in August 2022. His representative has provided a detailed complaint submission in response to our investigator's recommendations and has asked for this complaint to be considered by an ombudsman. His representative has also provided a copy of a termination notice that Mr R has received from the holiday company following his failure to pay the management charges in which it says that it has now elected to enforce the foreclosure provisions in the contract and served termination notices. It says that the foreclosure clause and the steps taken by the holiday company to exercise the same gives rise to an unfair relationship and the foreclosure clause also falls foul of the Unfair Terms in Consumer Contracts Regulations".

I said in my provisional decision: *"I consider that Mr R's complaint should be upheld for these reasons:*

- the particulars of complaint from Mr R's representative and Mr R's witness statement say that Mr R and his wife had purchased a total of 318,001 membership points between June 2007 and June 2014 at a total cost of £32,095 – but the contractual documentation that has been provided evidences purchases of 268,001 points at a total cost of £25,550 during that period;*
- there's no contractual documentation to show that they bought 50,000 points at a cost of £6,545 in June 2010 as claimed in the particulars of complaint and Mr R's witness statement – and the June 2014 purchase agreement says that their total number of points was 268,001;*
- Mr R and his wife entered into a purchase agreement in March 2019 to buy 32,000 more points for a purchase price of £16,896.60 which increased their total number of points to 300,001 and they also signed the holiday company's memorandum of understanding which said that they had a total of 300,000 membership points;*
- the memorandum of understanding said: "I/We understand that [3] years after the completion of this Purchase Agreement I/We may trade my/our [points] (fully or partially, at maximum of [300.000] points per property purchased) against any future properties that may become available for sale through [the holiday company] or it's partners ... all [points] traded will be valued at [€100] per 1000 [points] against the purchase price of any properties available. The balance of the difference in the purchase price after [points] have been deducted will be payable by me/us ... I/We understand that in the event that only part of our [points] are traded in against a property purchase, that I/we will remain liable for all the applicable annual fee's for the remaining points";*
- the holiday company waived its points fees for 2019 and 2020 and confirmed that Mr R and his wife would be able to surrender the points that they were buying at that time (partially or totally at no additional cost) from their fifth year of membership;*
- Mr R also paid £1,500, using a credit card, for seven nights accommodation;*
- Mr R says in his witness statement: "[In] March 2019 we were invited to a meeting to discuss our membership but we were told that the purpose of the meeting was an opportunity for us to own a property as we were in a good position with the number of points that we had owned and the fact that we had secured an exit contract. The sales representative sympathised with our position, he explained that he had a unique opportunity for us. If we purchased a further 32,000 points, we could use the total of our points as a deposit towards acquiring a property. Basically, how he presented it was that we could buy an additional 32,000 and the entirety of our points previously purchased could be converted into property ownership after 3 years. All our points we had then purchased historically would effectively be turned into cash and used as the deposit on a freehold property. He explained the property would be*

sold by the Supplier or alternatively we would be able to rent out the property for 52 weeks a year”;

- *the finance provider said in its response to Mr R's claims that the: "... purchase financed by [the loan] was specifically a 'points for purchase' contract..."; Mr R and his wife "... purchased these points for the sole purpose [of] trading them against a future property purchase ... to use for holidays and rental"; but: "... due to Covid 19, the release of freehold ... properties has had to be put on hold";*
- *the particulars of complaint say that the loan, the purchase agreement and the related agreements have resulted in there being an unfair relationship between Mr R and the finance provider and that "there was an abject failure to warn [Mr R]" that the "option to transfer 300,000 points to an interest in property ... was of no real benefit or created no enforceable benefit as against the [holiday company]. The defects with this arrangement were simply not disclosed";*
- *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 Mr R's claim under sections 140A as only a court would be able to do that but I'm considering whether or not the finance provider's response to his claim was fair and reasonable in the circumstances;*
- *Mr R and his wife already had 268,001 points and I'm not persuaded that it's likely that they would have bought more points to use for their holidays unless they understood that they'd be able trade those points for an interest in a property;*
- *nor am I persuaded that it's likely that Mr R and his wife would have agreed to pay £16,896.60 for 32,000 more points unless they understood that they'd be able trade those points for an interest in a property;*
- *the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 prohibit a holiday company from marketing or selling a proposed timeshare contract or long-term holiday product contract as an investment;*
- *I consider that the 'points for purchase' scheme would properly be considered to be an investment and that it's more likely than not the points and the purchase agreement were sold to Mr R and his wife in March 2019 as an investment, in breach of the applicable regulations;*
- *I also consider that Mr R and his wife have suffered a loss as a result of that breach because they paid a further £16,896.60 for the points that it's more likely than not that they wouldn't have paid if the points hadn't been sold to them as an investment;*
- *the holiday company said that the release of freehold properties had been postponed due to the Covid-19 pandemic and that it was prepared to put the purchase of the points that Mr R and his wife had bought in March 2019 on hold, but I don't consider that to be a fair and reasonable response to Mr R's section 140A claim;*
- *I consider that the breach of the regulations caused Mr R's relationship with the finance provider to be unfair and I consider it to be more likely than not that a court would conclude that there was an unfair relationship between Mr R and the finance provider in these circumstances;*
- *I find that it would be fair and reasonable for [Tandem Personal Loans] to refund to Mr R all of the payments that he's made under the fixed sum loan agreement that he electronically signed in March 2019, with interest, to cancel the loan agreement at no further cost to him and to write-off any outstanding amount due from him under that agreement;*

- *the holiday company agreed to waive the points fees for 2019 and 2020 and it's clear from the termination notice that has been sent to Mr R that he hasn't paid all of the management fees that are due from him – but I find that it would also be fair and reasonable for [Tandem Personal Loans] to refund to him the proportion of the management charges that he and his wife have paid, if any, which relate to the purchase of the points that they made in March 2019, with interest;*
- *I've not seen any evidence to show that the finance provider or [Tandem Personal Loans] has recorded any adverse information about the loan agreement on Mr R's credit file – but if any such information has been recorded, I consider that it would be fair and reasonable for [Tandem Personal Loans] to ensure that that information is removed;*
- *as I consider that there was an unfair relationship between Mr R and the finance provider, I haven't considered any liability that [Tandem Personal Loans] may have to Mr R under section 75 or his claim that the finance provider lent to him irresponsibly; and*
- *Mr R's representative has provided a copy of the termination notice that was sent to Mr R but I'm not persuaded that it would be fair or reasonable for me to require [Tandem Personal Loans] to take any further action in these circumstances as a result of that notice”.*

Subject to any further comments or evidence that I received, my provisional decision was that I intended to uphold this complaint. Mr R has accepted my provisional decision.

Mr R's loan has now been transferred to Tandem Personal Loans and it says that this was the sixth contract which Mr R and his wife had entered into with the holiday company dating back to 2007 so it's reasonable to assume that Mr R was familiar with the operation of the points scheme and the repeat purchases indicate he was happy with the arrangement. It has referred to what it says is an identical complaint which wasn't upheld by another ombudsman and says that Mr R's complaint shouldn't be upheld because:

- there's no evidence to support the claim that Mr R sought to enter the agreement for additional points because he wanted to use them to purchase a property;
- the training manual provided by Mr R's representative can't be relied upon; and
- the memorandum of understanding doesn't make any reference to the purchase of points being an investment as it details the opportunity to trade the points at a future date against any future properties that may become available for sale through the holiday company or its partners.

Mr R's representative says that Mr R already had points and there was no need to buy more, hence the reliance placed on the investment element, and it has also referred to a decision on a similar complaint which was upheld by this service.

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'm not persuaded that I should change the findings that I set out in my provisional decision. Mr R and his wife had purchased a total of 268,001 membership points in the holiday club between June 2007 and June 2014 and they then entered into a purchase agreement in March 2019 to buy 32,000 more points which increased their total number of points to 300,001.

Tandem Personal Loans says that it's reasonable to assume that Mr R was familiar with the operation of the points scheme and the repeat purchases indicate he was happy with the arrangement but his familiarity with the operation of the points scheme and the repeat purchases don't show that the additional points weren't sold to him as investment.

It also says that there's no evidence to support the claim that Mr R sought to enter the agreement for additional points because he wanted to use them to purchase a property. But Mr R and his wife signed the memorandum of understanding which said that they may trade their points against any future properties that may become available for sale through the holiday company or its partners and Mr R described in his witness statement the way that he says that the points were sold to him as an investment. The finance company also said in response to Mr R's claims that Mr R and his wife purchased the points for the sole purpose of trading them against a future property purchase.

I've seen no evidence to show that Mr R and his wife have ever used all of their 300,001 membership points for holidays or other activities and I don't consider it to be likely that they would have been able to do so.

Tandem Personal Loans has referred to what it says is an identical complaint which wasn't upheld by another ombudsman. The ombudsman in that decision didn't consider that the complainant bought the additional points to use them to purchase a property as the complainant sought to surrender his membership before the option to purchase a property could be invoked. But I've seen no evidence to show that Mr R has tried to surrender his membership.

I consider that the 'points for purchase' scheme would properly be considered to be an investment, that it's more likely than not the points and the purchase agreement were sold to Mr R and his wife in March 2019 as an investment, in breach of the applicable regulations, and that that was the reason that they went ahead with the purchase of the additional points at that time. I also consider that the breach of the regulations caused Mr R's relationship with the finance provider to be unfair and that it's more likely than not that a court would conclude that there was an unfair relationship between Mr R and the finance provider in these circumstances.

Putting things right

I find that it would be fair and reasonable in these circumstances for Tandem Personal Loans to take the actions described in my provisional decision and as set out below.

My final decision

My decision is that I uphold Mr R's complaint and I order Tandem Personal Loans Limited to:

1. Refund to Mr R all of the payments that he's made under the fixed sum loan agreement that he electronically signed in March 2019.
2. Cancel the loan agreement at no cost to Mr R and write-off any outstanding amount due from him under that agreement.
3. Refund to Mr R the proportion of the management charges that he and his wife have paid, if any, which relate to the purchase of the points that they made in March 2019.
4. Remove any adverse information about the loan agreement that the finance provider or it has recorded on Mr R's credit file.

5. Pay interest on the amounts at 1 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.

HM Revenue & Customs requires Tandem Personal Loans to deduct tax from the interest payment to be made to Mr R and Tandem Personal Loans must give him a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 October 2023.

Jarrold Hastings
Ombudsman