

The complaint

Mr A complains that Tandem Personal Loans Limited, trading as Oplo, 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 A and his wife entered into a membership application agreement to buy 6,000 level one holiday club membership credits from a holiday company in July 2018. The membership price was £18,361 and Mr A also entered into a fixed sum loan agreement with a finance provider for a loan of that amount. He agreed to make 179 monthly payments of £187.43 and a final payment of £187.70 to the finance provider.

Mr A's representative made claims, on behalf of Mr A, to the finance provider under sections 75 and 140A of the Consumer Credit Act 1974 in July 2022. The representative's letter to the finance provider included claims that: the membership credits were mis-sold to Mr A and his wife and, but for the misrepresentations made to them, they wouldn't have purchased them nor entered into the loan agreement; the holiday company was in liquidation so can't provide the service sold and is in breach of contract; the membership credits were sold to Mr A and his wife as an investment, contrary to the Timeshare Regulations, and under extreme sales pressure; the terms of the agreement are so egregious so as to be unfair and the payment of commission was hidden from view; and the holiday company didn't undertake a proper affordability check.

Mr A's loan was transferred to another finance provider in August 2022 (which changed its name to Tandem Personal Loans in August 2023) and it responded to those claims in detail and said that, based on the points that had been put forward and the lack of substantive documentary or other supporting evidence, it was unable to uphold any of the claims. Mr A wasn't satisfied with its response so a complaint was made to this service.

Mr A's 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, unduly pressured him and his wife 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.

Our investigator didn't recommend that Mr A's complaint should be upheld as she didn't think that the finance provider had acted unfairly. She said that she hadn't seen enough to suggest that the relationship between Mr A and the finance provider was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She wasn't persuaded that there was a misrepresentation at the time of sale or that there

had been a breach of contract. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr A.

Mr A didn't accept our investigator's recommendation and his representative says that it would like this matter referred to an ombudsman for a decision. It has provided submissions which say, in summary and amongst other things, that:

- the membership credits were marketed and sold to Mr A and his wife as an investment that was extremely desirable and could easily be resold at a profit;
- it's very likely that the holiday company did sell the membership credits as more than a holiday product and its resale programme is now discontinued and the holiday company appears to have gone into administration;
- the holiday company misrepresented the membership credits to Mr A and his wife and, were it not for the misrepresentations, they wouldn't have purchased them;
- Mr A was 46 years of age when he was sold the membership credits and their expiration date is the end of December 2043 - during that period he would have been responsible for paying maintenance charges and failure to pay them would result in termination of the membership with no refund;
- the Timeshare Regulations prohibited the holiday company from marketing or selling the membership credits as an investment;
- the holiday company had a responsibility under the Timeshare Regulations to give Mr A and his wife sufficient information for them to make an informed contractual decision; and
- the finance provider has failed to demonstrate adequate oversight of the broker of the loan and, given the age of Mr A at the time of purchase and the long term nature of the membership credits, the decision to finance such a purchase was irresponsible.

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

- Mr A's representative has provided a summary of the membership application agreement that Mr A and his wife entered into in July 2018 which shows that they bought 6,000 membership credits from the holiday company for a membership fee of £18,361 – but neither Mr A nor his representative has provided a copy of that agreement or any of the other documents that I consider it to be likely that Mr A and his wife would have signed with the holiday company at that time;
- Mr A also entered into a loan agreement that he electronically signed in July 2018 for a loan of £18,631 from the finance provider and the finance provider has provided a copy of the pre-contract credit information, a loan information document and the loan agreement for that loan;
- Mr A's representative made claims to the finance provider in July 2022 about the membership application agreement and Mr A then made a complaint to this service – the representative's letter to the finance provider in July 2022 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 response to them was fair and reasonable in the circumstances;
- the July 2022 letter says that it was represented to Mr A and his wife by the holiday company in July 2018 that: the membership credits could be sold at a profit as part of the holiday company's re-sale scheme; they had exclusive access to the resort and booking was readily available; famous personalities were investing in the resort; and the membership credits were available at a special price but only if purchased on that day - and further information about the alleged misrepresentations was contained in the submissions that were provided by Mr A's representative in response to our investigator's recommendation;
- neither Mr A 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 A and his wife before their July 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr A and his wife that the membership credits were an investment, that the membership credits were misrepresented 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 the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations;
- the July 2022 letter also says 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 only the sales company was placed into liquidation and Mr A and his wife are able to access all the facilities that were included within their agreement;
- 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 a new club manager to have been a suitable remedy for any breach of contract, and I've seen no evidence to show that Mr A and his wife's use of their membership credits has been adversely impacted by the liquidation of the holiday company;
- the July 2022 letter says that Mr A and his wife haven't been able to use the membership credits as there were no bookings available that suited holidays of their choosing but I'm not persuaded that there's enough evidence to show that there's been any breach of contract by the holiday company for which Tandem Personal Loans would now be liable under section 75;
- the July 2022 letter also says that Mr A's relationship with the finance provider was unfair and Mr A's 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, unduly pressured him and his wife into entering into the membership application agreement and him into entering into the loan agreement 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 purchase, in breach of the Timeshare Regulations;

- the final response letter says that there was no commission arrangement in place between the finance provider and the holiday company 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 the loan that was made to Mr A;
- the final response letter also says that all customers were provided with an application for credit which included personal and financial information which the customer then signed to acknowledge that it contained the correct information and the application was then electronically processed and subjected to the appropriate checks and balances, including information obtained from credit reference agencies and verified against the underwriting policies in place at the time - but no further information was provided about the affordability assessment that was conducted;
- neither Mr A nor his representative has provided any detailed information about Mr A's financial situation in July 2018 when the loan was made to him but Mr A's representative has provided annual loan account statements for the years to August 2020 and 2021 which show that Mr A made the payment of £187.43 each month;
- the loan was made to Mr A in July 2018 but I've seen no evidence to show that he complained about the affordability checks that had been conducted by the finance provider or the affordability of the loan until his representative's July 2022 letter – if the loan was unaffordable for him I consider that it would be reasonable to expect him to have contacted the finance provider about that issue sooner than he did;
- the loan agreement refers to three credit intermediaries and I can see that one of those credit intermediaries was authorised to represent the holiday company at the time that the loan was made to Mr A – I'm not persuaded that there's enough evidence to show that the finance provider failed to have adequate oversight of the broker of the loan;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr A in July 2018 when it was made to him, that the finance provider didn't assess the affordability of the loan for him, that it was irresponsible for it to have lent to Mr A or that the finance provider (or Tandem Personal Loans) has acted incorrectly in connection with the loan;
- Mr A and his wife had the right to withdraw from the membership application agreement within fourteen days without giving any reason but I've seen no evidence to show that Mr A contacted either the holiday company or the finance provider to withdraw from the membership application agreement within the withdrawal period;
- the loan agreement said that Mr A had the right to withdraw from that agreement without giving any reason for a period of fourteen days but I've seen no evidence to show that he contacted the finance provider to withdraw from the loan agreement within that period;
- Mr A and his wife entered into those agreements in July 2018 but I've seen no evidence to show that Mr A complained to either the holiday company or the finance provider about the undue pressure that he claims was applied to them until Mr A's representative's July 2022 letter – if they had been unduly pressured into signing the membership application agreement and didn't want to buy the membership credits, I consider that it would be reasonable to expect Mr A to have contacted either the holiday company or the finance provider about that issue sooner than he did;
- I'm not persuaded that there's enough evidence to show that Mr A and his wife were unduly pressured into entering into the membership application agreement or that

Mr A was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;

- Mr A's complaint form says that the Timeshare Regulations require the holiday company to provide Mr A and his wife 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 A nor his representative has identified the information that Mr A and his wife required to make an informed decision regarding the purchase but that wasn't provided to them by the holiday company - and they haven't provided all of the documentation that would have been provided to Mr A and his wife at the time of the purchase and I'm not persuaded that there's enough evidence to show that there's been a breach of the Timeshare Regulations as alleged;
- the July 2022 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Mr A nor his representative has provided a copy of the membership application agreement or the other documents that were signed by Mr A and his wife in July 2018 and they haven't 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 any of those documents 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 A 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 A and the finance provider (or Tandem Personal Loans);
- having carefully considered all of the information and evidence that Mr A and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr A'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 A and the finance provider (or Tandem Personal Loans) in these circumstances;
- I sympathise with Mr A for the issues that he and his wife have had with their membership credits but I consider that the finance provider's response to the claims that had been made to it was 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 A 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 A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 March 2024.

Jarrod Hastings
Ombudsman

