

The complaint

Mr P 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 P's representative says that Mr P and his wife owned a holiday product that they'd bought from a holiday company and that they agreed to upgrade it in November 2018. They entered into a membership application agreement to buy 8,000 level two holiday club membership credits from the holiday company in November 2018. The membership price was £15,000 and Mr P 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 £153.12 and a final payment of £153.61 to the finance provider.

Mr P's representative made claims, on behalf of Mr P, to the finance provider under sections 75 and 140A of the Consumer Credit Act 1974 in September 2021. The representative's letter to the finance provider included claims that: the membership credits were mis-sold to Mr P and his wife and, but for the misrepresentations made to them, they wouldn't have purchased them and Mr P wouldn't have 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 P 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.

No response was received from the finance provider so Mr P complained to this service in May 2023. 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, 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.

Mr P's loan had been transferred to Oplo in August 2022 (and Oplo changed its name to Tandem Personal Loans in August 2023) so this service sent a copy of Mr P's complaint form to Oplo. It said that the September 2021 letter hadn't been received so it then sent its response to the claims to Mr P's representative. It said that, based on the claims put forward and the lack of substantive documentary or other supporting evidence, it was unable to uphold any of the points that had been raised.

Our investigator didn't recommend that Mr P's complaint should be upheld. He said that he hadn't seen enough to suggest that the relationship between Mr P and the finance provider was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He wasn't persuaded that there were any actionable misrepresentations at the time of sale or that there had been a breach of contract. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr P.

Mr P disagreed with our investigator's recommendation and asked for his complaint to be looked at by an ombudsman. His representative has provided submissions which say, in summary and amongst other things, that:

- the membership credits were marketed and sold to Mr P and his wife as an investment that was extremely desirable and could easily be resold at a profit;
- it was represented to them that the value of the membership credits would increase due to their desirability and that the product that they currently owned would prove difficult to sell and the only way of achieving a profit on it was to trade it in for membership credits that they would be able to sell and exit their agreement whilst making a profit;
- 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 – and there's no evidence that the holiday company ever made available resale opportunities to its members before it fell into financial difficulty;
- the holiday company misrepresented the membership credits to Mr P and his wife and, were it not for the misrepresentations, they wouldn't have purchased them;
- the Timeshare Regulations prohibited the holiday company from marketing or selling the membership credits as an investment; and
- the holiday company engaged in misleading commercial practices which caused Mr P and his wife to take a transactional decision that they wouldn't have otherwise done.

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

- Mr P and his wife signed the membership application agreement in November 2018 to buy 8,000 level two holiday club membership credits - they also signed the terms and conditions, an internal exchange checklist, an exchange contract, the holiday company's standard information form, an initial disclosure document and a separate standard form of the withdrawal notice that could be given to withdraw from the agreement;
- Mr P also entered into the loan agreement that he electronically signed and he received pre-contract credit information and a loan information document from the finance provider;
- Mr P's representative's September 2021 letter 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 response to them was fair and reasonable in the circumstances;
- the September 2021 letter says that it was represented to Mr P and his wife by the holiday company that: their existing holiday product was unsellable and that they were required to purchase some membership credits if they were to sell their product at a profit; the holiday company was ceasing to trade in timeshare apartments and was starting a membership credits system instead; and the membership credits were available for a special price but only if purchased on that day;
- the standard information form described the membership credits and says: *"You are purchasing credits ... which can be exchanged for rights of occupation and use in a unit of accommodation or a yacht or use of other lifestyle products such as luxury cars at various locations each Use Year ..."*;
- it also says: *"The Resale Facility for [the membership credits] will be available to be applied for as of the year 2023 and cannot be relied upon as the basis for entering into a Membership. Resale values or timeframes cannot be guaranteed and are subject to offer and demand. [The holiday company] is the only authorised vendor offering this facility, currently the transaction fee is £49 and is subject to prevailing Resales Terms and Conditions applicable at the time of registration"*;
- neither Mr P 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 P and his wife before their November 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr P 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 September 2021 letter also says that the holiday company is in liquidation so can't provide the service sold and is in breach of contract but Oplo says that the holiday club isn't in liquidation, it was only the sales company which was placed into liquidation and Mr P and his wife are able to access all the facilities that were included within their agreement by accessing their account via the portal or contacting reservations to book their next holiday;
- I understand that a new management company has been appointed to manage the holiday club and that the membership credits remain available for Mr P and his wife to use;
- I consider that the liquidation of the holiday company could be a breach of contract for which Tandem Personal Loans might now 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 P and

his wife's use of their membership credits has been adversely impacted by the liquidation of the holiday company;

- I'm not persuaded that enough evidence to show that there's been any breach of contract or regulation by the holiday company for which Tandem Personal Loans would now be liable under section 75;
- the September 2021 letter also says that Mr P's relationship with the finance provider was unfair and Mr P'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;
- Oplo 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 it made to Mr P;
- Oplo also 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 then verified against the underwriting policies in place at the time;
- Oplo hasn't provided any further information about the affordability assessment that was conducted before the loan was made to Mr P but neither Mr P nor his representative has provided any detailed information about Mr P's financial situation in November 2018 when the loan was made to him;
- the loan was made to Mr P in November 2018 but I've seen no evidence to show that he complained to the finance provider about the affordability checks that it had conducted, or about the affordability of the loan, until his representative's September 2021 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;
- I'm not persuaded that there's enough evidence to show that a loan with monthly repayments of £153.12 wasn't affordable for Mr P in November 2018 when it was made to him, that the finance provider didn't assess the affordability of the loan for him, that the loan was mis-sold to him or that the finance provider (or Tandem Personal Loans) has acted incorrectly in connection with the loan;
- Oplo says that after each sale there is a post-sale review, which is often video-recorded, and which gives the customer an opportunity to review all aspects of the sale and go through the paperwork, some of which they take away and a full copy is sent to their preferred email address, so the customer is provided with ample opportunity to read through all the documentation at their leisure;
- Mr P and his wife had signed the separate standard form of the withdrawal notice that could be given which says: "*The consumer has the right to withdraw from this contract within 14 calendar days without giving any reason*", but I've seen no evidence to show that Mr P contacted either the holiday company or the finance provider to withdraw from the membership application agreement within the withdrawal period;

- the loan agreement says: *"You have the right ... to withdraw from this agreement without giving any reason ..."* within fourteen days but I've seen no evidence to show that Mr P contacted the finance provider to withdraw from the loan agreement within that period;
- those agreements were signed in November 2018 but I've seen no evidence to show that Mr P complained to either the holiday company or the finance provider about the undue pressure that he claims was applied to him and his wife until his representative's September 2021 letter – if they'd 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 P 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 P and his wife were unduly pressured into entering into the membership application agreement or that Mr P was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive or misleading commercial practices against them;
- Mr P's complaint form says that the Timeshare Regulations require the holiday company to provide him 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 P nor his representative has identified the information that Mr P and his wife required to make an informed decision regarding the purchase but that wasn't provided to them by the holiday 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 September 2021 letter also says that the terms of the agreement are so egregious so as to be unfair but neither Mr P 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 agreement or the other documents that Mr P and his wife 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 P 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 P and the finance provider or Tandem Personal Loans;
- having carefully considered all of the information and evidence that Mr P and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr P'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 P and the finance provider or Tandem Personal Loans in these circumstances;
- I sympathise with Mr P for the issues that he and his wife have had with their membership credits but I consider that Oplo'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 P 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 P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 March 2024.

Jarrold Hastings
Ombudsman