

The complaint

Mr K has complained that Tandem Personal Finance Ltd (“Tandem”) needed to pay compensation arising out of the sale of a holiday product bought using a loan later assigned to Tandem.

What happened

In November 2018, Mr K, alongside another, took out an agreement with a holiday product supplier (“the Supplier”). Under the agreement, they purchased 15,000 ‘credits’, which could be used toward taking holidays, at a cost of £24,500. To pay for this, Mr K took a loan from a lender called Honeycomb Finance over fifteen years. This loan was later assigned to Tandem, so it is responsible to answer this complaint.

In May 2022, a professional representative (“PR”) wrote to Tandem on Mr K’s behalf, setting out problems he said there were with the sale of the membership.¹ PR set out a number of issues and concerns that it argued Tandem were responsible to answer under the operation of ss.75 and 140A of the Consumer Credit Act 1974 (“CCA”). Those concerns included:

- The Supplier is now in liquidation, so it can’t supply the services under the membership. This amounted to a breach of contract and therefore Tandem was jointly liable to answer a claim under s.75 CCA.
- PR said that Mr K went to an update meeting with the Supplier, but in fact it was a pressured sales meeting. At the time he already held an existing timeshare with the Supplier which had been sold to him as a highly desirable product that he could sell later at a profit.
- Mr K was told that the new product from the Supplier was more highly desirable and would be easier to sell and generate a higher profit.
- The Supplier said that the offer to take out the new membership for the stated price was only available that day.
- The representations that were made were false and therefore Tandem was jointly liable to answer a misrepresentation claim under s.75 CCA.
- The payment of commission by Honeycomb Finance to the Supplier had been hidden from Mr K.
- No proper credit checks were carried out when deciding to lend to Mr K.
- The sale breached The Consumer Protection from Unfair Trading Regulations 2008 (“CPUTR”) and the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (“the Timeshare Regulations”).
- All of this gave rise to an unfair debtor-creditor relationship as set out in s.140A CCA.

In June 2022, PR referred Mr K’s complaint to our service, noting that Tandem hadn’t replied to it and asked us to investigate matters. After we contacted Tandem, it explained that there was no record of any complaint being raised and, after further investigation, it said PR had sent the complaint to an incorrect email address.

¹ Although the membership was bought by Mr K and someone else, as the loan in question was only in Mr K’s name, only he was able to make a complaint to Tandem about it

One of our investigators considered the complaint, but didn't think Tandem needed to do anything to answer the concerns raised. She thought that there did not appear to be any actionable misrepresentation or breach of contract and that there was not enough to say there was an unfair debtor-creditor relationship. Finally, she said there was nothing to suggest that the lending was unaffordable for Mr K.

PR, on behalf of Mr K, disagreed. It argued that the membership had been sold to him as an investment and he'd be able to resell the credits bought at a profit. PR said that Mr K had bought five products from the Supplier, each time being told the product he held was no longer desirable and so he needed to buy a new one to be able to sell it in the future.

PR argued that the Supplier misrepresented the credits as something that could be easily resold in the future when that was not the case. It also said that the Supplier didn't provide the information it needed to under the Timeshare Regulations and breached the CPUTRs in the way the product was sold. As Mr K disagreed with our investigator, the complaint was passed to me for a 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.

When deciding complaints, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

"(1) relevant:

- (a) law and regulations;*
- (b) regulators' rules, guidance and standards;*
- (c) codes of practice; and*

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."

Where I need to make a finding of fact based on the evidence, I make my decision on the balance of probabilities. In other words, when I make a finding that something happened, that's because I think it's more likely than not that that thing did happen.

Further, my role as an ombudsman isn't to answer every point raised by PR, instead it's to explain what I find to be a fair and reasonable outcome to Mr K's complaint. So although I've read everything provided by both parties, I've focused on what I find to be the salient issues needed to come to a fair and reasonable answer.

Having considered everything, I don't think there's enough evidence for me to say that this complaint should be upheld.

Is Tandem jointly liable for the Supplier's misrepresentations?

Under s.75 CCA, Tandem could be liable to answer a claim about the Supplier's misrepresentations and Mr K has complained that Tandem didn't properly deal with his claim. Having considered what has been said, I think Mr K alleged that being told the credits were something that could be sold later at a profit and that the price for the credits were only available on the day amount to misrepresentations.

PR has provided its letter of claim, a response to our investigator's view and some of the

documents available from the time of sale. The amount of evidence is, therefore, limited in its scope. So I've thought about what evidence I have and whether, on balance, I think there is enough for me to say these representations were made to Mr K and, if they were, were they untrue.

Mr K hasn't set out much detail about what he was told when he came to buy credits from the Supplier in 2018. So it's not clear to me why he says he thought these credits could be sold at a later date to generate a profit. Having read the sales documentation, I haven't seen anything that I think could have created that impression. Further, I don't think there was anything inherent in the Supplier's product that had an obvious investment element to it.

Mr K has said that this was the fifth purchase he'd made from the Supplier, believing each previous one to be an investment too. But this product seems to be quite different – rather than buying a right to stay in a specified property, Mr K was buying credits he could exchange to use when buying holidays. So I can't see why a previous representation made about a different product would mean he would believe these credits were something that could be sold later for profit. On balance, I don't think there's enough to say this representation was made to Mr K.

I've not seen anything to show that the price for credits wasn't lower on the date Mr K purchased them than on subsequent days. So, even if they were told there was a discounted price that day, I can't say that was untrue.

It follows, I can't say Tandem should have accepted liability for any of the alleged misrepresentations of the Supplier.

Is Tandem jointly liable for the Supplier's breach of contract?

The Supplier is now insolvent and Mr K has argued that this means there was a breach of contract. But I understand that the holiday club is now being run by a different business and Mr K hasn't pointed to anything he was entitled to under their membership that he's no longer able to get. It follows, I can't see that there was any breach of the membership agreement by the Supplier's insolvency or for any other reason.

Was commission paid to the Supplier by the lender?

This was an allegation made by PR on Mr K's behalf. PR hasn't set out why it believes any commission was paid in this case, but I've seen that the loan agreement stated that commission *may* have been paid to one or more of three credit intermediaries. I note that there was no regulatory duty on Honeycomb to disclose the level of commission it paid, if any such commission was paid, and based on what I've seen in similar loans any commission paid tended to be low and under 15%. So I can't see that if a commission was paid in this case, why that would have led to an unfair debtor-creditor relationship that required a remedy.

Did the lender carry out the right checks before lending to Mr K?

PR said that Honeycomb didn't undertake the right checks of Mr K's ability to repay the loan. However, in any complaint about lending there are a number of matters to consider. First, a lender had to undertake reasonable and proportionate checks to make sure a prospective borrower was able to repay any credit in a sustainable way. Secondly, if such checks were not carried out, it is necessary to determine what the right sort of checks would have shown. Finally, if the checks showed that the repayment of the borrowing was not sustainable, did the borrower lose out?

Here, even if the right checks weren't carried out, I've not been provided with anything to show that the lending was not affordable for Mr K and he hasn't said he was heavily indebted at the time of sale. So I'm not persuaded that the complaint should be upheld on that basis.

Was Tandem party to an unfair debtor-creditor relationship?

PR say that the problems with the Supplier's sale gave rise to an unfair debtor-creditor relationship as defined by s.140A CCA. When considering a complaint about this, I'm able to look at both the actions and agreements between Mr K and Tandem, but also the agreement with the Supplier funded by the loan and what the Supplier said at the time it was entered into.

Many of the matters I've set out above could, if proven, have given rise to an unfair debtor-creditor relationship, for example the Supplier's alleged misrepresentations or granting an unaffordable loan. But as I didn't think those allegations were made out, I also don't think they could give rise to an unfair debtor-creditor relationship.

PR has pointed to regulations it says were breached during the sale (CPUTR and the Timeshare Regulations). But I'm not able to say that any potential breaches lead to an unfair relationship requiring a remedy, as I can't see they influenced Mr K's decision to take out the membership. For example, PR has said that there was a pressured sale in breach of the CPUTR. However, I have seen that Mr K was a longstanding customer of the Supplier and it appears that he had some interest in taking out a holiday product from them. So although there may have been an element of pressure in the sales process, I can't say it was so severe it caused him to buy something he otherwise wouldn't have. Having considered all of the evidence and arguments, I can't see sufficient reasons to think there was an unfair debtor-creditor relationship between Tandem and Mr K.

My final decision

I don't uphold Mr K complaint against Tandem Personal Finance Ltd

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

Mark Hutchings
Ombudsman