

The complaint

Mr S complains about the sale of a timeshare he financed through an agreement with Honeycomb Finance Ltd. Mr S has brought his complaint through a representative, so references to his submissions and arguments include those made on his behalf.

What happened

I issued a provisional decision on this complaint in March 2024. An extract from that provisional decision is set out below.

In August 2018 Mr S purchased a timeshare membership with a company I will call “Az”. The purchase was funded through a fixed sum loan with Honeycomb Finance Ltd. That loan has subsequently been transferred to Tandem Personal Loans Ltd. For ease I will refer to the lender as Tandem.

Mr S complained to Tandem in June 2022. His claim was detailed but in essence he said he had a claim under sections 75 and 140A of the Consumer Credit Act 1974 (CCA) as the agreement had been misrepresented to him and there had been an unfair relationship. He also said that Tandem hadn’t completed the necessary affordability checks when they approved the loan.

Tandem responded to the complaint but as they didn’t uphold it Mr S escalated his complaint to this Service.

Our investigator considered what had happened but didn’t think Tandem had been unreasonable to reject Mr S’s claims.

Mr S didn’t agree so the complaint has been referred to me, an ombudsman, to provide a decision.

What I’ve provisionally 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.

I’m issuing a provisional decision here as I can see our investigator didn’t respond to all of the issues Mr S raised. I’m not currently expecting to uphold the complaint.

I’m required by DISP 3.6.4R of the Financial Conduct Authority’s (FCA’s) Handbook to take

into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.

The claim under the CCA

When something goes wrong and the payment was made with a fixed sum loan, as was the case here, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Section 56 of the CCA is relevant in the context of section 140A of the CCA that Mr S also relies on, as the pre-contractual acts or omissions of the credit broker or supplier will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mr S and the lender.

It's not for me to decide the outcome of any legal claim Mr S may have under sections 75 or 140A but I'm required to take the provisions into account when deciding whether the lender was reasonable to reject Mr S's claims.

The claim under section 75 of the CCA

Mr S says that as Az has now been liquidated there has been a breach of contract. I'm not persuaded that's the case as Tandem have confirmed there is a new management company in charge, and it appears Mr S's use of his timeshare would, therefore, have been unaffected.

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

Mr S says the agreement was misrepresented to him as an investment but other than Mr S's testimony, I've not seen evidence to corroborate that or to corroborate Mr S's suggestion that he wanted to sell the timeshare and was promised he'd be able to. I don't, therefore, think Tandem were unreasonable to reject those complaints.

Mr S also suggests there was a misrepresentation because he was promised full flexibility, but he subsequently discovered his points would only allow him to use accommodation in a prescribed period, and in an unsuitable one bedroom accommodation. It seems to me that any restriction in the type of accommodation that was bookable for Mr S, or the period in which that accommodation could be booked, was likely to be a product of the amount of points he purchased. I've not seen evidence to corroborate Mr S's assertion that he was told he could book anywhere, and at any time, and in any accommodation, given the points he

purchased, and I don't think a court would be likely to uphold a section 75 claim on that basis.

The claim under section 140A of the CCA

Section 140A CCA looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement (taken together with any related agreement).

I do not consider it likely that a court would conclude that the lender's acts and/or omissions, or those of the supplier or credit broker as agents of the lender, generated an unfair debtor – creditor relationship.

Mr S relies upon a number of clauses in the Consumer Protection from Unfair Trading Regulations 2008 (CPUT Regulations) that his representatives suggest created an unfair relationship between him and Az. We know it is common that these sales presentations often lasted for a number of hours. I've therefore considered whether there is evidence that Mr S's ability to exercise choice was significantly impaired by the pressure and aggressive sales tactics he says he experienced.

Regulation 7 of the Consumer Protection from Unfair Trading Regulations 2008 (CPUT Regulations) seems to expand on the everyday definition of pressure. At the time of sale, Regulation 7 stated that a commercial practice was aggressive if, in its factual context and taking account of all of its features and circumstances, it:

- a) significantly impaired or was likely to significantly impair the average consumer's freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion, or undue influence; and*
- b) caused or was likely to cause the consumer to take a transactional decision they would not have taken otherwise as a result.*

Regulation 7(2) went on to say that consideration must be given to the timing, location, nature, and persistence of the practice. And when thinking about whether "undue influence" was applied, Regulation 7(3) said that thought must be given as to whether the Supplier exploited "a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly [limited] the consumer's ability to make an informed decision."

I don't think I've been provided with sufficient information to suggest Mr S didn't understand he didn't have to say yes to the agreement or that he didn't understand he could walk away without entering into it. He was provided with a 14 day cooling off period and I think that was a reasonable amount of time for him to consider the paperwork and make an informed decision.

Overall, I'm not persuaded that Mr S's ability to exercise choice was – or was likely to have been – significantly impaired contrary to Regulation 7 of the CPUT Regulations.

Mr S says that he was offered a special one off, time limited, price to accept the agreement and that was an aggressive sales practice in contravention of Schedule 1, clause 5 of CPUT. I've not seen any supportive evidence to suggest that was the case and I don't, therefore, think Tandem were unreasonable to reject that complaint point.

Mr S also claims that an unfair relationship existed because he wasn't told about the commission Az received from the lender. But Tandem have confirmed that no commission was paid in this case, so I think it's unlikely a court would find there was an unfair relationship for that reason.

Mr S says that an unfair relationship also existed because he wasn't offered a choice of lenders. Az wasn't acting as an agent of Mr S but as the supplier of contractual rights he obtained under the Purchase Agreement. And, in relation to the loan, it doesn't look like it was the Supplier's role to make an impartial or disinterested recommendation or to give Mr S advice or information on that basis. However, even if it's right to suggest that Mr S should have been presented with a greater range of lenders to choose from, there's little to nothing to demonstrate that he has suffered a financial loss because he entered into a credit agreement with this particular lender rather than another one. And, for that reason, I'm not persuaded that created or contributed to an unfair relationship on this occasion given the facts and circumstances of this complaint. I don't, therefore, think Tandem were wrong to reject the claim under s140A.

Was the loan irresponsible?

Mr S says that the lender was in breach of its obligations to carry out an adequate credit assessment to determine whether he could afford to repay the loan.

However, when considering a complaint about unaffordable lending, a large consideration is whether the borrowing was likely to prove unaffordable in practice and whether the complainant has actually lost out due to any failings on the part of the lender. So even if I was persuaded that the lender did not do appropriate checks (and I make no such finding), for me to say it needed to do something to put things right, I would need to see that the credit granted by them was likely to be unaffordable and that Mr S suffered a loss as a result. I've not been provided with sufficient evidence from Mr S to suggest he didn't have enough disposable income to sustainably afford repayments against this loan, and I don't therefore think it would be reasonable to suggest the lender was irresponsible when providing the credit

My provisional decision

For the reasons I've given above, I'm not expecting to uphold this complaint.

Further comments/evidence

Neither party provided any further comments or evidence in response to my provisional 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.

As no further comments were received I have not been persuaded to change my provisional decision. That provisional decision now becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 May 2024.

Phillip McMahon
Ombudsman