

The complaint

Miss N complains that Tandem Personal Loans Ltd (“Tandem”) unfairly rejected her claim under section 75 of the Consumer Credit Act 1974 (“CCA”) in relation to a timeshare product she purchased with a loan from them.

What happened

The loan that is the subject of this complaint was originally provided by another business. That loan was subsequently acquired by Tandem. So, this means that Tandem are the respondent in this complaint. For simplicity, I’ll refer to Tandem throughout my decision rather than the original lender.

In or around 2016, Miss N, together with another party, purchased a timeshare product from a supplier who I’ll refer to as “A”. The purchase of that product was funded with a loan from another business, so doesn’t form part of the complaint being considered here.

In or around November 2018, Miss N and the other party agreed to upgrade their timeshare product by entering into a new purchase agreement with A. The cost of the upgrade purchased was £35,000 and was funded under a fixed sum loan agreement in Miss N’s sole name with Tandem. The associated product membership was later transferred into Miss N’s sole name.

In or around February 2020, Miss N agreed to enter into a new membership agreement with A in her sole name which replaced the membership agreement for the product she purchased in 2018.

In or around December 2021, Miss N submitted a claim to Tandem under section 75 (S75) of the CCA. She said the product she’d purchased had been misrepresented by A. In particular, that A told her she could rent out her timeshare and receive a rental income of up to £5,000 each year. Miss N said A told her the loan can pay for itself from lettings. But she’d only received a rental income of £5,000 on one occasion in 2018.

Furthermore, following A entering into liquidation in 2020, a new club manager had been appointed to manage the timeshare she owned. And they told her that the rental programme was no longer available. Miss N thought Tandem were liable for any misrepresentations under S75. She wanted Tandem to refund the loan payments she’d made and cancel the remaining amount owed.

In response, Tandem didn’t think they could be held liable for any alleged misrepresentation as:

- the timeshare agreement purchased in 2018 had been cancelled when a new one was entered into in 2020;
- the loan amount exceeded the limit that could be claimed for under S75.

Unhappy with Tandem’s response, Miss N referred her complaint to this service. Having considered all the information available, one of our investigator’s thought the purchase price of the product exceeded the limits specified within S75. And any potential breach of contract claim under S75a was unlikely to succeed given the purchase agreement in 2018 had since been superseded. As a result, our investigator didn’t think Tandem needed to do anything more.

Miss N didn't accept our investigator's findings. Particularly as the business that funded her purchase in 2016 had agreed to pay her back. She didn't think it right that she'd been refunded for that loan but not for the loan with Tandem. As a result, she asked that her complaint be referred to an ombudsman to consider.

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 considering what's fair and reasonable, DISP¹ 3.6.4R of the FCA² Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides consumers with protection for goods or services bought using credit. Where Miss N paid for her timeshare membership, having financed it with a restricted use regulated loan with Tandem, she is afforded the protection offered to borrowers like her under those provisions – subject to any restrictions and limitations. So, I've taken this section into account when deciding what's fair in the circumstances of this case.

It's important to distinguish between the complaint being considered here and the legal claim. The complaint referred to this service specifically relates to whether I believe Tandem's treatment of Miss N's claim was fair and reasonable given all the evidence and information available to me. This service isn't afforded powers to determine any legal claim itself. That is the role of the courts.

The claim for misrepresentation

S75(3) says that "*Subsection (1)³ does not apply to a claim – (so far as any claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000[...]*". The cash price shown within the loan agreement in November 2018 was £35,000. So, I don't believe a valid claim can be made under S75.

Could there be a claim for breach of contract?

Section 75A ("S75A") of the CCA provides similar (although narrower) rights to S75 and has a higher purchase price limit. Specifically, this section covers certain situations where there's evidence of a breach of contract - but not misrepresentation.

Miss N alleges that A told her she would be able to rent out her timeshare. So, if there was evidence that this was a contractual benefit included within her membership/purchase contract and A failed to honour that, it's possible this could amount to a breach of contract. And if such a breach of contract fell within the circumstances outlined in S75A, it's possible Miss N could make a like claim against Tandem. So, I've considered this within the context of the information provided from the time of the sale.

I've seen limited documentation from the time of the sale in November 2018. I've only seen a welcome letter dated 11 November 2018 summarising the Membership Application Agreement to Miss N. And while I acknowledge what Miss N says she was told, there doesn't appear to be anything within that document to suggest A were contractually obliged to rent out Miss N's timeshare, should she request it.

I've also seen a copy of a Membership Application Agreement from February 2020. However, this appears to be a new and separate agreement which wasn't funded with a loan from Tandem. So, I don't think it provides much help in establishing the facts relating to the

¹ Dispute Resolution: The Complaints sourcebook (DISP)

² Financial Conduct Authority

³ In respect of a misrepresentation or breach of contract.

purchase completed in November 2018. And because this new contract wasn't funded by Tandem, I don't believe Miss N is able to make a like claim under either S75 or S75A in relation to it.

Summary

I would like to reassure Miss N that I've carefully considered everything she's said together with the information she's provided. Having done so, I can't reasonably conclude that Tandem's response to her claim was unfair here.

I do realise she will be very disappointed and believes her claim for misrepresentation should succeed. Unfortunately, given my findings, I don't think Miss N is able to make a like claim against Tandem under S75. So, it wouldn't be fair or reasonable of me to ask Tandem to do anything more here. But this doesn't stop Miss N from pursuing her claim through any other channel that may be available to her.

My final decision

For the reasons set out above, I don't uphold Miss N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 13 September 2023.

Dave Morgan
Ombudsman