

The complaint

Mrs B complains that Tandem Personal Loans Limited won't refund to her the money that she paid for some holiday club membership credits. Her friend is also involved in her complaint and she's being represented by a claims management company.

What happened

Mrs B and a friend entered into a membership application agreement to buy 1,000 holiday club membership credits from a holiday company in May 2018. The membership price was £3,975 and Mrs B also entered into a fixed sum loan agreement with a finance provider for a loan of that amount. She agreed to make 35 monthly repayments of £137.50 and a final payment of £137.35 to the finance provider.

Mrs B and her friend wrote to the holiday company in March 2020 to cancel their membership because the monthly payment was too much and they hadn't taken a holiday with the holiday company since they'd bought the membership. The cancellation wasn't accepted. Mrs B phoned the finance provider and complained that the credits were mis-sold to her and her friend and the loan wasn't affordable. The finance provider didn't uphold her complaint and said that the loan application was auto-accepted based on the information it had at that time which showed that Mrs B had over £300 in disposable income available.

Mrs B's representative then made claims, on behalf of Mrs B, to the finance provider under sections 75 and 140A of the Consumer Credit Act 1974 in August 2020. It said that the product was misrepresented to Mrs B and her friend; the contract was breached; commission was paid between the finance provider and the holiday company which wasn't disclosed to Mrs B which created a breach of fiduciary duty and caused an unfair relationship; and the loan was unaffordable.

The finance provider didn't uphold those claims. It said that: all customers attend a video recorded compliance interview with a compliance manager where every aspect of the purchase is explained to them prior to signing all of the documentation; the value of the membership was in the experiences and holidays taken and the credits weren't marketed as anything other than 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; a new management company had been appointed and was able to fully service Mrs B's contract and her membership and at no time had Mrs B's rights of use and occupation been affected by the liquidation of the previous management company so there had been no breach of contract; and there was no commission arrangement between it and the holiday company.

Mrs B wasn't satisfied with its response so a complaint was made to this service. Mrs B's complaint form says that the holiday company and the finance provider failed to conduct a proper assessment of her ability to afford the loan; the finance provider paid a commission to the holiday company which wasn't declared to her and the holiday company unduly pressured her and her friend into entering into the membership application agreement and her into entering into the loan agreement; all rendering the loan agreement unfair pursuant to section 140A.

Our investigator didn't recommend that Mrs B's complaint should be upheld as he didn't think that the finance provider's decision to turn down her claims was unfair or unreasonable. He wasn't persuaded that there was a misrepresentation at the time of sale and he didn't think that the holiday company had breached the contract. He said that he hadn't seen enough to suggest that the relationship between Mrs B and the finance provider was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs B.

Mrs B's representative, on behalf of Mrs B, has asked for this complaint to be considered by an ombudsman. It says that the product was sold as an investment and the credits could be rented out and an income obtained. It has provided a generic submission from counsel about the holiday company and the unfair terms that it uses and it says that non-payment of maintenance fees results in the cancellation of the membership but not the finance agreement and there are significant hidden charges and liabilities found within the documents which makes the relationship unfair. It has also raised its serious concerns about the way that the finance was sold to Mrs B and says that the holiday company didn't broker proper credit and failed to meet the standard of a regulated firm.

Mrs B's loan was transferred to another finance provider in August 2022 and since then it has been transferred to Tandem Personal Loans.

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 Mrs B's complaint shouldn't be upheld for these reasons:

- Mrs B and her friend entered into a membership application agreement in May 2018 to buy 1,000 holiday club membership credits and they signed a standard information form which says that the product was: "... *a short-term membership with 1,000 [credits] giving members access to the benefits available within the ... Club*";
- they also signed other documents including an initial disclosure document, a separate standard form of the withdrawal notice that could be given and an exchange contract, and Mrs B electronically signed the loan agreement and confirmed that she'd seen and read the pre-contract credit information and the loan explanation documents;
- Mrs B and her friend wrote to the holiday company in March 2020 and said that they wanted to cancel their membership but the standard information form that they'd signed says: "*The Membership Application is subject to the timeshare contract rules and therefore may be terminated within the withdrawal period ... After the expiry of such withdrawal period the contract may not be terminated. However, each of the benefits referred to in Part 1 will expire in accordance with the Terms and Conditions applicable to each*";
- Mrs B and her friend had signed the separate standard form of the withdrawal notice that could be given which made it clear that they could withdraw from the membership application agreement within 14 days without giving any reason;
- I've seen no evidence to show that Mrs B and her friend exercised their right to withdraw from that agreement during the withdrawal period and I don't consider that they had the right to cancel the agreement when they wrote to the holiday company in March 2020;

- Mrs B's representative made claims to the finance provider in August 2020 and Mrs B then made a complaint to this service – the claim letter refers to claims under sections 75 and 140A, including that the credits were misrepresented to Mrs B and her friend, but her complaint form only refers to claims under section 140A and doesn't refer to a misrepresentation made by the holiday company;
- 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 Mrs B's claims under sections 75 and 140A as only a court would be able to do that but I'm considering whether or not the finance provider's response to her claims was fair and reasonable in the circumstances;
- Mrs B's representative's August 2020 letter says the credits were misrepresented to Mrs B and her friend because they were advised that the product was of some substance and that the purchase would be an investment as the product would increase in value and, after a period of a few years, they would be able to sell it at a considerable profit – but it says that the product is worthless and has no merit;
- Mrs B says that she and her friend were told that the credits could be redeemed when they wanted to book a holiday – and that they could only book a studio apartment at the resort but could also book any other resort or hotel owned by the holiday company – and if they didn't want their week they could ask friends and family to take a holiday and charge them but they didn't know anyone that would be interested as it wouldn't be cost effective as they had to eat at the resort which was very expensive and they would have to hire a car because it was so isolated;
- the credits can be exchanged for rights of occupation and use in a unit of accommodation or a yacht or use of other lifestyle products so I don't consider that they're worthless and neither Mrs B nor her representative has provided a detailed account of the circumstances in which Mrs B and her friend were told that the credits were an investment, the conversations that took place at that time or the information that was provided to Mrs B and her friend;
- there was no reference in the letter that Mrs B and her friend wrote to the holiday company in March 2020 to the credits having been misrepresented to them as an investment and the holiday company says that all customers attend a video recorded compliance interview with a compliance manager where every aspect of the purchase is explained to them prior to signing all of the documentation;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs B and her friend that the credits were an investment, that the 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;
- the August 2020 letter also says that the holiday company has ceased to trade and has committed a repudiatory breach of contract - the finance provider said that a new management company had been appointed and was able to fully service Mrs B's contract and her membership and at no time had Mrs B's rights of use and occupation been affected by the liquidation of the previous management company so there had been no breach of contract;
- I consider that the liquidation of the holiday company would be a breach of contract for which Tandem Personal Loans would now be liable under section 75 - but I also

consider the appointment of the new management company to have been a suitable remedy for that breach of contract, and I've seen no evidence to show that Mrs B and her friend's use of their credits has been adversely impacted by the liquidation of the holiday company and I'm not persuaded that they would be entitled to terminate the membership application agreement in these circumstances;

- Mrs B and her friend said in March 2020 that they hadn't taken a holiday with the holiday company since they'd bought the membership but the credits were available for them to use so it was their choice not to use them and I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company for which Tandem Personal Loans would now be liable under section 75;
- the August 2020 letter says that commission was paid between the finance provider and the holiday company which wasn't disclosed to Mrs B which created a breach of fiduciary duty and caused an unfair relationship and Mrs B's complaint form says that the finance provider paid a commission to the holiday company which wasn't declared to her;
- the finance provider says that there was no commission arrangement between it and the holiday company and I've not been provided with any evidence to show that any commission was paid by the finance provider to the holiday company;
- the August 2020 letter also says that the loan was unaffordable for Mrs B and her complaint form says that the holiday company and the finance provider failed to conduct a proper assessment of her ability to afford the loan – and Mrs B said in the March 2020 letter to the holiday company that she hadn't even realised that she'd taken out a loan;
- the finance provider said that the loan application was auto-accepted based on the information it had at that time which showed that Mrs B had over £300 in disposable income available and it also said that a full credit and affordability check was completed, Mrs B met its lending criteria so the application was conditionally accepted, and she then signed the loan agreement;
- Mrs B had signed a document which said that she agreed to apply for a loan from the finance provider where payment needed to be covered in 36 months and she electronically signed the loan agreement in May 2018 and confirmed that she'd seen and read the pre-contract credit information and the loan explanation documents, she also electronically signed a direct debit mandate and had made monthly payments of £137.50 to the finance provider, so I consider that she ought reasonably to have known that she'd entered into a loan agreement with the finance provider;
- the loan explanation documents said: *"It is important that you only enter into this agreement if you can comfortably afford the payments, and are not aware of any potential changes in your circumstances that could affect your ability to make the payments in the future"*;
- Mrs B phoned the finance provider six times between March and July 2020 about her loan and she said in July 2020 that she couldn't afford the loan – she provided information about her income and expenditure which showed that she had a monthly disposable income at that time of £681 so she agreed to leave the amount of her monthly loan repayment unchanged and the finance provider provided her with contact details for a debt charity and a citizens advice bureau;
- the finance provider hasn't provided any further information about the affordability checks that it conducted before the loan was made to Mrs B but I don't consider that Mrs B has provided enough evidence about her financial situation in May 2018 to show that a loan with monthly repayments of £137.50 wasn't affordable for her at that

time and I'm not persuaded that there's enough evidence to show that the finance provider should have done more to assess the affordability of the loan for her, that the loan was mis-sold to her or that the finance provider has acted incorrectly in connection with the loan;

- the finance provider was required to respond to any financial difficulties that Mrs B was experiencing positively and sympathetically – and I consider that its response to the phone call that Mrs B made to it in July 2020 shows that it responded to her financial situation positively and sympathetically;
- Mrs B's loan has now been transferred to Tandem Personal Loans and it's also required to respond to any financial difficulties that Mrs B is experiencing positively and sympathetically – so if Mrs B is having difficulties with her monthly loan repayments, I suggest that she contacts Tandem Personal Loans and explains those difficulties to it;
- Mrs B's complaint form says that the holiday company unduly pressured her and her friend into entering into the membership application agreement and her into entering into the loan agreement but if they had been unduly pressured into entering into the membership application agreement and didn't want to buy the credits, I consider that it would be reasonable to expect them to have contacted either the holiday company or the finance provider within the applicable withdrawal period to withdraw from the agreement;
- the loan agreement clearly set out Mrs B's right to withdraw from the loan agreement within 14 days without giving any reason but I've seen no evidence to show that she contacted the finance provider within the withdrawal period to withdraw from the loan agreement;
- there was no reference in the letter that Mrs B and her friend wrote to the holiday company in March 2020 to the holiday company unduly pressuring them and I'm not persuaded that there's enough evidence to show that Mrs B and her friend were unduly pressurised into entering into the membership application agreement or that Mrs B was unduly pressurised into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mrs B's representative has provided a generic submission from counsel about the holiday company and the unfair terms that it uses and it says that non-payment of maintenance fees results in the cancellation of the membership but not the finance agreement and there are significant hidden charges and liabilities found within the documents which makes the relationship unfair – but it would be for a court to determine whether or not any of the terms in the agreements were unfair;
- 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 Mrs B and her friend 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 Mrs B and the finance provider;
- I'm not persuaded that there's enough evidence to show that Mrs B's relationship with the finance provider was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mrs B and the finance provider in these circumstances;

- I sympathise with Mrs B for the issues that she and her friend have had with their membership credits but I consider that the finance provider's responses to the claims that had been made to it were 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 Mrs B any of the money that she's paid under the loan agreement, to cancel the loan agreement, to pay her any compensation or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 1 November 2023.

Jarrold Hastings
Ombudsman