

## **The complaint**

Mrs D, who is represented by a professional representative ("PR") complains that Tandem Personal Loans Ltd ("Tandem") rejected her claims under the Consumer Credit Act ("CCA") 1974 in respect of a holiday product. The loan was made by another lender but it has been taken over by Tandem and I will refer to it as the lender in this decision.

## **What happened**

Mrs D has made three purchases of holiday products from a company I will call A. The first was in 2016, the second in 2017 and the last was in July 2018. This last one cost £15,000 which was funded by a loan from Tandem and is the subject of this complaint.

PR submitted a letter of claim to Tandem in June 2021. In summary it claimed that:

- A was now in liquidation and so it was unable to provide the service it had sold.
- Mrs D had not been told of commission paid to A by Tandem.
- She had been aggressively targeted and subjected to excessive pressure.
- She had been told the product was an investment.
- She was told that the points based system offered greater flexibility and improved benefits.
- She was told the following year she could remedy any issues by making another purchase.
- She was given the impression that the loan and the holiday product came as a package.
- A breached the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations ("the Regulations").
- A aggressively marketed the product in breach of the Consumer Protection from Unfair Trading Regulations ("CPUT")
- There was an unfair relationship as set out in s.140A CAA.
- No proper affordability checks were carried out.

Tandem rejected the claim and said before signing Mrs D would have had a meeting with a Compliance manager which would have been videoed. She also had a 14 day period in which she could have withdrawn from the agreement.

Although A had gone into liquidation a new management company had taken over and Mrs D continued to have access to the club membership and benefits. Mrs D had been aware of

the fact Tandem paid A commission, but it also noted that it had given a subsidised rate of interest to Mrs D.

PR brought a complaint to this service on behalf of Mrs D repeating the issues raised in the letter of claim. It was considered by one of our investigators who didn't recommend it be upheld. Tandem provided further information and said the compliance video showed Mrs D had an understanding of the product and had no issue with affordability.

It said a full credit and affordability check had been carried out and provided a summary of a call with Mrs D in August 2018. This confirmed her income details, her understanding of the loan rates and monthly payments. She was also made aware of her right to cancel and of the annual maintenance fees amongst other things. Finally, she confirmed she had not been placed under any pressure by A.

Our investigator didn't believe that Tandem had been wrong to reject the claims under s.75 and s.140A CAA nor did she think there were grounds to uphold the complaint due to affordability issues.

PR didn't agree. It said the two upgrades purchased by Mrs D were unnecessary. It said Mrs D believed she was buying an investment and provided testimony from her to that effect. It said that it would take her 30 years to redeem her points unless she paid extra to redeem them earlier. PR also made general points about A and the timeshare industry. Mrs D had been sold an investment that she could not sell.

### **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 doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account the:

“(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”

And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don't think this complaint should be upheld. I will explain why.

I should point out first of all that Mrs D has provided very limited documentation in support of her claim. I do not, for example, have a copy of the purchase documents. However, this service has seen a number of complaints about A's sales from around the same time. As is to be expected, the sellers and Tandem used largely standard contract wording. I have

presumed that the same standard wording was used for Mrs D's purchase. Tandem has also provided further detail.

## S.75 CCA

S. 75 of the CCA states that, when a debtor (Mrs D) under a debtor-creditor-supplier agreement has a claim of misrepresentation or breach of contract against the supplier that relates to a transaction financed by the agreement, the creditor (Tandem) is equally and concurrently liable for that claim – enabling the debtor to make a 'like claim' against the creditor should he choose to.

It's important to note that, as Tandem was the lender rather than the supplier, under the Act a claim is limited to one for misrepresentation or breach of contract, rather than general unhappiness with what was available under the contract.

## Breach of Contract

I do not believe that the liquidation of A in 2020 led to a breach of contract. I gather new management companies were appointed, and Mrs D was able to use the timeshare as usual after that date.

In July 2020 the trustee wrote to all the club members. Its letter said: *"The JLS are pleased to confirm that FNTC has taken over as the new manager of the Clubs and further confirm that, as a result, the Clubs will continue to operate for the benefit of members."* I presume Mrs D received a copy of this letter or something similar.

On the face of it, therefore, the services linked to Mrs D's purchase of the points remain available to her and are unaffected by the liquidation. Indeed the agreements used by A usually allow for the liquidation of A and its replacement by another provider. That said, I cannot say if this was in Mrs D's contract since I have not seen a copy of it.

Given I have not been persuaded that the product was sold as a financial investment I cannot conclude that the removal of a sales service by A can be regarded as a breach of contract.

## Misrepresentation

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.

PR has said that Mrs D was told that her purchase was an investment. While I was not present I do not consider that I am able to conclude the product was misrepresented. I have seen no explanation of how that could be the case or why Mrs D believed that the purchase of points would be an investment. If she had been told that – or had otherwise believed that to be the case – I would have expected her to ask for more information.

Although I am aware of the types of agreement used by A I cannot be certain what Mrs D signed. PR has suggested that it is likely A sold the product as an investment, but I don't believe that is sufficiently persuasive to allow me to require Tandem to refund the costs to Mrs D. PR is asking that Tandem refund a significant sum of money, but has not given sufficient evidence in support of its claims. I am aware that some sales representatives have referred to these products as investments in future holidays, but that does not mean they were sold as financial investments. However, the paperwork usually explains that the products are not financial investments, but I cannot say what was contained in the

agreement signed by Mrs D as a copy has not been supplied. However, the further information provided by Tandem about the process including the videoed meeting and follow up call do not indicate grounds for misrepresentation.

In short I do not believe I can say that there was misrepresentation such that I can uphold this complaint.

#### S. 140A claims

Only a court has the power to decide whether the relationships between Mrs D and Tandem were unfair for the purpose of s. 140A. But, as it's relevant law, I do have to consider it if it applies to the credit agreement – which it does.

However, as a claim under Section 140A is “an action to recover any sum recoverable by virtue of any enactment” under Section 9 of the LA, I've considered that provision here.

It was held in *Patel v Patel* [2009] EWHC 3264 (QB) ('*Patel v Patel*') that the time for limitation purposes ran from the date the credit agreement ended if it wasn't in place at the time the claim was made. The limitation period is six years and the claim was made within this period.

However, I'm not persuaded that Mrs D could be said to have a cause of action in negligence against Tandem anyway.

Mrs D's alleged loss isn't related to damage to property or to her personally, which must mean it's purely financial. And that type of loss isn't usually recoverable in a claim of negligence unless there was some responsibility on the allegedly negligent party to protect a claimant against that type of harm.

Yet I've seen little or nothing to persuade me that Tandem assumed such responsibility – whether willingly or unwillingly.

PR seems to suggest that Tandem owed Mrs D a duty of care to ensure that A complied with the Regulations and it argues at length that the payment of commission created an unfair relationship. Tandem has confirmed it paid commission and this was disclosed to Mrs D. It also says the interest rate was subsidised. None of this allows me to conclude there was an unfair relationship. I would add that I cannot see any clear evidence that shows A breached the Timeshare Regulations.

#### Affordability

PR says no or insufficient checks were carried out at the time of sale and this means the lending was irresponsible. Tandem says it did carry out checks and sought further confirmation of Mrs D's income and ability to pay in the August phone call.

When considering a complaint about unaffordable lending, a large consideration is whether the complainant has actually lost out due to any failings on the part of the lender. So, if Tandem 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 Mrs D lost out as a result of its failings. Mrs D has provided no evidence whatsoever that she would have found, or did find, it difficult to repay the loan, so I do not need to consider this point further.

## Conclusion

I appreciate Mrs D is dissatisfied with her purchase and she has my sympathies for this, but, in summary I cannot see why any of her claims were likely to have succeeded. So overall I think that Tandem acted reasonably in declining the claims under s.75 and s. 140A CCA.

## **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 15 February 2024.

Ivor Graham  
**Ombudsman**