

The complaint

Mr A, who is represented by a professional representative ("PR") complains that Tandem Personal Loans Ltd ("Tandem") rejected his claims under the Consumer Credit Act ("CCA") 1974 in respect of a holiday product. I gather the purchase was made by Mr and Mrs A, but as the finance agreement was in Mr A's name he is the eligible complainant. In this decision for simplicity I will refer to Mr A as the sole purchaser.

What happened

Mr A had made several purchases from a company I will call T, one in 2006 and another in 2014. He says that in 2018 while on holiday he was persuaded to surrender his old product for a new one at a cost of £20,500. He says he was told that the new points based product would offer greater flexibility in accessing holidays. However it turned out that he had difficulty in accessing the resorts he wanted. He also said that after he and his wife retired they found it more difficult to make the monthly payments.

In April 2021 PR submitted a letter of claim to the original lender, but received no response. The lender subsequently sold the loan to Tandem. PR said the product had been misrepresented by T and Mr A had been aggressively targeted. He had been unable to sell the old product and he had been led to believe the new one would offer an opportunity to recover his investment.

It claimed that Mr A had been pressured into making the purchase which he had been told was an investment. It said T had gone into liquidation and so could no longer offer services. It added that no affordability checks had been carried out and no choice of lender had been offered. It claimed a refund under s.75 CAA and s.140A CAA.

In January 2022 it brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. She asked Tandem for its response to the claim. It said that PR had not provided any evidence to support its claims and noted that while a company in T's group of companies had closed it believed another was providing the services for members. It also provided a video recording of the compliance process.

Our investigator considered the material supplied by both parties and concluded he did not have sufficient evidence of misrepresentation or that there had been an unfair relationship. Nor did he think the lending decision was made in such a way as to allow him to uphold the complaint.

PR didn't agree and said the product had been sold as desirable and it could be easily sold. It said Mr A had purchased all the products as investments.

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 Financial Conduct

Authority ("FCA") 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 protection to consumers for goods or services bought using credit. So, this means that Mr A may be afforded the protection offered to borrowers like him under those provisions. As a result, I've taken this section into account together with any other relevant sections of the CCA when deciding what's fair in the circumstances of this case.

It's important to stress that this service's role as an Alternative Dispute Resolution Service (ADR) is to provide mediation in the event of a dispute. The complaint being considered here specifically relates to whether I believe Tandem's treatment of Mr A's claim was fair and reasonable given all the evidence and information available. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we do not provide a legal service.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made 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 evidence that's available from the time and the wider circumstances.

PR has made a number of claims, but has not submitted much evidence in support of them. I have noted Mr A's testimony, but I have not seen a copy of the agreement signed by Mr A nor any other paperwork supplied by A at the time of sale. PR has simply made several assertions but without supporting documentary evidence. Furthermore as our investigator has pointed out the video recording, albeit of poor quality, does not support the claims made regarding pressure or misrepresentation.

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.

As I have explained I have seen insufficient evidence to show that the product was misrepresented. In particular I cannot safely conclude that it was sold as a financial investment. The sales representative may well have put the best possible gloss on the product but that does not mean that it was misrepresented.

Breach of Contract

Again I do not consider I have seen sufficient evidence of any breach of contract. I have noted that one of A's companies went into liquidation, but I have not been persuaded that the services offered in the contract were not provided by another company.

S.140 A

Only a court has the power to decide whether the relationships between Mr A 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 Mr A could be said to have a cause of action in negligence against Tandem anyway.

His alleged loss isn't related to damage to property or to him 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 Mr A a duty of care to ensure that C complied with the 2010 Regulations and it argues at length that the payment of commission created an unfair relationship. As for the issue of commission has not denied that commission was paid. In my experience of this industry the sums paid were not such that they could be said to have led to an unfair relationship.

Indeed although PR has not submitted all the documentation signed by Mr A I am aware that T's Member's Declaration usually includes a paragraph that mentions that commission is paid and details can be made available. While I cannot say if this was included in the paperwork given to Mr A I think it likely that he could have asked for details of the commission paid.

Affordability

PR says no or insufficient checks were carried out at the time of sale and this means the lending was irresponsible.

Our investigator said that he could not see any evidence that Mr A found the loan unaffordable. 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 Mr A lost out as a result of its failings. Following the issue of our investigator's view PR has made generic points about affordability, but has not provided evidence that they 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 Mr A is dissatisfied with his purchase and he has my sympathies for this, but, in summary I cannot see why any of his claims were likely to have succeeded. So overall I think that Tandem acted reasonably in not accepting 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 Mr A to accept or reject my decision before 15 December 2023.

Ivor Graham
Ombudsman