

The complaint

Mr T, 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 product was purchased by Mr T and his wife, but the loan is in his name and so he is the eligible complainant. In this decision for simplicity I will refer to Mr T as the sole purchaser.

What happened

Mr and Mrs T had made a number of purchases of holiday products from a company I will call A. I gather the previous ones were funded by loans taken out by Mrs T with a different lender. In October 2018 they purchased a points based membership at a cost of £15,000. Mr T says that he was assured that the new purchase was the same as the old ones and it would be possible to transfer the points to other family members or third parties. Having given a digital signature he left the meeting. He was only able to access the website some six weeks later and then discovered what he had bought was not what he thought he had signed for.

In April 2021 PR submitted a letter of claim to Tandem. In short it said that:

- The product was misrepresented as it had been sold as an investment.
- There had been a breach of contract as A was in liquidation.
- Mr T had been pressurised.
- No affordability checks had been carried out.
- The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010, SI 2010/2960 had been broken.
- The membership fees had increased.
- There was an unfair relationship as set out in s.140 A CCA.

Tandem rejected the claim and gave detailed rebuttal of each point raised by PR. A complaint was brought to this service by PR where it was considered by one of our investigators who didn't recommend it be upheld. She said there was insufficient evidence that there had been misrepresentation. As for the breach of contract she noted A had been taken over by another company and there was no evidence that the contract had not been fulfilled. Nor did she think the material presented to her showed there had been an unfair relationship. She also noted that there was no evidence that the lending was unaffordable.

PR didn't agree and said that Mr T had been told his purchase was an investment which was desirable and easily resalable. It added that the various sales between 2016 and 2018 were 'churning' and Mr T had been subjected to pressure. It believed A's resale programme had been discontinued and A had not provided sufficient information as required by the 2010

Regulations in order for Mr T to have made an informed choice. Mr T only discovered when he was able to log on to A's website that he didn't have the points for the holidays he wanted.

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.

S.75 provides protection to consumers for goods or services bought using credit. So, this means that Mr T 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 T'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 T's testimony, but I have not seen a copy of the agreement signed by Mr T nor any other paperwork supplied by A at the time of sale. PR has simply made several assertions which are not supported by the documentary evidence.

Breach of Contract

I do not believe that the liquidation of A in 2020 led to a breach of contract. New management companies were appointed, and Mr T 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 consider it reasonable to presume this, or a similar communication was sent to Mr T. On the face of it, therefore, the services linked to Mr T's purchase of the points remain available to him and are unaffected by the liquidation. Indeed the agreement he signed allowed for the liquidation of A and its replacement by another provider.

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 Mr T was told that his purchase was an investment. It also supplied written testimony from Mr T as to what he recalled being told. 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 Mr T believed that the purchase of points would be an investment. If he had been told that – or had otherwise believed that to be the case – I would have expected him to ask for more information.

In any event I note Tandem has explained the contract shows, the resale facility was not available to Mr T until one year following the first year of occupancy which is at the earliest 2020. It added that in 2020 a worldwide pandemic began with little or no holiday travel and compromised resale opportunities. In normal market conditions if Mr T wanted to sell his points, a resale of points may well have been achieved.

S. 140A claims

Only a court has the power to decide whether the relationships between Mr T 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 s. 140A is “an action to recover any sum recoverable by virtue of any enactment” under s. 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 T could be said to have a cause of action in negligence against Lloyds anyway.

Mr T's 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.

I appreciate Mr T 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 declining the claims under s.75 and s. 140A CCA.

As such I can see no basis for a successful claim under s.140A. Nor do I think the alleged pressure to which PR says Mr T had been subjected at the time of the sale would allow me to uphold his complaint.

Affordability

PR says no or insufficient checks were carried out at the time of sale and this means the lending was irresponsible. Tandem has said that it carried out a full credit and affordability check and Mr T met its lending criteria.

Our investigator said that she could not see any evidence that Mr T 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 T lost out as a result of its failings. Mr T has provided no evidence whatsoever that he would have found, nor did he find, it difficult to repay the loan, so I do not need to consider this point further.

Conclusion

It is not for me to decide whether Mr T has a claim against A, or whether he might therefore have a “like claim” under s. 75 of the Consumer Credit Act. Nor can I make orders under s. 140A and s. 140A of the same Act – by which a court can decide that a credit agreement creates an unfair relationship and make orders amending it.

Rather, I must decide what I consider to be a fair and reasonable resolution to Mr T’s complaint. In the circumstances, I think that Tandem’s response to Mr T’s claims was fair and reasonable.

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 T to accept or reject my decision before 27 November 2023.

Ivor Graham
Ombudsman