

The complaint

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

What happened

Mrs S and her husband entered into a membership application agreement to buy 5,000 holiday club membership credits from a holiday company in June 2018. The purchase price was £15,500 and Mrs S also entered into a fixed sum loan agreement with a finance provider for a loan of that amount. She agreed to make 179 monthly repayments of £158.23 and a final payment of £156.46 to the finance provider.

Mrs S and her husband exchanged emails with the holiday company about some issues with their membership and the holiday company agreed to pay compensation to them. Mrs S's representative then made claims, on behalf of Mrs S, to the finance provider under sections 75 and 140A of the Consumer Credit Act 1974 in September 2020. It said that the product was misrepresented to Mrs S and her husband; the contract was breached; commission was paid between the finance provider and the holiday company which wasn't disclosed to Mrs S which created a breach of fiduciary duty and caused an unfair relationship; and the loan was unaffordable.

The finance provider didn't provide a substantive response to those claims so a complaint was made to this service. Mrs S'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 husband 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.

The finance provider then provided a detailed response to Mrs S's claims. It apologised for not responding within a reasonable time or within the regulatory timeframe and said that it would review its processes to ensure that it improves. It said that: it had found no evidence that the credits or loan account were mis-sold to her; the management company was in liquidation but a new management company had been appointed and was able to fully service Mrs S and her husband's membership in accordance with the terms and conditions of the contract; and there was no commission arrangement between it and the holiday company. Mrs S then provided a summary of the selling experience and the service received from the holiday company.

Our investigator didn't recommend that Mrs S's complaint should be upheld. 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 S 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 Mrs S had completed a loan application and provided details of her income and expenditure, the finance provider had assessed the application based on the information provided and he couldn't see anything to suggest that the loan wasn't correctly set-up or that affordability wasn't assessed prior to the loan being granted.

Mrs S's representative, on behalf of Mrs S, has asked for this complaint to be considered by an ombudsman. It has provided a generic submission from a legal 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 concerns about the way that the finance was sold to Mrs S and says that the holiday company didn't broker proper credit and failed to meet the standard of a regulated firm.

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

- Mrs S and her husband entered into a membership application agreement in June 2018 to buy 5,000 holiday club membership credits and the terms and conditions that they signed say that the credits granted them the right of occupation or use of a unit in each use year until the termination date – and they acknowledged receipt of the standard information document, the rules of membership, the reservation rules and the deed of trust;
- the standard information form, which they also signed, says: *"You are purchasing 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 such as luxury cars at various locations each Use Year ... until the Termination Date in accordance with the Rules of Membership, the Reservation Rules and the Deed of Trust"*;
- Mrs S and her husband also signed other documents including an exchange contract, an initial disclosure document and a separate standard form of the withdrawal notice that could be given, and Mrs S electronically signed the loan agreement and confirmed that she'd seen and read the pre-contract credit information and the loan explanation document;
- Mrs S's representative made claims to the finance provider in September 2020 and Mrs S 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 S and her husband, 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 S'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 S's representative's September 2020 letter says that: Mrs S and her husband were advised that the package would enable them to use exclusive accommodation and have cheaper holidays and that, over the length of the contract, they would save an amount in excess of the sum paid; and the credits were misrepresented to them 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;
- 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, although Mrs S had provided a summary of the selling experience, I don't consider that she's provided enough information about the circumstances in which the alleged misrepresentations were made, the conversations that took place at that time or the information that was provided to her and her husband to show that the holiday company misrepresented the credits to them;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs S and her husband that the credits would enable them to use exclusive accommodation or to have cheaper holidays or that they were an investment – and nor am I persuaded that there's enough evidence to show 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 September 2020 letter also says that the holiday company has ceased to trade and has committed a repudiatory breach of contract - the finance provider says that a new management company had been appointed and is able to fully service Mrs S and her husband's membership in accordance with the terms and conditions of the contract and at no time had their rights of use and occupation been affected by the liquidation of the previous management company and appointment of the new management company. so there had been no breach of contract;
- I consider that the liquidation of the holiday company could be a breach of contract for which Tandem Personal Loans might be liable under section 75 - but I also consider the appointment of the new management company to have been a suitable remedy for any breach of contract, and I've seen no evidence to show that Mrs S and her husband'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;
- the finance provider has also referred to the difficulties experienced by Mrs S and her husband in booking accommodation but it says that those difficulties were with an exchange affiliate that their membership allowed them to utilise – although I sympathise with Mrs S and her husband for those difficulties, the holiday company paid them some compensation 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 September 2020 letter says that commission was paid between the finance provider and the holiday company which wasn't disclosed to Mrs S which created a breach of fiduciary duty and caused an unfair relationship and Mrs S'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 September 2020 letter also says that the loan was unaffordable for Mrs S 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;
- the finance provider has described the affordability assessment that it conducted and has provided its loan application summary which shows that Mrs S had stated that her annual income was £25,000 and that she'd given information about her monthly expenditure and other credit commitments;
- it says that it calculated that after payment of household and other expenses, mortgage, credit commitments and the loan she would be left with monthly disposable income of £233.25 which passed its affordability checks and that Mrs S and her husband confirmed in the compliance meeting when the contracts were signed that the loan was affordable for them;
- Mrs S has provided information about her financial situation which she says shows that the loan wasn't affordable for her but she'd signed a document which said that she agreed to apply for a loan from the finance provider where payment needed to be covered in 180 months and she electronically signed the loan agreement in June 2018 and confirmed that she'd seen and read the pre-contract credit information and the loan explanation document;
- the loan explanation document says: *"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"*;
- I don't consider that Mrs S has provided enough evidence about her financial situation in June 2018 to show that a loan with monthly repayments of £158.23 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;
- Mrs S's loan has now been transferred to Tandem Personal Loans and it's required to respond to any financial difficulties that Mrs S is experiencing positively and sympathetically – so if Mrs S is having difficulties with her monthly loan repayments, I suggest that she contacts Tandem Personal Loans and explains those difficulties to it;
- Mrs S's complaint form says that the holiday company unduly pressured her and her husband into entering into the membership application agreement and her into entering into the loan agreement and she has described the selling experience;
- the standard information form that Mrs S and her husband had signed says: *"The consumer has the right to withdraw from this contract without giving any reason within 14 days from the conclusion of the contract or receipt of the contract if that takes place later"*; and they had also signed the separate standard form of the withdrawal notice that could be given;

- if they'd 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 but I've seen no evidence to show that they did so;
- the loan agreement also clearly set out Mrs S'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;
- the finance provider says that Mrs S and her husband confirmed in the compliance meeting when the contracts were signed that they'd had sufficient time to read and understand the product and supporting literature and I'm not persuaded that there's enough evidence to show that they were unduly pressurised into entering into the membership application agreement or that Mrs S was unduly pressurised into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mrs S's representative has provided a generic submission from a legal 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 S and her husband 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 S and the finance provider;
- I'm not persuaded that there's enough evidence to show that Mrs S'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 S and the finance provider in these circumstances;
- the finance provider didn't respond to Mrs S's claims until after she'd complained to this service but it apologised for not responding within a reasonable time or within the regulatory timeframe, and I consider that the reasons that it then gave for not upholding her claims were fair and reasonable; and
- I sympathise with Mrs S for the issues that she and her husband have had with their membership credits, but I find that it wouldn't be fair or reasonable for me to require Tandem Personal Loans to refund to Mrs S 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 S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 November 2023.

Jarrold Hastings
Ombudsman