

The complaint

Mr C complains that Tandem Personal Loans Limited won't refund to him the money that he paid for some membership credits. His wife is also involved in his complaint and he's being represented by a claims management company.

What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follows:

"Mr C had bought a trial membership of a holiday club from a holiday company in July 2006 and he upgraded to full membership of the club in July 2007. He upgraded his membership again in November 2008.

Mr C and his wife entered into a membership application agreement to trade in that membership and to buy 13,500 membership credits from the holiday company in April 2019. The membership price was £15,950 and Mr C also entered into a fixed sum loan agreement with a finance provider for a loan of that amount. He agreed to make 179 monthly repayments of £162.82 and a final payment of £162.42 to the finance provider.

Mr C's representative, on Mr C's behalf, made claims to the finance provider under sections 75 and 140A of the Consumer Credit Act 1974 in July 2020. It said that: the product was misrepresented to Mr C and his wife; the contract between Mr C and his wife and the holiday company was breached; commission was paid between the finance provider and the holiday company which wasn't disclosed to Mr C which created a breach of fiduciary duty and an unfair relationship; and the loan agreement was unaffordable.

The finance provider didn't provide a substantive response to those claims so a complaint was made to this service. Mr C's complaint form says that: the holiday company and the finance provider failed to conduct a proper assessment of his ability to afford the loan; the finance provider paid a commission to the holiday company which wasn't declared to him and the holiday company unduly pressured him and his wife into entering into the membership application agreement and him into entering into the loan agreement; all rendering the loan agreement unfair pursuant to section 140A.

Our investigator recommended that Mr C's complaint should be upheld. He thought that the holiday company had misrepresented the credits as something that Mr C would benefit from by selling his credits - but he said that the evidence suggests that that couldn't have been the case. He said that Mr C paid for a product that he would otherwise not have purchased, if not for the misrepresentation. He didn't think that the finance provider properly assessed the claim under section 75 and he said that, had it done so, it would have upheld it and so it needed to take action to put things right.

He also thought it likely that a court would conclude that an unfairness has arisen and that it was possible that the loan may have been unaffordable for Mr C but he didn't consider those points any further because he was already upholding Mr C's complaint. He recommended that the finance provider should: cancel the loan and refund all loan payments made (with interest); and refund any maintenance fees paid for the years in which the credits weren't utilised (with interest).

Mr C's loan was transferred to another finance provider in August 2022 and it asked for Mr C's complaint to be considered by an ombudsman. It provided a detailed response to our investigator's recommendations, including summaries of Mr C's welcome call with the finance provider, and said that it had not found any evidence to support a conclusion of misrepresentation or unaffordable lending so it said that there can be no valid claim under sections 75 or 140A. Mr C's loan was then transferred to Tandem Personal Loans.

Mr C's representative, on behalf of Mr C, says that there's evidence to support that the credits were sold as an investment and it has provided information about resale listings, including an application form, and minutes of an annual members' meeting, which it says demonstrate a resale value of the credits. It also says that the welcome call was undertaken prior to Mr C experiencing the monthly repayments from his limited funds, and that that, coupled with the annual maintenance obligations, the cost to potentially use the product and the absence of a return on the investment, make the loan unaffordable. It has also raised concerns about the way that the loan was sold to Mr C".

I said in my provisional decision: *"I consider that Mr C's complaint shouldn't be upheld for these reasons:*

- Mr C and his wife entered into a membership application agreement in May 2019 to trade in their existing membership and to buy 13,500 membership credits – they also signed other documents including the terms and conditions, a standard information form, a separate standard form of the withdrawal notice that could be given, and an initial disclosure document;*
- the membership fee was £15,950 and Mr C also electronically signed the loan agreement and confirmed that he'd seen and read the pre-contract credit information and the loan explanation documents;*
- Mr C's representative made claims to the finance provider in July 2020 and Mr C then made a complaint to this service – the claim letter referred to claims under sections 75 and 140A, including that the points were misrepresented to Mr C and his wife, but his complaint form only referred to a claim under section 140A and didn'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 Mr C'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, and Tandem Personal Loans', responses to his claims were fair and reasonable in the circumstances;*
- the July 2020 letter said that the holiday company represented to Mr C and his*

wife that the credits were of some substance and that the purchase would be an investment as the credits would increase in value and, after a few years, they would be able to sell them at a considerable profit – but it's now clear that the credits are worthless and have no merit;

- *Mr C has described the way that the credits were sold to him and his wife – he says that they were looking to sell their existing membership but were told that because it was for low season weeks it would be impossible to sell so the credits were explained to them – they could be swapped for luxury holidays all over the world, for cruises, country manor stays in England, luxury power boats trips and power cars – and he says after two years they could sell a proportion of the points back, so they thought that they could carry on taking nice holidays and still get a proportion of their money back;*
- *the standard information form that they signed says that 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 such as luxury cars at various locations ..."; and: "The Resale Facility for [credits] will be available to be applied for as of the year 2024 and cannot be relied upon as the basis for entering into a Membership. Resale values or timeframes cannot be guaranteed and are subject to offer and demand";*
- *the finance provider says that all prospective purchasers attend a compliance interview with a compliance manager where every aspect of their purchase is explained to them before signing the documentation;*
- *the finance provider made a welcome call to Mr C after he'd entered into the loan and a transcript of that call has been provided which shows that Mr C said: "It was the deal that did it for me, because we were looking to sell our existing scheme and the fact that they changed it to this new points scheme where we could actually sell some and keep some. That was what we were after. The family can use it as well so we are not limited to one week a year we can chop and change, it is so much more flexible so that's why we liked it";*
- *I consider that the credits do have some substance as they 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, and I'm not persuaded that they're worthless;*
- *Mr C has provided a handwritten note which he says were the notes that the sales reps used to explain the benefits that could be had from buying the credits and there was a breakdown of costs to justify the membership fees but I don't consider that those notes show that the holiday company sold the credits to Mr C and his wife as an investment and I've seen no written documentation that refers to the credits as an investment or to a guaranteed increase in value or profit;*
- *it was clear from the standard information form that the resale facility would be available to be applied for from 2024 (which was five years after Mr C and his wife entered into the membership application agreement) but the resale value wasn't guaranteed;*
- *I'm not persuaded that there's enough evidence to show that the holiday company sold the credits to Mr C and his wife as an investment - nor am I persuaded that there's enough evidence to show that the credits were misrepresented to Mr C and his wife by the holiday company or that they were induced into entering into the membership application agreement by any such misrepresentations;*
- *the July 2020 letter also says that the holiday company has stopped trading so*

has committed a repudiatory breach of contract - the finance provider said that a new management company has been appointed and was able to fully service Mr C and his wife's membership in accordance with the terms and conditions of their agreement - 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 Mr C and his wife'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;

- Mr C says that he and his wife tried to book holidays but were unable to book the holidays that they wanted as there was never any availability and that they did book a couple of city breaks but due to the Government imposed restrictions in response to the pandemic they were unable to take advantage of them – and he says that they've now terminated their agreement with the holiday company;*
- but the finance provider's response to our investigator's recommendation said that it wasn't aware that Mr C and his wife's agreement had been terminated and the agreement included payment of the annual membership renewal fees until 2025 – it also says that outside of the government imposed restrictions on travel, Mr C and his wife have been able to book holidays as they wished but have chosen not to do so;*
- I'm not persuaded that there's enough evidence to show that there's been any breach of the membership application agreement for which Tandem Personal Loans would now be liable under section 75;*
- Mr C's representative says that commission was paid between the finance provider and the holiday company which wasn't disclosed to Mr C which created a breach of fiduciary duty and an unfair relationship but the finance provider said that there was no commission arrangement between it and the holiday company;*
- I've not been provided with any evidence to show that the finance provider paid a commission to the holiday company or to show what commission, if any, was paid by the finance provider to the holiday company and I'm not persuaded that there's been a breach of any fiduciary duty by the finance provider in these circumstances;*
- Mr C's representative says that the loan agreement was unaffordable for Mr C and Mr C's complaint form says that the holiday company and the finance provider failed to conduct a proper assessment of his ability to afford the loan;*
- the finance provider says that Mr C's loan application was underwritten subject to its lending criteria at the time which would have included validation of information on the application form and a check against a number of databases, including credit reference agencies, before arriving at the decision to approve the lending;*
- the finance provider has provided evidence to show that it assessed the affordability of the loan for Mr C and that Mr C was retired with investment income of £3,000 each month and that it obtained information from him about his expenditure and credit commitments – and it says that it used that information to calculate that he had a monthly disposal income of £1,029.74;*
- Mr C has provided copies of his bank account statements for the period from January to June 2019 but I don't consider that those statements show that the loan wasn't affordable for him in April 2019 when it was made to him;*

- *Mr C said in the welcome call that the loan was affordable for him and that: "For the first two years the payments are fine and then in the third year I expect to pay it off all in one go once my pension comes through so I don't think it is going to be a problem";*
- *he has provided information about the redundancy payment that he received in November 2018 which he said would have comfortably lasted until his 60th birthday when he could draw on his pension – and he also provided information about the lump sum payment and annual pension that he would be receiving;*
- *Mr C's representative says the monthly repayments coupled with the annual maintenance obligations, cost to potentially use the product and the absence of a return on the investment, make the loan unaffordable – but the membership application agreement said that the annual membership renewal fee was included from 2020 until 2025;*
- *Tandem Personal Loans has provided information to show that Mr C has continued to make the loan repayments and Mr C says that he's been advised to keep making the loan repayments until a decision is made on his complaint;*
- *I consider that the checks that were conducted by the finance provider were reasonable and proportionate and I don't consider that it would be reasonable to expect the finance provider to have made more detailed checks about the affordability of the loan for Mr C and I find that it was fair and reasonable for it to conclude on the basis of the checks that it made that a loan with a monthly payment of £162.82 was affordable for Mr C;*
- *even if I'm wrong about that and those checks weren't reasonable or proportionate, I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr C in April 2019 when it was made to him and I'm not persuaded that there's enough evidence to show that the loan was mis-sold to Mr C, that the finance provider shouldn't have made the loan to him or that it has acted incorrectly in its dealings with Mr C about the loan;*
- *Mr C's complaint form says that the holiday company unduly pressured Mr C and his wife into entering into the membership application agreement and Mr C into entering into the loan agreement;*
- *Mr C and his wife had signed the separate standard form of the withdrawal notice that could be given to withdraw from the membership application agreement within 14 calendar days without giving any reason, so if they were concerned about the way that the credits had been sold to them and didn't want to buy them, I consider that it would be reasonable to expect them to have contacted the holiday company within the withdrawal period to withdraw from the membership application agreement but I've seen no evidence to show that they did so;*
- *the loan agreement that Mr C electronically signed clearly set out his right to withdraw from the loan agreement without giving any reason within 14 days, so if Mr C was concerned about the way that the loan had been sold to him, I consider that it would be reasonable to expect him to have contacted the finance provider within the withdrawal period to withdraw from the loan agreement but I've seen no evidence to show that he did so;*
- *Mr C said in the welcome call that he was definitely given enough time to read the terms and conditions and that: "Rather than a hard sell we could go away and read the deal and the plan [and] discuss it with our daughter who is in finance so we were quite confident about it"; and he also said that he would recommend the holiday company to a family member;*

- *I'm not persuaded that there's enough evidence to show that Mr C and his wife were unduly pressured into entering into the membership application agreement, that Mr C was unduly pressured into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;*
- *I'm not persuaded that there's enough evidence to show that Mr C'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 Mr C and the finance provider in these circumstances;*
- *the finance provider didn't issue a substantive response to Mr C's claims so I can't say that its response to his claims was fair or reasonable – but if it had properly responded to his claims I consider that it would have been fair and reasonable for it not to have upheld them; and*
- *I sympathise with Mr C for the issues that he and his wife have had with their membership credits, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Tandem Personal Loans to refund to him any of the money that he's paid under the loan agreement, to cancel the loan agreement, to pay him any compensation or to take any other action in response to his complaint”.*

Subject to subject to any further comments or evidence that I received from any of Mr C, his representative and Tandem Personal Loans, my provisional decision was that I didn't intend to uphold this complaint. Tandem Personal Loans says it has no further points to make but Mr C has provided a statement in response to my provisional decision. In that statement he says, in summary, that:

- the credits were sold to him on the basis that half could be sold or rented back to the holiday company within two years, so should be construed as an investment, whilst still retaining the other half to use for services – but the resales never materialised so he never got a chance to make any money from his investment;
- the credits were also sold to him on the basis of flexibility of use of the services but there was never availability of the hotels or services that he tried to book and it would appear that the holiday company had oversold the credits;
- the credits seemed like the best investment to make as the holiday company told him that his timeshare option with it wouldn't sell because he owned winter months and in a couple of years he could sell off a portion of the credits and use the money to pay off the loan for the initial purchase and the holiday company made it sound like a good self-funding investment; and
- he's left with a loan that he's continuing to pay but has nothing at the end of it except a very bad experience and a huge lump sum missing from his pension, all because the credits were misrepresented by to him by the holiday company.

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'm not persuaded that I should change the findings that I set out in my provisional decision. Mr C and his wife had signed the standard information form which says that: *"The Resale Facility for [credits] will be available to be applied for as of the year 2024 and cannot be relied upon as the basis for entering into a Membership. Resale values or timeframes cannot be guaranteed and are subject to offer and demand"*; and I've seen no evidence to support Mr C's claim that any of the credits could be sold or rented back to the holiday company within two years.

I've carefully considered all of the information that Mr C and his representative have provided, including Mr C's statement in response to my provisional decision and, although I sympathise with him for the issues that he and his wife have had with their membership credits, I'm not persuaded that there's enough evidence to show that the credits were sold to them as an investment or that the credits were misrepresented to them.

Mr C says that he's left with a loan that he's continuing to pay but has nothing at the end of it except a very bad experience and a huge lump sum missing from his pension. He also says that he and his wife have terminated their agreement with the holiday company but the finance provider said that it wasn't aware that Mr C and his wife's agreement had been terminated. I suggest that Mr C contacts the holiday company to check whether his and his wife's agreement has been terminated and, if it hasn't, they may be able to use their credits. But 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.

For the reasons set out in my provisional decision, I find that it wouldn't be fair or reasonable in these circumstances for me to require Tandem Personal Loans to refund to Mr C any of the money that he's paid under the loan agreement, to cancel the loan agreement, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 December 2023.

Jarrold Hastings
Ombudsman