

## The complaint

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

## What happened

Mr T and his wife had been members of a holiday club since 2005 and they entered into a purchase agreement with the holiday company in June 2019 to trade in a total of 108,000 of the membership points that they'd acquired and to purchase 74,000 of a different type of membership points. They also agreed to pay a net purchase price of £6,630. Mr T entered into a fixed sum loan agreement with a finance provider for a loan of that amount and he agreed to make 119 monthly repayments of £92.44 and a final payment of £93.35 to the finance provider. Mr T and his wife also signed a memorandum of understanding which said that, after three years, they may trade their points against any future properties that may become available for sale.

Mr T's representative made claims, on behalf of Mr T, to the finance provider in November 2021 under sections 75 and 140A of the Consumer Credit Act 1974. The representative's letter to the finance provider included claims that: the membership credits were mis-sold to Mr T and his wife and, but for the misrepresentations made to them, they wouldn't have purchased them and Mr T wouldn't have entered into the loan agreement; the membership points were sold to Mr T and his wife as an investment, contrary to the Timeshare Regulations, and under extreme sales pressure; the terms of the agreement are so egregious so as to be unfair and the payment of commission was hidden from view; and the holiday company didn't undertake a proper affordability check.

The finance provider responded to those claims in detail and said that all allegations of mis-selling, misrepresentation, breach of contract, no affordability checks, no choice of creditor, pressure selling of the loan and the membership points and an unfair relationship were denied as unsupported and unproven.

Mr T wasn't satisfied with its response so complained to this service. His complaint form says that: the finance provider paid a commission to the holiday company which wasn't declared to him; the holiday company failed to conduct a proper assessment of his ability to afford the loan, unduly pressured him and his wife into entering into the purchase agreement and him into entering into the loan agreement and used aggressive commercial practices to pressure them; and the membership points were misrepresented to them; all rendering the loan agreement unfair pursuant to section 140A; and it said that the claim should also be considered under section 75. Mr T's loan was transferred to another provider in August 2022.

Our investigator recommended that Mr T's complaint should be upheld. He thought that investing in property to rent looked to have been the focus of the sale to Mr T and his wife and that the holiday company likely breached the Timeshare Regulations by marketing and selling the membership points to them as an investment. He recommended that the finance provider to which Mr T's loan had been transferred should: refund all of the loan payments

and cancel the loan; refund any management charges relating to the membership points; pay interest on those refunds; remove any adverse information in relation to the lending from Mr T's credit file; and arrange the cancellation of the purchase agreement with the holiday company (if it's still active), so that the membership points that Mr T and his wife purchased are cancelled, along with any ongoing liability in relation to them.

Mr T's representative says that Mr T is happy with that outcome. It also says that Mr T has made claims to the finance provider about a purchase of more membership points that he and his wife made in March 2020, to which he hasn't had a response, so a complaint was being made to this service.

Mr T's loan has been transferred to Tandem Personal Loans and it said that it didn't agree with our investigator's recommendation and asked for this complaint to be referred to an ombudsman for a decision. It says that:

- the memorandum of understanding and the pre-contractual information don't make any reference to an investment and Mr T and his wife had agreed that the purchase wasn't entered into for the purpose of a wider investment opportunity or financial gain;
- the purchase agreement details the acquisition of membership points as opposed to a physical property purchase and gave Mr T and his wife the ability to stay at their chosen property at a given period; and
- that doesn't contravene any regulations and the holiday company's comments don't infer that the points purchase was made as a form of property investment;

and it has referred to a decision issued by another ombudsman on a complaint, in what it says were similar circumstances, which wasn't upheld.

### **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 Mr T's complaint should be upheld for these reasons:

- the holiday company says that Mr T and his wife had been members of the holiday club since 2005 - they entered into a purchase agreement with the holiday company in June 2019 to trade in a total of 108,000 of the membership points that they'd acquired and to purchase 74,000 of a different type of membership points;
- they also signed a separate form about their right to withdraw from the purchase, a declaration of treating customers fairly in a compliant sales practice and a memorandum of understanding - a loan requirements form was completed, Mr T received pre-contract credit information and he signed the loan agreement;
- the memorandum of understanding says: *"I/We understand that 3 years after the completion of this Purchase Agreement I/We may trade my/our [membership points] (fully or partially, at maximum of 300,000 points per property purchased) against any future properties that may become available for sale through [the holiday company] or its partners"*;
- Mr T wrote on his complaint form that the holiday company told him and his wife that they could use their points towards buying one of its properties which it would then rent out and the rent would be divided between them and would finance the purchase of the property – but they were then told in March 2020 that more points were needed for an investment purchase so they bought more points and another loan

was arranged – and they realised in May 2020 that the scheme wasn't going to happen so they ended their membership in June 2021;

- Mr T's representative says that Mr T has also made claims to the finance provider about the purchase of more membership points that he and his wife made in March 2020 – but in this decision I'm only considering his complaint about the finance provider's response to the claims that he made to it about his and his wife's June 2019 purchase – any complaint about the finance provider's response to his claims about his and his wife's March 2020 purchase will be considered separately;
- the declaration that Mr T and his wife signed in June 2019 says: *"I/We also understand that I/we have not entered into this purchase purely for a wider investment opportunity or financial gain"*;
- the finance provider quoted from the holiday company in its final response letter and said: *"The client did this contract to purchase a property and to be able to rent it ..."*;
- the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 say: *"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract"*;
- 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 T's claim under sections 140A as only a court would be able to do that but I'm considering whether or not the finance provider's response to his claim was fair and reasonable in the circumstances;
- Tandem Personal Loans has referred to a decision issued by another ombudsman on a complaint, in what it says were similar circumstances, which wasn't upheld – I've looked at that decision and the ombudsman wasn't persuaded that a significant reason that the purchaser entered into an agreement to purchase additional points was because he wanted to use them to purchase a property as he sought to surrender his membership before the option to purchase a property could be invoked;
- Mr T says that he and his wife realised in May 2020 that the scheme wasn't going to happen so they ended their membership in June 2021 and I'm persuaded that it's more likely than not that a significant reason for Mr T and his wife purchasing the membership points in June 2019 was because of their understanding that they would be able to trade their membership points against a future property;
- I consider it to be more likely than not the holiday company marketed and sold the membership points to Mr T and his wife in June 2019 as an investment – in breach of the Timeshare Regulations, and I also consider it to be more likely than not that they wouldn't have entered into the purchase agreement and Mr T wouldn't have entered into the loan agreement if the membership points hadn't been marketed and sold to them as an investment;
- I consider that the breach of the Timeshare Regulations caused Mr T's relationship with the finance provider to be unfair and I consider it to be more likely than not that a court would conclude that there was an unfair relationship between Mr T and the finance provider in these circumstances;
- as I consider that there was an unfair relationship between Mr T and the finance provider, I haven't considered Mr T's other claims relating to the June 2019 purchase; and
- I don't consider that the finance provider's response to Mr T's section 140A claim

was fair or reasonable and I find that it would be fair and reasonable for Tandem Personal Loans to take the actions described below.

### **Putting things right**

Our investigator recommended that the finance provider to which Mr T's loan had been transferred should: refund all of the loan payments and cancel the loan; refund any management charges relating to the membership points; pay interest on those refunds; remove any adverse information in relation to the lending from Mr T's credit file; and arrange the cancellation of the purchase agreement with the holiday company (if it's still active), so that the membership points that Mr T and his wife purchased are cancelled, along with any ongoing liability in relation to them.

Mr T's loan has now been transferred to Tandem Personal Loans and I find that it would be fair and reasonable for Tandem Personal Loans to refund to Mr T all of the payments that he's made under the fixed sum loan agreement that he signed in June 2019, with interest, and that it should cancel the loan agreement at no further cost to Mr T and write-off any outstanding amount due from him.

I find that it would also be fair and reasonable for Tandem Personal Loans to refund to Mr T any management charges that have been paid relating to the membership points that he and his wife purchased in June 2019, with interest (subject to Mr T providing evidence of those charges to Tandem Personal Loans).

I've not seen any evidence to show that Tandem Personal Loans (or either of the other finance providers) has recorded any adverse information about the loan agreement on Mr T's credit file – but if any such information has been recorded, I consider that it would be fair and reasonable for Tandem Personal Loans to ensure that that information is removed.

Mr T says that he and his wife ended their membership in June 2021 but I find that it would also be fair and reasonable for Tandem Personal Loans to ensure that the purchase agreement with the holiday company has been cancelled - so that the membership points that Mr T and his wife purchased in June 2019 are cancelled, along with any ongoing liability in relation to them.

### **My final decision**

My decision is that I uphold Mr T's complaint and I order Tandem Personal Loans Limited to:

1. Refund to Mr T all of the payments that he's made under the fixed sum loan agreement that he signed in June 2019.
2. Cancel the loan agreement at no cost to Mr T and write-off any outstanding amount due from him.
3. Refund to Mr T any management charges that have been paid relating to the membership points that he and his wife purchased in June 2019, with interest (subject to him providing evidence of those charges).
4. Remove any adverse information about the loan agreement that has been recorded on Mr T's credit file.
5. Ensure that the purchase agreement with the holiday company has been cancelled.
6. Pay interest on the amounts at 1 and 3 above at an annual rate of 8% simple from

the date of each payment to the date of settlement.

HM Revenue & Customs requires Tandem Personal Loans to deduct tax from the interest payment to be made to Mr T and Tandem Personal Loans must give him a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 February 2024.

Jarrold Hastings  
**Ombudsman**