

The complaint

Mrs G, who is represented by a professional representative (“PR”) complains that Tandem Personal Loans Ltd (“Tandem”) rejected her claims under the Consumer Credit Act (“CCA”) 1974 in respect of a holiday product. It appears that the product was purchased with another person, but as the loan is in Mrs G’s name she is the eligible complainant and for simplicity, in this decision, I will refer to her as the sole purchaser. The original loan was made by another financial institution but this was then sold to Tandem and for simplicity I will refer to it as the lender in this decision.

What happened

In May 2018 Mrs G purchased a holiday product from a company I will call A. It cost £14,250 and this was funded by a loan from Tandem. I understand she took a promotional holiday with A and during that she attended a sales meeting and made the purchase.

In July 2022 PR submitted a letter of claim. Both parties are aware of the details of that claim and as such I will set out a brief summary of the key points. PR said:

- A was now in liquidation and so it was unable to provide the service it had sold.
- Mrs G had not been told of commission paid to A by Tandem.
- She had been aggressively targeted, subjected to excessive pressure and rushed into making the purchase.
- She was told she would have exclusive access.
- Maintenance fees have increased more than is required to maintain the property.
- She had been told the product was an investment which could be easily sold.
- It was offered at a special price if purchased that day.
- She was told that the points based system offered greater flexibility and improved benefits.
- She was not given time to read the extensive paperwork.
- She was given the impression that the loan and the holiday product came as a package.
- A breached the 2010 Timeshare, Holiday Products, Resale and Exchange Contracts Regulations (“the Regulations”).
- A aggressively marketed the product in breach of the Consumer Protection from Unfair Trading Regulations (“CPUT”)

- There was an unfair relationship as set out in s.140A CAA.
- No proper affordability checks were carried out.

PR says no response was received and it brought a complaint to this service on behalf of Mrs G. Tandem says it didn't receive the letter of claim, but after we let it have a copy Tandem issued a final response letter. This rejected the claim.

The matter was considered by one of our investigators who didn't recommend it be upheld. He didn't consider he had seen enough evidence to show there had been either a breach of contract or misrepresentation. Nor did he consider there had been an unfair relationship as claimed under s.140A CAA or that the loan was unaffordable.

PR didn't agree and said Mrs G had bought the product as an investment and she was led to believe it could be sold easily. She had been told she could exit after five years, but she was limited to a certain number of points per year and unless she paid extra she could not use these all in that time period. It said it was likely that A sold the product as more than a holiday club membership. PR said that key information had not been given, but did not specify what that was. It also said Mrs G was having difficulty meeting her monthly payments.

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 doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account the:

“(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”

And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision 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 available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don't think this complaint should be upheld.

I should point out first of all that Mrs G has provided very limited documentation in support of her claim despite the letter of claim stating that she was given very extensive paperwork. However, I do have the six page purchase document. As for the other documents this service has seen a number of complaints about A's sales from around the same time. As is to be expected, the sellers and Tandem used largely standard contract wording. I have presumed that the same standard wording was used for Mrs G's purchase.

S.75 CCA

S. 75 of the CCA states that, when a debtor (Mrs G) under a debtor-creditor-supplier agreement has a claim of misrepresentation or breach of contract against the supplier that relates to a transaction financed by the agreement, the creditor (Tandem) is equally and concurrently liable for that claim – enabling the debtor to make a ‘like claim’ against the creditor should she choose to.

It’s important to note that, as Tandem was the lender rather than the supplier, under the Act a claim is limited to one for misrepresentation or breach of contract, rather than general unhappiness with what was available under the contract.

Breach of Contract

I do not believe that the liquidation of A in 2020 led to a breach of contract. I gather new management companies were appointed, and Mrs G 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 presume Mrs G received a copy of this letter or something similar.

On the face of it, therefore, the services linked to Mrs G’s purchase of the points remain available to her and are unaffected by the liquidation. Indeed the agreements used by A usually allow for the liquidation of A and its replacement by another provider. That said, I cannot say if this was in Mrs G’s documentation since I have not seen a full copy of it.

Given I have not been persuaded that the product was sold as a financial investment I cannot conclude that the removal of a sales service by A can be regarded as a breach of contract.

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 Mrs G was told that her purchase was an investment. 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 Mrs G believed that the purchase of points would be an investment. If she had been told that – or had otherwise believed that to be the case – I would have expected her to ask for more information.

The documentation I have seen makes it clear Mrs G was purchasing membership of a club and not acquiring real estate or an interest in real estate. PR has suggested that it is likely A sold the product as an investment, but I don’t believe that is sufficiently persuasive to allow me to require Tandem to refund the costs to Mrs G. PR is asking that Tandem refund a significant sum of money, but has not given sufficient evidence in support of its claims. I am aware that some sales representatives have referred to these products as investments in future holidays, but that does not mean they were sold as financial investments.

I would add that I have seen no evidence that Mrs G was seeking to, or actually tried to sell the product.

In short I do not believe I can say that there was misrepresentation such that I can uphold this complaint.

S. 140A claims

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

Mrs G's alleged loss isn't related to damage to property or to her 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.

In any event I do not consider I have been shown evidence which indicates there was an unfair relationship. PR seems to suggest that Tandem owed Mrs G a duty of care to ensure that A complied with the Regulations and it argues at length that the payment of commission created an unfair relationship. Tandem has confirmed it paid no commission.

It also says she attended the meeting of her own volition and the special price was a discounted rate which many companies use in their sales regimes. Furthermore, Mrs G had the opportunity to cancel within 14 days, but she chose not to do so which does not indicate that she was unduly pressurised to make the purchase.

PR also claims that Mrs G was given too much paperwork to read and assimilate and also that she was not given key information, but it is not clear what she was allegedly not given. Apart from the fact that neither Tandem nor I have been provided with all the paperwork PR has not specified what key information was missing.

More recently PR has suggested Mrs G can only use 160 points per year out of a total of 5,000 she purchased. It supplied an unsigned copy of the Club Rules in support of this claim. I have read this and I can only identify a requirement that the member use a minimum number of points per year. It also allows members to accelerate their use of points at an additional cost. If I assume this was the document signed by Mrs G I think it is reasonable to conclude she could be expected to have been aware of what she was buying.

None of this allows me to conclude there was an unfair relationship. I would add that I cannot see any clear evidence that shows A breached the Timeshare Regulations. PR has simply made assertions rather than provide evidence.

Affordability

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

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 Mrs G lost out as a result of its failings. I have noted PR's assertion that Mrs G's husband is struggling to repay the loan, but has provide no further detail. I am not sure why it referred to Mr G; possibly this was an error. It has not said that the loan was unaffordable at the time it was taken out. If Mrs G is struggling I would advise her to contact Tandem to see what options are available to her.

Conclusion

I appreciate Mrs G is dissatisfied with her purchase and she has my sympathies for this, but, in summary I cannot see why any of her 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.

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 Mrs G to accept or reject my decision before 29 February 2024.

Ivor Graham
Ombudsman