

## **The complaint**

Mrs M complains that Tandem Bank Limited unfairly declined her claim under section 75 of the Consumer Credit Act 1974 ("CCA") in respect of a holiday product she purchased in 2019.

## **What happened**

In October 2019 Mrs M along with her husband purchased a points -based holiday club membership with a company I will call A. They purchased 4,000 points costing £13,950. This purchase was funded by a point of sale loan of £13,950 with Honeycomb Finance Limited in Mrs M's name. As this complaint is made by Mrs M I will refer to her as the sole purchaser in the remainder of this decision. Recently Honeycomb transferred this loan to Tandem which is now responsible for this complaint. I will refer to Tandem as being the lender.

Mrs M complained to A in late 2019, but it rejected her complaint. In November 2020 she contacted Honeycomb and said:

- The sales representative did not discuss or explain what would happen if her circumstances changed (loss of job, age, income/expenditure, etc.).
- She was not aware she was taking out finance with Honeycomb.
- She was advised she could relinquish membership after three years.
- She felt pressurised to sign the loan agreement.
- She was advised at the point of sale the investment would rise; but was later told by the liquidators this was not the case.
- A had gone into liquidation.
- This had affected her relationship.

She wished to stop making payment and have the finance application cancelled and be refunded all her payments.

Honeycomb rejected her claim and said A had not gone into liquidation, rather a management company had done so, but it had been replaced and this would have no impact on Mrs M's agreement.

It said the sales process set out all the aspects of the purchase and she would have signed a member's declaration confirming her understanding of the purchase. She would have been given copies of all the relevant documentation.

This documentation confirmed the resale facility was available to be applied for as of the year 2023 and could not be relied upon as the basis for entering into a membership. Resale values or timeframes were not guaranteed and were subject to offer and demand. It

explained that A was the only authorised vendor offering this facility and which was subject to a fee and certain terms and conditions.

Honeycomb also said that it had carried out the appropriate checks on Mrs M's finances, but it could not be expected to anticipate any changes after the agreement had been signed.

Mrs M brought a complaint to this service which was considered by one of our investigators who recommended it be upheld. Mrs M said that she understood the timeshare to be an investment. She said she was told unused points could be sold on for a 30 to 40 percent profit.

She anticipated using the timeshare every other year so was keen on being able to sell on points. She also said she was told that she could re-sell the points and use the money to pay off the loan agreement. She explained to our investigator that she hadn't been able to re-sell any of the points.

Our investigator was satisfied that Mrs M only proceeded with the agreement because she was reassured that she could resell the points. She based this, in part, on an email sent by Mrs M two months after the purchase in which she related her belief that she was told she could resell the points. Our investigator thought the points could not be resold easily. She also said that she considered there could have been an unfair relationship between Mrs M and A which would have rendered the loan agreement unfair. However, she didn't expand on this as she had concluded the complaint should be upheld for the grounds of misrepresentation.

Honeycomb didn't agree and submitted a detailed explanation of how the product worked and the sales process. It said there was no basis for concluding there had been misrepresentation or that there was an unfair relationship.

I issued a provisional decision which read as follows:

*"Sections 56 and 75 of the Consumer Credit Act 1974*

*Under section 56 of the Consumer Credit Act statements made by a broker in connection with a consumer loan are to be taken as made as agent for the lender.*

*In addition, one effect of section 75 (1) of the Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender.*

*Those conditions include:*

- that the lending financed the contract giving rise to the claim; and*
- that the lending was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.*

*It is clear in this case that the loan financed the purchase of the club membership. The company that sold the club membership was A. I have approached this case on the basis that the loan was set up as a result of pre-existing arrangements between Honeycomb and A and that both section 56 and section 75 of the Consumer Credit Act could therefore apply.*

*Mrs M signed a comprehensive membership agreement which amongst other things included details of the RCI membership, cancellation forms and information about the benefits of membership. It recorded personal details, the price and the XPs bought. It*

*included a statement that she had read and understood the membership terms which was signed. It also listed the accommodation covered by the membership – namely, apartments at a resort in Malta, yacht hire in Malta, supercar experiences in the UK, and motorhomes in the UK – and the points needed to book them.*

*It included an acknowledgement that Mrs M had received all the documentation and it set out the right of withdrawal within 14 days and included a withdrawal form. I can also see that although a company involved in the provision of accommodation etc. has gone into liquidation this role has been taken over by another company and I have seen no evidence that Mrs M has been affected by this change.*

### *Misrepresentation*

*A 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 induces the other party into the contract. A claim for misrepresentation can also arise where one party allows the other to proceed under a misunderstanding, although such cases are rare and generally limited to situations where there is a duty to disclose certain facts – for example, where legislation requires it or there is a duty of utmost good faith.*

*I have no doubt that Mrs M genuinely believed she would be able to sell the points she had bought. However, I am not persuaded however that this was because of anything incorrect or misleading that she was told by A's representative.*

*The paperwork includes the following statement in bold and Mrs M signed that she had acknowledged receipt of this information. It reads:*

***"The Resale Facility for [A points] will be available to be applied for as of the year 2024 and cannot be relied on as the basis for entering into a Membership. Resale values or timeframes cannot be guaranteed and are subject to offer and demand. [A] is the only authorised vendor offering this facility, currently the transaction fee of £65 and is subject to prevailing Resales Terms and Conditions applicable at the time of registration."***

*I appreciate Mrs M's recollections of what was said, supported by her husband, but the documentation which she signed made it clear that the points could not be sold until 2024. As such I cannot conclude that the product was misrepresented. I would add that I have noted that Honeycomb's final response letter refers to 2023 rather than 2024.*

*Mrs M has also mentioned that the discounted flights offered by A were more expensive than others available on the open market. That may be the case, but I am not aware that A offered the cheapest flights. It simply offered a discount on the flights it was able to source. I can see no grounds for saying this amounted to misrepresentation.*

*Nor can I say that there is sufficient evidence to allow me to conclude that Mrs M was told that this was an investment. I have reviewed the lengthy documentation she received and signed in multiple places and none of this refers to the product being an investment.*

*I have noted the paperwork supplied to Mrs M shows that she is taking out finance with Honeycomb and I cannot safely conclude that she was unaware of this. The loan agreement sets out clearly the key terms and conditions and it identified the agreement as a loan.*

*Overall I can see no reason why I can conclude that Honeycomb was wrong to reject her claim under s 75 CCA.*

### *Section 140A and 140B claims*

*Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments. In deciding whether to make such an order, section 140 C allows the court to take into account any linked agreement – which is likely to include in this case the membership agreement.*

*The investigator took the view that the way in which the membership agreement was sold meant that the loan agreement was likely to have created an unfair relationship between Mrs M and Honeycomb within the meaning of section 140 A. For the reasons I have explained, however, I am not persuaded that the club membership was misrepresented to Mrs M.*

*The loan terms were themselves clear and the loan agreement set out the key points – the amount of the loan, the period for which it would run, the interest rate and the monthly payments. It was in the form required by the relevant consumer legislation. That does not mean that it cannot have created an unfair relationship, of course, but I am not persuaded that it did.*

#### *Affordability*

*Mrs M has mentioned that proper checks were not carried out into the affordability of the loan and no explanation was given as to what would happen if her circumstances changed.*

*Honeycomb has sent this service details of the checks it carried out with third party agencies and into Mrs M's creditworthiness. I have no reason to believe these were inadequate and I gather they were in line with what it was required to do. It cannot be held responsible for any subsequent changes in Mrs M's circumstances.*

*Even if I were to conclude that Honeycomb didn't carry out the proper checks for creditworthiness and affordability when arranging a loan for Mrs M, I would still need to be satisfied that the lending was unaffordable for her and/or that she lost out as a result, in order to uphold this part of her complaint. Quite simply I have no basis for upholding this element of the complaint on either the claim that proper checks were not carried out or that the loan was unaffordable.*

#### *Conclusion*

*I stress that it is not for me to decide whether Mrs M has a claim for misrepresentation against A. Nor is it for me to decide whether the loan created an unfair relationship between Mrs M and Honeycomb. Rather, I must consider whether Honeycomb's response to Mrs M's complaint was fair and reasonable, having regard amongst other things to the relevant provisions of the Consumer Credit Act 1974. In my view, Honeycomb acted reasonably in declining Mrs M's claims and in not upholding her complaint."*

*Mrs M didn't agree and said she was concerned that her and her husband's recollection of events had not been relied on more. She said a lot had changed since the new management company had taken over and it was failing to respond to them. The resale of points hadn't been mentioned and was supposed to commence in 2020, but the new management company doesn't know how to do this.*

*I asked for evidence in support of her appeal and she submitted a number of documents including email exchanges with A and details of the voluntary liquidation of the management company.*

*Mrs M elaborated on her earlier arguments and said the new management company had not*

dealt with issues they had raised. She also said that the incentives they had been promised were of no use to them. She also said that the resale of points was to take place in 2020 and my reference to 2024 was for the sale of the whole programme. She hasn't been able to sell any of the points so far and this could have covered some of the cost she had incurred. She said the staff would have been aware of the impending liquidation in line with the various online articles she shared. Finally she said the loan had been sold by Honeycomb without notifying her.

### **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.

I have given consideration to both the original information submitted by Mrs M and her recent submissions, but I do not consider I can uphold her complaint. I will explain why.

Firstly, I would explain that I do not consider our investigator was lacking information when she issued her view. I simply noted that she had explained that she had not needed to give consideration to the S140A element in writing her view as she had concluded there were other grounds for upholding the complaint.

It is probably worth noting that what A was offering was as follows:

- accommodation at a named resort in Malta, yacht hire, supercar experiences, and motorhome hire;
- Holiday Plus membership; and
- RCI membership.

The contract states clearly that what was being acquired was in terms of accommodation with A i.e. *"the right of occupation or use of a Unit in each Use Year until Termination Date or accelerated occupation..."* If Mrs M did not wish to make use of the accommodation she was able to ask A to rent out her points. I believe this is what Mrs M is referring to when she talks about reselling the points. It did not guarantee they would be taken up, but it has confirmed that other customers use this rental regime successfully.

The contract includes the RCI membership and details of the right of withdrawal. The RCI element allows for the exchange of A's points for products supplied by RCI. I believe RCI also provide discounted flights.

Mrs M signed a 32 page contract, including the loan application, in numerous places. This set out in some detail what was being offered and what terms and conditions applied. It identified Mrs M and her husband and that they had purchased 4,000 credits with membership level XP level 1.1. The first year of use was 2020.

### **Misrepresentation**

I have noted the email exchanges and the reasons given by Mrs M for her complaint. It seems there was some confusion as to what had been acquired. To enable me to uphold this complaint I have to be satisfied that there was misrepresentation and Mrs M was misled as to what she was purchasing. Given what she had signed and the details set out in the documentation I need to be clear that this was overridden by what the sales representative said.

Within a few months Mrs M was seeking clarification of the agreement and regarding how RCI worked, about discounted flights and the incentives promised. These questions were addressed by A and the incentives of £1,500 cash back and flight vouchers worth £1,000 were available for her use. A says the latter was handed over on the day of purchase. The cash back was to compensate Mrs M for the potential rental points in 2020. This was due to the fact Mrs M signed the contract after the cut-off date for the rental of points. Honeycomb said it had not received the voucher from Mrs M to allow it to reduce her balance by £1,500.

To obtain rentals A required Mrs M to make her request on 1<sup>st</sup> January and she was told of this in December. It seems to me that A sought to answer her questions and provide the clarification she wanted. I also think A gave information about the process to earn money back from rentals and I cannot see how this element of the agreement can be said to have been misrepresented. I have also noted that the bank has told this service that due to the covid lockdown points were allowed to be carried over rather than lost.

I gather Mrs M and her husband were not planning to return to Malta and had other holiday plans which she believed could be part funded by what they had bought. Given their holiday requirements I would have presumed Mrs M would have sought to make use of the rental regime.

I appreciate that the potential of using discounted flights may have been attractive to Mrs M. A explained that RCI offered discounted flights of up to 30%. This does not mean that the flights would necessarily be the cheapest, but they would be discounted from the normal price offered by RCI. I do not see that explaining how the RCI system works amounted to misrepresentation.

I presume that the sales representative would have presented the product in the best possible light and would also have emphasised the positives, but that of itself does not amount to misrepresentation. Nor do I think the fact a management company went into liquidation as part of restructuring process is relevant to the claim of misrepresentation. Nor am I persuaded that there is evidence to show this was kept hidden from Mrs M.

In short I do not consider there is enough evidence to allow me to uphold this complaint on the basis of misrepresentation.

#### Breach of Contract

I have considered whether the liquidation of a management company by A has led to a breach of contract. One of the extracts supplied by Mrs M reads:

*"The company noted that it has every intention to ensure that the upcoming liquidation is conducted in an orderly manner and that timeshare owners will continue to enjoy the same service and benefits as they have for the past years. In fact, the Golden Sands Resort will fully honour all timeshare commitments arising from obligations entered into with existing members."*

I am satisfied from this, along with other reports and the bank's representations that this was a restructuring of the business and while no new customers were being taken on the existing clients would be serviced as before. Mrs M says that she has had difficulty in contacting the company. However, I cannot conclude that a restructuring is such that it can be said to amount to a breach of contract.

I have also noted that another bank has paid compensation to certain customers of A. I am aware of this and the reasons are unconnected with the agreement entered into by Mrs M. It does not assist me in reaching an outcome which would be favourable to Mrs M.

I have enquired about the sale of the loan to Tandem and I see that Mrs M was notified of this in December 2022. I do not consider this has any material effect on Mrs M's complaint.

I have every sympathy with Mrs M, but I do not consider there are sufficient grounds which would allow me to uphold this complaint.

### **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 M to accept or reject my decision before 10 March 2023.

Ivor Graham  
**Ombudsman**