

## The complaint

Mrs S complains that Honeycomb Finance Limited won't refund to her the money that she paid for some holiday club membership credits. She's being represented in her complaint by a claims management company.

## What happened

Mrs S and her husband entered into a membership application agreement to buy 12,000 level three holiday club membership credits from a holiday company in March 2019. The membership price was £28,277 and Mrs S entered into a fixed sum loan agreement with Honeycomb Finance for a loan of that amount. She agreed to make 179 monthly repayments of £288.65 and a final payment of £290.23 to Honeycomb Finance but the loan was fully repaid in July 2019 and the loan account was closed in August 2019.

Mrs S's representative made claims, on behalf of Mrs S, to Honeycomb Finance under sections 75 and 140A of the Consumer Credit Act 1974 in September 2022. The representative's letter to Honeycomb Finance included claims that: the membership credits were mis-sold to Mrs S and her husband and, but for the misrepresentations made to them, they wouldn't have purchased them nor entered into the loan agreement; the holiday company was in liquidation so can't provide the service sold and is in breach of contract; the membership credits were sold to Mrs S and her husband 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.

Honeycomb Finance responded to those claims and set out the reasons that it wasn't upholding them. It said that it contacted Mrs S for a compliance call in April 2019 and she confirmed that the holiday company went through the full compliance process, that she fully understood the purchase and was very happy with it. It provided a summary of that call and also said that it had observed a video recording taken when Mrs S signed her agreements in which she says that she wants the product so her family can join her on holidays which clearly indicates that it was a holiday use product and there was no mention of it being an investment.

Mrs S wasn't satisfied with its response so a complaint was made to this service. Her complaint form says that: Honeycomb Finance paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her and her husband into entering into the membership application agreement and her into entering into the loan agreement and used aggressive commercial practices to pressure them; the membership credits were misrepresented to them; the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations; the holiday company is in liquidation so is in breach of contract; and they weren't provided with key information necessary for them to be able to make an informed decision regarding their purchase, in breach of the Timeshare Regulations; all rendering the loan agreement unfair pursuant to section 140A; and it said that the claim should also be considered under section 75.

Our investigator didn't recommend that Mrs S's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale or that there had been a breach of contract for which Honeycomb Finance was likely to be jointly liable. She said that she hadn't seen enough to suggest that the relationship between Mrs S and Honeycomb Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs S.

Mrs S's representative says that Mrs S doesn't accept our investigator's recommendation and it provided an addendum to be read alongside its September 2022 letter and Mrs S's complaint form, so this complaint has been passed to me for a decision. The addendum says, in summary and amongst other things, that:

- it was represented to Mrs S and her husband that the membership credits would give them easy access to a wide range of luxury holidays and were sold to them as an investment that was extremely desirable and could easily be resold at a profit;
- Mrs S and her husband had bought a holiday product from the holiday company in August 2017 and it was represented to them in March 2019 that trading in that product and purchasing membership credits was the only method of realising their investment;
- since purchasing the membership credits, Mrs S and her husband have had very little support from the holiday company and feel that they weren't dealt with in a fair manner and were put under a lot of pressure to make a decision to purchase something they weren't entirely comfortable with;
- the maintenance fees have increased to £600 per annum, and due to Mrs S's change in job, they've seen a fall in their income and her husband is now registered as blind, which means it's difficult to travel and make use of the membership credits;
- when they tried to book their first holiday in 2019, they were dismayed to be advised that they didn't have sufficient points to access any of their preferred holiday destinations as level three membership only allows them to use 400 points annually without additional charges and that level of points wouldn't allow them to access the level of luxury holidays and accommodation that they'd been promised at the point of sale;
- they were also advised that if they didn't use their annual allocation of membership credits, they would lose them regardless of going on holiday or not - and that wasn't made clear at the point of sale – and they then felt pressured to take whatever holiday was available;
- it would have taken them 30 years to fully redeem their points and exit the membership and, when it expired in 2049, Mrs S would be around 89 years old;
- it's very likely that the holiday company did sell the membership credits as more than a holiday product and the resale programme is now discontinued and the holiday company appears to have gone into administration; and
- the holiday company had a responsibility under the Timeshare Regulations to give Mrs S and her husband sufficient information for them to make an informed contractual decision but failed to provide the necessary information.

### **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 had bought a holiday product from the holiday company in August 2017 and they then entered into the membership application agreement in March 2019 to buy 12,000 level three holiday club membership credits – the membership application agreement refers to terms and conditions but the terms and conditions haven't been provided and I consider it to be likely that they would have also signed other documents with the holiday company but those documents haven't been provided either;
- Mrs S also signed the loan agreement in March 2019 for a loan of £28,277 from Honeycomb Finance but she repaid the loan in July 2019;
- Mrs S's representative made claims to Honeycomb Finance in September 2022 about the membership application agreement that Mrs S and her husband had entered into in March 2019 and Mrs S then made a complaint to this service – the representative's letter included claims under sections 75 and 140A;
- 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 those claims as only a court would be able to do that but I'm considering whether or not Honeycomb Finance's response to them was fair and reasonable in the circumstances;
- the September 2022 letter says that it was represented to Mrs S and her husband by the holiday company that: their current holiday product was unsellable as part of the re-sale scheme and that they would require to purchase membership credits if they were to sell their product at a profit; the holiday company was ceasing to trade in timeshare apartments; and the membership credits were available at a special price but only if purchased on that day;
- the addendum provided by Mrs S's representative includes a description of the way that Mrs S says that the membership credits were sold to her and her husband – but neither Mrs S nor her representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to Mrs S and her husband before their March 2019 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs S and her husband that the membership credits were an investment, that the membership 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;
- nor am I persuaded that there's enough evidence to show that the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations;
- the September 2022 letter also says that the holiday company is in liquidation so can't provide the service sold and is in breach of contract but I understand that the holiday club is now operated by a newly appointed club manager and full use of their memberships remains available to all members who continue to make payment of the annual fees;

- I consider that the liquidation of the holiday company could be a breach of contract for which Honeycomb Finance might be liable under section 75 - but I consider the appointment of the new club manager 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 membership credits has been adversely impacted by the liquidation of the holiday company;
- the addendum provided by Mrs S's representative includes a description of the issues that Mrs S and her husband have had with their membership credits, but I'm not persuaded that there's enough evidence to show that there's been any other breach of contract by the holiday company for which Honeycomb Finance would be liable under section 75;
- the September 2022 letter also says that Mrs S's relationship with Honeycomb Finance was unfair and Mrs S's complaint form says that: Honeycomb Finance paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her and her husband into entering into the membership application agreement and her into entering into the loan agreement and used aggressive commercial practices to pressure them; and she wasn't provided with key information necessary for her to be able to make an informed decision regarding her purchase, in breach of the Timeshare Regulations;
- Honeycomb Finance says there was no commission paid to the holiday company for Mrs S's loan and I've not been provided with any evidence to show that it paid a commission to the holiday company in connection with that loan;
- Honeycomb Finance says that a full credit and affordability check was completed to comply with its lending criteria to ensure that the loan was appropriate and affordable – and, as Mrs S met its criteria, the loan was approved and activated – it says that Mrs S also told it that she'd paid off the loan made to her in August 2017 by another lender to finance her purchase of a holiday product;
- Honeycomb Finance says that it made a compliance call to Mrs S in April 2019 – and it has provided a summary of that call – the summary shows that Mrs S confirmed that her annual income of £30,000 was correct, a credit check had been made and the loan was affordable;
- neither Mrs S nor her representative has provided any detailed information about Mrs S's financial situation in March 2019 when the loan was made to her but she made four monthly loan repayments of £288.65 between April and July 2019 and she also made a payment of £28,300 in July 2019 and the loan was fully repaid later that month;
- the loan was made to Mrs S in March 2019 and was fully repaid in July 2019 but I've seen no evidence to show that she complained to Honeycomb Finance about the affordability checks that it had conducted until her representative's September 2022 letter – if the loan was unaffordable for her I consider that it would be reasonable to expect her to have contacted Honeycomb Finance about that issue sooner than she did;
- the addendum that's been provided by Mrs S's representative says that, due to Mrs S's change in job, she and her husband have seen a fall in their income and her husband is now registered as blind, which means it's difficult to travel and make use of the membership credits – but I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mrs S in March 2019 when it was made to her, that Honeycomb Finance didn't assess the affordability of the loan for her, that

the loan was mis-sold to her or that Honeycomb Finance has acted incorrectly in connection with the loan;

- Mrs S and her husband had the right to withdraw from the membership application agreement within fourteen days without giving any reason and the loan agreement clearly set out Mrs S's right to withdraw from the loan agreement without giving any reason for a period fourteen days;
- Mrs S confirmed in the compliance call that she'd been made aware of her right to cancel the membership application agreement but I've seen no evidence to show that she contacted either the holiday company or Honeycomb Finance to withdraw from either the membership application agreement or the loan agreement within the applicable withdrawal periods;
- Mrs S signed those agreements in March 2019 but I've seen no evidence to show that she complained to either the holiday company or Honeycomb Finance about the undue pressure that she claims was applied to her and her husband until her representative's September 2022 letter – if they'd been unduly pressured into signing the membership application agreement and didn't want to buy the membership credits, I consider that it would be reasonable to expect Mrs S to have contacted either the holiday company or Honeycomb Finance about that issue sooner than she did;
- I'm not persuaded that there's enough evidence to show that Mrs S and her husband were unduly pressured into entering into the membership application agreement, that Mrs S was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- Mrs S's complaint form and the addendum that's been provided by her representative say that the Timeshare Regulations require the holiday company to provide Mrs S and her husband with sufficient information about the proposed contract to enable them to make an informed decision about whether to enter into it, but it didn't do so;
- neither Mrs S nor her representative has identified the information that Mrs S and her husband required to make an informed decision regarding the purchase but that wasn't provided to them by the holiday company - and I don't consider that they've provided all of the documentation that would have been provided to them at the time of the purchase;
- Mrs S and her husband had made a purchase from the holiday company in August 2017 and I consider that it would be reasonable to expect them to have been aware of the information that they needed before they made a decision to buy the membership credits in March 2019 so I'm not persuaded that there's enough evidence to show that there's been a breach of any of those regulations as alleged;
- the September 2022 letter also says that the terms of the agreement are so egregious so as to be unfair but it would be for a court to determine whether or not any of the terms in the membership application agreement or the other documents that Mrs S and her husband entered into with the holiday company are unfair – but 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 Honeycomb Finance;

- having carefully considered all of the information and evidence that Mrs S and her representative have provided, including the addendum provided by Mrs S's representative, I'm not persuaded that there's enough evidence to show that Mrs S's relationship with Honeycomb Finance 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 Honeycomb Finance in these circumstances;
- I sympathise with Mrs S for the issues that she and her husband have had with their membership credits and the other issues that they've described, including her husband's blindness, but I consider that Honeycomb Finance's response to the claims that had been made to it was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Honeycomb Finance to refund to Mrs S any of the money that she paid under 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 28 February 2024.

Jarrold Hastings  
**Ombudsman**