

## **The complaint**

Mr H complains that a timeshare product was misrepresented to him. The purchase was financed with credit provided by Honeycomb Finance Limited (“Honeycomb”). That loan has now been transferred to Oplo PL Ltd, but for ease of reference I’ll refer to the lender as Honeycomb.

Because Honeycomb financed the purchase, Mr H says that he has a claim against it in the same way he has a claim against the timeshare company.

Mr H has been represented in this complaint by a claims management business, which I’ll call “N”, and so any reference to Mr H’s submissions and arguments include those made on his behalf.

## **What happened**

In August 2018 Mr H and his wife were on holiday in Malta. During the course of that holiday, they attended a sales presentation, at the end of which they bought a points based timeshare product from Azure XP Limited, a company registered in the British Virgin Islands. They bought 4,500 XP points and Level 1 membership of the Azure XP club at a total cost of £14,580. XP points could be exchanged for holiday accommodation and experiences, including sailing trips, motor home hire, and driving experiences. The purchase was financed with a loan for the full purchase price from Honeycomb in Mr H’s sole name.

In October 2022 Mr H complained to Honeycomb through N. He said that the timeshare product had been misrepresented to him and that the business which had brokered the loan had not been properly authorised.

Because it had financed the purchase, N said that Honeycomb was responsible for the actions of the seller; alternatively, Mr H could bring claims against Honeycomb as a result of the seller’s actions. Further, because the broker had not been properly authorised, the loan was not enforceable.

Honeycomb did not accept the complaint, and Mr H referred the matter to this service. Our investigator did not recommend that the complaint be upheld. Mr H did not accept that recommendation and asked that an ombudsman review the case. In making that request on behalf of Mr H, N provided a lengthy commentary on the operations of the Azure group of companies.

I reviewed that case and issued a provisional decision in which I said:

*I do not believe that I have been provided with a complete set of the August 2018 sale documents. However, this service has seen a number of complaints about Azure timeshare sales from around the same time. As is to be expected, the sellers and Honeycomb used largely standard contract wording. I have therefore approached this case on the assumption that the same standard wording was used for Mr and Mrs H's purchase. If that (or any other assumption I have made) is incorrect, the parties can explain that and provide the necessary evidence in their response to this provisional decision.*

### **Authorisation**

*Mr H's representatives have said that the business which acted as credit intermediary was not properly authorised by the Financial Conduct Authority (FCA) to do so. In support of that assertion they have referred to a company within the Azure Group which, until 2016, was acting without authority and brokering loans for a different lender – not Honeycomb. As a result, the FCA took action and more than 1,400 borrowers received refunds.*

*Mr H's loan was however with a different lender, was brokered by a different company within the Azure Group (and which did have the necessary authorisation), and post-dated the issues identified by the FCA. I do not believe there is any merit in this part of Mr H's case.*

### **Misrepresentation**

*Under section 56 of the Consumer Credit Act 1974 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 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.*

*I do not understand Honeycomb to dispute that the loan was made under pre-existing arrangements between it and Azure XP Ltd, the seller of the membership and the XP points, or between it and a company closely linked to the Azure Group. I have therefore considered what has been said about the sale.*

*Mr H said when he made his claim to Honeycomb that Azure had misrepresented the timeshare product to him. 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.*

*Whilst Mr H has made an allegation of misrepresentation, he has not provided any detail about what he says he was told or in what way it was untrue. I do not believe that a bare allegation of that nature – with no detail, still less any supporting evidence – is enough for me to be able to uphold that part of Mr H's complaint.*

*Finally, I will comment briefly on Mr H's response to the investigator's initial assessment. N provided a 36-page document referred to as "Generic submissions on behalf of complainants". The Financial Ombudsman Service was however set up to resolve individual complaints and, where a formal determination is needed, to do so by reference to what the ombudsman considers to be fair and reasonable in all the circumstances. But N's generic submissions include nothing about how, if at all, Mr H has been affected by what it considers to be shortcomings in Azure's products and sales processes.*

I invited the parties to provide me with any further evidence and arguments they wanted me to consider before I issued my final decision, and I gave them until 27 March 2024 to do so. Honeycomb said it had nothing to add; Mr H has not responded.

### **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.

As I have received no further submissions from either party, I see no reason to reach a different conclusion from that set out in my provisional decision. I stress however that I have reviewed everything in full before issuing this final decision.

### **My final decision**

For these reasons, my final decision is that I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 May 2024.

Mike Ingram

**Ombudsman**