

## The complaint

Mrs O's complaint is, in essence, that Oplo PL Ltd<sup>1</sup> ('Oplo') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

## What happened

Mr and Mrs O were on a holiday in Disney World, Florida, having been regular visitors there in the preceding years. Whilst there, they learnt about a holiday club called the Expectations Club Limited ('The Club') from a fellow holiday maker, and on return to the UK Mr and Mrs O made enquiries with The Club about their membership options.

Between October 2018 and January 2019 there was an ongoing email conversation between Mr and Mrs O and a sales representative ['PP'] of The Club's marketing agents ['WT'], who had the right to promote and sell memberships. WT was the 'Supplier' for the purpose of the CCA.

Mrs O purchased membership of The Club from the Supplier on 14 January 2019 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 250,000 points at a cost of £13,268.50 (the 'Purchase Agreement') but after adding the first year's Annual Management Fee, Membership Fee, and an administration charge, the final purchase price was £15,000.

Mrs O paid for her membership of The Club by taking finance of £15,000 from Honeycomb (the 'Credit Agreement'). As the Credit Agreement was only in Mrs O's name, she is the eligible person to bring this complaint, but I will refer to Mr and Mrs O throughout.

Mrs O - using a professional representative (the 'PR') – wrote to Honeycomb on 15 December 2020 (the 'Letter of Complaint') to complain about:

- (1) Misrepresentations by the Supplier at the Time of Sale giving her a claim against Honeycomb under Section 75 of the CCA.
- (2) Honeycomb being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
- (3) The decision to lend being irresponsible because Honeycomb did not carry out the right creditworthiness assessment.

### (1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mrs O says that the Supplier made pre-contractual misrepresentations in the email exchange with herself and Mr O – namely that the Supplier:

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<sup>1</sup> The finance to which this complaint relates was originally provided by Honeycomb Finance Ltd ('Honeycomb'). It is now the responsibility of Oplo and as such Oplo is the respondent in this complaint. However, for ease I will refer to Honeycomb throughout.

- Told them that The Club membership would allow access to the same resorts that could be booked through a Disney Vacation Club membership ('Disney Club'), but at a much cheaper price than joining Disney Club. This was not true as they could not book the Disney resorts.

Mrs O says that she has a claim against the Supplier in respect of the misrepresentation set out above, and therefore, under Section 75 of the CCA, she has a like claim against Honeycomb, who, with the Supplier, is jointly and severally liable to Mrs O.

## (2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mrs O says that the credit relationship between her and Honeycomb was unfair to her under Section 140A of the CCA. In summary, they include the following:

- The contractual term, setting out that non-payment of the annual maintenance fee would lead to foreclosure of the membership, is an onerous provision that gives rise to an unfair relationship.
- There had been a breach of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ('the Timeshare Regulations') due to the failure of the Supplier to provide key information before concluding the Purchase Agreement.

## (3) Irresponsible lending

The Letter of Complaint set out several reasons why the decision by Honeycomb to lend to Mrs O was irresponsible. In summary, they include the following:

- No meaningful affordability checks or assessments were carried out by the lender.
- The interest rate on the loan is extortionate.
- Mrs O was given no choice of finance companies to use to obtain the loan.
- Due to a change in personal circumstances, Mrs O is now struggling to afford the loan repayments.

Honeycomb dealt with Mrs O's concerns as a complaint and issued its final response letter on 10 March 2021, rejecting it on every ground.

Mrs O then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. He didn't think it likely there had been a misrepresentation by the Supplier at the Time of Sale, and didn't think that the credit relationship between Honeycomb and Mrs O was unfair to her.

Mrs O disagreed with the Investigator's assessment and asked for an Ombudsman's decision. After that, Oplo acquired from Honeycombs the rights and obligations in relation to Mrs O's loan, so the complaint transferred to it.

Mrs O's complaint was assessed by an Ombudsman who issued two provisional decisions, the first one upholding Mrs O's complaint, but the second one rejecting it. I don't need to set out in detail the contents of the decisions as the original Ombudsman is not available to issue a further decision on this complaint, so I am considering it afresh. However, in summary, in response to the first provisional decision Oplo highlighted parts of the email

exchange between Mr and Mrs O and the Supplier which it said provided the information that the Ombudsman had said had been omitted.

And in response to the second provisional decision the PR said, amongst other things, that the Supplier had made misrepresentations to Mr and Mrs O that led Mrs O to believe she would have access to all the Disney Resorts, in the same way as could be achieved by membership of the Disney Club, but for less cost. This was untrue as Mrs O would have to make bookings via a third-party and access was subject to availability, and that had proved impossible.

On 29 July 2024 I set out to both Mrs O (via her PR) and Oplo my initial thoughts on the merits of Mrs O's complaint. I said, in summary, that I thought it ought to be upheld on the basis that the Supplier had made actionable and material misrepresentations which had induced Mrs O to purchase The Club membership when she otherwise would not have done. So, I did not think it was fair and reasonable for Honeycomb to reject Mrs O's claim under Section 75 of the CCA, nor fair for Oplo to maintain this position. I then set out how I thought Oplo should calculate and pay Mrs O compensation.

In my provisional decision I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*And in doing this, I am required under DISP 3.6.4 R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.*

*And having done that, I currently think that this complaint should be upheld.*

*However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to Mrs O's complaint, it isn't necessary to make formal findings on all of them because, for reasons I'll go on to explain, I think the Supplier most likely made precontractual misrepresentations upon which Mrs O relied when making the decision to purchase membership of The Club. And had these misrepresentations not been made, I think it likely that Mrs O would not have made the purchase and taken the associated Credit Agreement. I therefore think that Honeycomb did not act fairly and reasonably in how it dealt with Mrs O's Section 75 CCA claim. But, having read all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint, when doing that.*

*Does Section 75 of the CCA apply here?*

*It does not appear to be in dispute that Section 75 of the CCA applies here. But for completeness, I have seen that Mrs O entered into a contract with the Supplier for services financed by a debtor-creditor-supplier agreement, for the purchase of The Club membership at the time of sale. This means that if I find the Supplier is liable for having misrepresented something to Mrs O, Honeycomb (or Oplo PL Ltd as of the date of this decision) – as the creditor – is jointly liable. And, once a claim was made, Honeycomb needed to properly consider the claim and pay compensation if needed. Mrs O's complaint is that Honeycomb did not do that.*

*Did Honeycomb properly consider the Section 75 claim?*

*As I've said, Honeycomb needed to properly assess Mrs O's claim for misrepresentation by the Supplier. The normal way to remedy any such claim would be rescission of the contract entered into and damages to put Mrs O in the position she would have been in had the misrepresentation not been made. So, I first need to consider whether the Supplier, and therefore Honeycomb (and now Oplo PL Ltd), could be liable for misrepresentation.*

*It seems the first contact between Mr and Mrs O and the Supplier was by telephone. I have no details of any conversations, or even if there were any, as it appears that Mr and Mrs O insisted on conversing via email. So almost all, if not all, of the pre-contractual negotiations were conducted via an email exchange between Mr and Mrs O and the Supplier, via Mr O and the Supplier's email addresses. And it was as a result of these exchanges that Mrs O says she made the decision to purchase membership of The Club, and take the Finance Agreement with Honeycomb in order to purchase it.*

*It seems that Mr and Mrs O were regular travellers to Orlando, and were familiar with the various Disney Resorts. And it also seems, from Mrs O's testimony, that they were only interested in staying in Disney Resorts, as they wished to make use of all the Disney facilities.*

*Having considered the email trail that has been submitted (and I accept I have no way of knowing if it is complete) I think the Supplier, in its email exchanges with Mr and Mrs O, made several representations about how membership of The Club worked, and importantly, how it worked in comparison to the Disney Club.*

*For example, in the email from PP to Mr O dated 22 October 2018, PP says:*

*"The prices for the amount of points you will need to get into Disney for 3 weeks will be over \$50,000 to buy approximately 900 points.*

*Alternatively, there is another points system called Expectations Holiday [sic] to get you into **the same resorts** for a lot less i.e. £15,000." (emphasis my own)*

*So, in this email, PP seems to set out how much Mr and Mrs O would need to spend to join the Disney Club. And then introduces Expectation Holidays as being able to provide the same resorts for significantly reduced cost.*

*And then further on the same day, PP wrote to Mr O:*

*"With reference to Expectation Holidays, it is a points based system just like Disney however the points dominations [sic] are different.*

*I have attached a screenshot of Disney resorts with points values.*

*It will cost you approximately 80,000 [points] for a week in a 2 bedroom, in any of the Disney resorts in Orlando."*

*And, on the same day, PP said after being asked if there was a finance package available:*

*"So you know Disney rather well then, quite a number of people have bought Expectations Holidays so they can go to Disney for a reduced cost."*

*Again, I see this as PP making a direct comparison between Disney Club and Expectations Holidays, and mentions "...any of the Disney resorts in Orlando". This leads me to think that PP was aware of Mr and Mrs O's requirement to stay in a Disney resort, and not any other brand of resort in the area. And PP is saying that it is possible to stay at any Disney resort with The Club membership, and in fact he said that other customers had taken out membership for this very reason.*

*Then later that day, PP gives Mr O an explanation of how the finance works, and then introduces the Expectation Holidays' 'concierge service' and tells Mr O "they can book exactly what you need."*

*So, over the course of emails sent on 22 October 2018, PP has introduced Mr and Mrs O to The Club membership and compared it to the Disney Club, and says that it provides access to the same resorts as Disney Club for significantly less cost. And says The Club is a points-based system just like Disney, and allows access to any Disney resort in Orlando.*

*On 23 October 2018 PP sent to Mr O details of Resorts Condominiums International ('RCI') and said:*

*"I wasn't sure whether I covered this yesterday so I thought I would just enclose it below just to be sure.*

*Below is a link to RCI for "Platinum RCI" you get this included within your membership. Everything you see you get included."*

*PP included a web-link for RCI. He also included a link for the Expectation Holidays concierge service.*

*To my mind this introduces an extra element to The Club membership above and beyond its own booking service, which allowed an exchange of member's points for accommodation worldwide. This is apparently an external partner which can be used by members if they wish to access a wider range of resorts and destinations. But there is no reference to RCI's terms and conditions, and that any additional fees may be payable if booked through RCI. Also, with respect to Mr and Mrs O booking Disney resorts through RCI, there is no explanation about how that might work, nor any explanation that access to Disney accommodation is at all subject to availability.*

*But by contrast, the link to the concierge was a link to the Expectations Holidays site. This would indicate to me that the concierge service previously mentioned by PP when saying "...they can book exactly what you need" was an Expectations Holidays (The Club) facility which members would use to book accommodation through The Club. And given this service was introduced as part of a conversation about booking any Disney resort in Orlando, it follows that it appears Expectations Holidays was being promoted as being able to be used to make those particular bookings.*

*Then later in the email chain, on 7 January 2019 the following exchange occurs:*

*PP to Mr O: "expectation points will get you into Disney Resorts. And RCI affiliate resorts worldwide. The points values depend on the resort, time of year and also size of the apartment/villa. 250,000 [points] will give you more than enough for 3 weeks holiday every year."*

*Mr O to PP: "So if we wanted Disney's Boardwalk Villas for 3 weeks in low season we could?"*

*PP to Mr O: "In low season you may even get 4 weeks. It really depends on the size and time of the year."*

*Mr O to PP: "Ok thanks thinks [sic] 4 weeks is bean [sic] a bit greedy I think three weeks in a two bed will do us nice"*

*PP to Mr O: "4 weeks will be in the lowest season/time of year. Would you be happy to proceed on this basis?..."*

*So, it seems to me that this conversation indicates that PP is telling Mr and Mrs O that they would be able to use their The Club points to get into Disney resorts, and in addition, if wanted, worldwide accommodation via the RCI Platinum element. Mr O then asks if they would be able to book three weeks in a specific Disney resort in low season, and PP says they may even get four weeks.*

*But importantly, WT as the Supplier, has not said anything about how Mr and Mrs O would actually be able to book this accommodation, or that it was subject to availability. The information provided in the emails gives the distinct impression that Mr and Mrs O, as members of The Club, would be able to book any of the Disney resorts with 250,000 points.*

*So, in summary, PP has told Mr O the following regarding their prospective The Club membership:*

- The points system works in the same way as Disney Club points, giving access to the same resorts but for significantly less cost.*
- The Club membership would get Mr and Mrs O into any Disney resort in Orlando.*
- The Club membership provides access to a concierge service that "can book exactly what you need."*
- The Club membership would provide Mr and Mrs O three weeks in a specified Disney resort in low season. And specifically "250,000 [points] will give you more than enough for 3 weeks holiday every year."*

*So, these are representations that the Supplier has made during the pre-contractual negotiations. I need to decide whether they are material and actionable misrepresentations.*

*A material and actionable misrepresentation is an untrue statement of existing fact, made by the Supplier, that induces a consumer into entering a contract. And a statement of opinion can be a misrepresentation if the opinion amounts to a statement of fact, and it can be proved that the person who made it did not hold that opinion, or could not have reasonably held it.*

*So, in Mrs O's case, for me to say there had been a pre-contractual misrepresentation by the Supplier, I would have to be satisfied, on the balance of probabilities, that Mrs O (or Mr O) was told something that was factually untrue, and that this induced her to make the purchase of the 250,000 points.*

*Which Disney resorts did The Club membership give access to?*

*Clause 1.1.1 of The Club rules states:*

*"A club member will have exclusive rights to utilize the points he has purchased to occupy the inventory of the Club according to the Club's Rules and Reservation Rules."*

*Honeycomb has been asked to provide our Service with a copy of the Inventory (as would have been applicable in 2019) which would show which resorts it was possible to book through The Club membership, but this has not been provided to date. I am requesting that this is provided in response to this provisional decision, however at present I cannot say that the Disney Resorts were within the 'Inventory'. But, as set out above, Mr and Mrs O were able to use their points through the third-party exchange company, RCI, so I have considered what accommodation was available to them through that route.*

Was it possible to book accommodation at all the Disney resorts with The Club membership?

Without seeing the Inventory of The Club, I only have Mrs O's testimony of her experiences when she and Mr O have tried to book Disney resort accommodation with her The Club points. I also have a transcript of a telephone conversation between Mrs O and a representative of RCI on 29 April 2020. It starts as follows:

Mrs O: "We have tried on multiple occasions to book a holiday through Expectation Holidays and they have failed to find us anything. We even changed the date of our holiday to accommodate them to make it easier for them to find us a holiday and they still could not find us what we asked for. We were told when we took on RCI that we would be able to get 3 weeks in Florida in low season which is September on a Dis... Disney property but nothing has been provided."

RCI: "It is very difficult to get into Disney resorts. We do, however, have some resorts very close to the parks. These resorts are very popular with our members."

Mrs O: "We were very specific that we only wanted to stay in a Disney resort as we always purchase the dining plan and use the free transport as none of us like to drive on holiday."

RCI: "Then you will need to clarify that with Expectations, as this is RCI, and it was Expectations that promised you that. We can only book what is available on our system."

So, from what I can see, Mrs O had made multiple efforts to book accommodation in Disney resorts as part of her The Club membership. She then tried to use RCI to book but found she was also unable to do so with RCI.

So, on the basis of what I have seen, I am unable to conclude that it was possible to book any Disney resort in Orlando, through The Club membership as was represented by the Supplier in the emails with Mr and Mrs O. And neither Honeycomb nor Oplo have provided the Resort Inventory which would show which resorts could be booked through The Club membership. So, from what I have seen I can only conclude that it was not possible to book any Disney resort in Orlando.

And the representations were made by PP, who described himself in the emails as Senior Sales Consultant for the Supplier. So it seems inherently unlikely that someone in a senior sales position for the Supplier of The Club membership would not have been aware that accommodation in Disney Resorts was subject to availability, and that it may not, due to availability, be possible for Mr and Mrs O to book any Disney resort in Orlando, nor that the Expectations Holidays' concierge service was able to "...book exactly what you need", given that Mr and Mrs O had made their specific requirements clear. These are statements of fact that I do not think were true, and I think that PP, as the representative of the Supplier, must have known it couldn't guarantee the availability of Disney resort accommodation, or he had no reasonable grounds for believing it could do so. It follows therefore, that I think that these amounted to a misrepresentation.

Were the misrepresentations made by the Supplier actionable and material?

As I have said, it seems that Mr and Mrs O were regular holiday makers in Orlando, and Disney resorts in particular. They first learnt about The Club whilst at one of the resorts from a fellow holidaymaker. There is nothing which makes me think that Mr and Mrs O were in any way dissatisfied with the arrangements they normally used to book their holidays, so I can only see that they would have changed (to The Club) if they believed that a new arrangement would provide what they could already get (or better) on the same or better terms.

*And looking at what PP told Mr and Mrs O (and I am satisfied that these were misrepresentations), I can only conclude that these misrepresentations induced Mrs O to purchase 250,000 membership points in The Club.*

*So, I am currently persuaded that the misrepresentations made by the Supplier were actionable and material.*

## **Conclusion**

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*Given the facts and circumstances of this complaint, I think the Supplier made actionable and material misrepresentations which induced Mrs O to purchase The Club membership when she otherwise would not have done so. So, I do not think that Honeycomb was fair and reasonable when it rejected Mrs O's claim under Section 75 of the CCA. Nor do I think it was fair for Oplo to maintain this position. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint. Given that, I do not need to consider the further points of complaint PR has raised, as even if I were to agree with them, I wouldn't award anything more than I intend to for the misrepresentations I have found were made.*

## **The response to my provisional decision**

Mrs O, via her PR, accepted the findings of my provisional decision, but Oplo did not. It clarified the detail of one of the email exchanges that I had relied upon (I will expand on this later) and provided evidence showing that it was possible to book Disney Resorts through The Club membership. It also provided evidence to show that Mr and Mrs O had booked or enquired about other non-Disney holidays, calling into question Mrs O's assertion that they only wanted to visit Disney. It also said that The Club did not have a 'Resort Inventory' as such, as it was affiliated to RCI, and did not have its own stock holding, but it clarified that as it was affiliated with several exchange companies, The Club was always able to offer some availability to members.

## **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.

And I have reconsidered everything in light of Oplo's submissions in response to my provisional decision. And having done so, I remain satisfied that Mrs O's complaint ought to be upheld as I do not think Honeycomb was fair or reasonable when it rejected her claim under Section 75 of the CCA on the grounds of misrepresentations made by the Supplier.

I acknowledge Oplo's clarification of the wording of the following email I quoted in my provisional decision. I said the email contained information about the Expectation Holiday's 'concierge service' using the words *"they can book exactly what you need."* Oplo have shown the full sentence used was *"As mentioned, there is a dedicated concierge service that can do everything they can to book exactly what you need."* So, I agree that this did go some way to suggest that there was a limit as to what the concierge service could provide.

I also acknowledge that it may have been *possible* to book Disney resorts via The Club, but what is not clear is whether those members who did successfully book Disney resort accommodation did so via The Club, or via RCI or one of the other affiliate organisations. And as I've said, the email chain said:

*"With reference to Expectation Holidays, it is a points based system just like Disney however the points dominations [sic] are different.*

*I have attached a screenshot of Disney resorts with points values.*



*It will cost you approximately 80,000 [points] for a week in a 2 bedroom, in any of the Disney resorts in Orlando."*

And, on the same day, PP said after being asked if there was a finance package available:

*"So you know Disney rather well then, quite a number of people have bought Expectations Holidays so they can go to Disney for a reduced cost."*

I remain satisfied that PP told Mr and Mrs O that it was possible to stay in any Disney resort with The Club membership, and I've not seen evidence which persuades me that this was the case. And the evidence I have seen suggests that it was very difficult to book any Disney resort with either The Club membership, or through RCI.

It is also apparent from Oplo's submission, that unlike what is contained within Clause 1.1.1 of The Club rules;

*"A club member will have exclusive rights to utilize the points he has purchased to occupy the inventory of the Club according to the Club's Rules and Reservation Rules."*

there apparently is no 'inventory of the Club' and the accommodation that members could access is provided by other affiliate organisations. But this is not the impression that I think is given in the email chain. This suggests that The Club is able to provide Disney holiday accommodation to its members from its own inventory, and *in addition* to this, they are able to use the affiliate organisation, RCI. So, I cannot see how The Club membership was *"just like Disney"* as the holiday accommodation that could be booked was reliant on the availability via third-party affiliates, not from its own stock.

So, I remain satisfied that, given all of the facts and circumstances of this complaint, and the submissions made in response to my provisional decision, I think the Supplier made actionable and material misrepresentations which induced Mrs O to purchase The Club membership when she otherwise would not have done so. So, I do not think that Honeycomb was fair and reasonable when it rejected Mrs O's claim under Section 75 of the CCA. Nor do I think it was fair for Oplo to maintain this position.

And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint. Given that, I do not need to consider the further points of complaint PR has raised, as even if I were to agree with them, I wouldn't award anything more than I intend to for the misrepresentations I have found were made.

### **Putting things right**

I set out in my provisional decision how I thought Oplo should calculate and pay compensation to Mrs O. I said:

*Having found that Mrs O would not have agreed to purchase The Club membership at the Time of Sale were it not for the Supplier's actionable and material misrepresentations, I think it would be fair and reasonable to put her back in the position she would have been in had she not entered into the Purchase Agreement and associated Credit Agreement, provided Mrs O agrees to assign to the Lender her 250,000 Points or hold them on trust for the Lender if that can be achieved.*

*Here's what I think needs to be done to compensate Mrs O with that being the case – whether or not a court would award such compensation:*

- *The Lender should refund Mrs O's repayments to it under the Credit Agreement along with the annual management charges she paid (if any, and not including that which was*

*included in the initial £15,000 purchase price) as result of her membership (the 'Net Repayments').*

- *Simple interest<sup>2</sup> at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.*

*In addition:*

- (1) *The Lender should write off the remaining balance in the Credit Agreement.*
- (2) *The Lender should remove any adverse information recorded on Mrs O's credit file in connection with the loan it provided at the Time of Sale.*

*If relevant, as long as Mrs O agrees to hold the benefit of her 250,000 points for the Lender (or assign them to the Lender if that can be achieved), the Lender must indemnify her against all ongoing liabilities as a result of her The Club membership.*

No representations were made by either party regarding my suggested redress, so I see no reason to depart from my provisional findings above in relation to this.

### **My final decision**

I uphold Mrs O's complaint against Oplo PL Ltd, and require Oplo PL Ltd (referred to above as the Lender) to calculate and pay compensation to Mrs O as set out above in the section titled "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 30 October 2024.

Chris Riggs  
**Ombudsman**

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<sup>2</sup> HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.