

The complaint

Mr G complains that Honeycomb Finance Limited won't refund to him the money that he paid for some holiday club membership credits. His wife is also involved in his complaint and he's being represented by a claims management company.

What happened

Mr G and his wife had bought holiday products from a holiday company in July 2016 and August 2017. They then entered into a membership application agreement in August 2018 to buy 14,000 level three holiday club membership credits from the holiday company. The membership price was £19,085 and Mr G also entered into a fixed sum loan agreement with Honeycomb Finance for a loan of that amount. He agreed to make 179 monthly payments of £194.82 and a final payment of £195.32 to Honeycomb Finance, but he repaid the loan in November 2018.

Mr G's representative, on behalf of Mr G, made claims to Honeycomb Finance in January 2022 under sections 75 and 140A of the Consumer Credit Act 1974. It said, in summary and amongst other things, that: the membership credits were mis-sold to Mr G and his wife and, but for the misrepresentations made to them, they wouldn't have purchased them nor entered into the loan agreement; the holiday company is in liquidation and can't provide the service sold so is in breach of contract; the terms of the agreement are so egregious as to be unfair; the payment of commission was hidden from view; the membership credits were marketed as an investment and were sold to Mr G and his wife under extreme sales pressure and they weren't given the opportunity to consider any other creditors; no affordability checks were carried out on Mr G's ability to afford the loan; and his relationship with Honeycomb Finance was unfair.

Honeycomb Finance responded to those claims in detail and set out the reasons that it denied and rejected all of the allegations contained within Mr G's representative's claim letter. Mr G wasn't satisfied with its response so a complaint was made to this service. Mr G and his wife signed a complaint form in which they wrote: *"Honeycomb Finance agreed to lend money through [the holiday company] to us, without checking to see if the product was legal or cost worthy. The [membership credits] system is not fit for purpose. We bought a product that doesn't live up to the promise at the point of sale".*

Mr G's representative also sent an unsigned complaint form to this service that says: Honeycomb Finance paid a commission to the holiday company which wasn't declared to Mr G; the holiday company failed to conduct a proper assessment of Mr G's ability to afford the loan; the holiday company unduly pressured Mr G into entering into the membership application agreement and the loan agreement and used aggressive commercial practices to pressure him; the membership credits were misrepresented to Mr G and his wife; the holiday company marketed and sold the credits as an investment in breach of the Timeshare Regulations; the holiday company is in liquidation so is in breach of contract; and Mr G and his wife weren't provided with key information necessary for them to be able to make an informed decision regarding their purchase; all rendering the loan agreement unfair under section 140A; and it said that the complaint should also be considered under section 75.

Our investigator didn't recommend that Mr G's complaint should be upheld. She didn't think that Honeycomb Finance's decision to turn down Mr G's claims was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract. She said that she'd seen that no commission was paid to the holiday company by Honeycomb Finance in relation to this purchase and that she hadn't seen enough to suggest that the relationship between Mr G 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 Mr G.

Mr G hasn't accepted our investigator's recommendation and his representative says that it would like the matter referred to an ombudsman for a decision. Mr G says that he's still paying off the loan but has nothing to show for it other than upset and disappointment at how he and his wife have been treated by the holiday company. He says that they were led to believe that they could sell a portion of their membership credits back to the holiday company to cover the fee after an 18 month waiting period but apparently that was never the case. He says that they were told they could use the same grade of room that they had with their previous deal but on their first booking using the membership credits the holiday company wanted an extra £500 for a one week stay. He also says that another finance provider has reimbursed its customers and that Honeycomb Finance should reimburse him.

Mr G representative has provided an addendum containing Mr G's additional arguments which says, in summary and amongst other things, that: the product was sold to Mr G and his wife as an investment; the holiday company represented to them that trading-in their existing product for the membership credits was the only method of realising their investment on their earlier purchases; the re-sale scheme would be open for members five years following the start of a membership but the holiday company's resale programme opened in 2015 and is now discontinued; the holiday company breached the Timeshare Regulations and misrepresented the membership credits as something that could be re-sold easily in the future; and, were it not for the representations, Mr G and his wife wouldn't have purchased the membership credits and traded-in their existing product.

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 Mr G's complaint shouldn't be upheld for these reasons:

- the addendum containing Mr G's additional arguments says Mr G and his wife had bought holiday products from the holiday company in July 2016 and August 2017 but I've not been provided with any of the contractual documentation for those purchases, and Mr G's complaint only relates to the purchase that they made in August 2018 and which he paid for using a loan provided by Honeycomb Finance;
- Mr G's representative says that Mr G and his wife traded in their existing product in August 2018 for 14,000 membership credits and they entered into a membership application agreement with the holiday company at that time for the purchase – the agreement shows that the membership price was £19,085 but I've not been provided with the terms and conditions that are referred to in that agreement or any of the other contractual documentation that it's likely that Mr G and his wife would have also signed with the holiday company at that time;
- Mr G also entered into a loan agreement with Honeycomb Finance in August 2018 and he confirmed that he'd received pre-contract credit information and a loan

information document;

- Mr G's representative made claims to Honeycomb Finance in January 2022 under sections 75 and 140A and a complaint was then made to this service: 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 Mr G's claims under sections 75 and 140A as only a court would be able to do that but I'm considering whether or not Honeycomb Finance's response to his claims was fair and reasonable in the circumstances;
- the January 2022 claim letter says that it was represented to Mr G and his wife by the holiday company before their August 2018 purchase that: their current product was unsellable as part of the re-sale scheme and that they would be required to purchase the membership credits if it was their intention to sell their product at a profit; the holiday company was ceasing to trade in timeshare apartments; the membership credits were marketed and sold as an investment; and the membership credits were available for a greatly reduced discount price but only if purchased on that day;
- the claim letter says that those were false and misleading representations made to induce Mr G and his wife into entering into the membership application agreement but the letter doesn't include 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 Mr G and his wife before their August 2018 purchase;
- the complaint form that was signed by Mr G and his wife says: *"Honeycomb Finance agreed to lend money through [the holiday company] to us, without checking to see if the product was legal or cost worthy. The [membership credits] system is not fit for purpose. We bought a product that doesn't live up to the promise at the point of sale"*; but it doesn't contain an explanation of the reasons why they consider the membership credits to be illegal or not fit for purpose;
- Mr G and his wife agreed to pay the membership price of £19,085 for the membership credits and I don't consider that there was any requirement for Honeycomb Finance to check that the membership price was *"cost worthy"*;
- Mr G says in response to our investigator's recommendation, that he and his wife were led to believe that they could sell a portion of their credits back to the holiday company to cover the fee after an 18 month waiting period and that they could use the same grade of room that they had with their previous deal but on their first booking using the membership credits the holiday company wanted an extra £500 for a one week stay – and the addendum containing Mr G's additional arguments says that the membership credits were marketed and sold to Mr G and his wife as an investment and that the re-sale scheme would be open for members five years following the start of a membership but the resale programme opened in 2015 and is now discontinued;
- neither Mr G nor his representative has provided a detailed account of the circumstances in which it was represented to Mr G and his wife that the membership credits were an investment, the conversations that took place, the information that was provided to them before their August 2018 purchase or any documentary or other evidence to show that it was represented to them that the membership credits were an investment;

- I understand that the membership credits can be used for accommodation and experiences and I'm not persuaded that it's likely that the membership credits would properly be considered to be an investment and I'm not persuaded that there's enough evidence to show that the membership credits were misrepresented to Mr G and his wife as an investment, or that they were marketed or sold to Mr G and his wife as an investment in breach of the Timeshare Regulations;
- Honeycomb Finance says that the resale facility wasn't available to Mr G and his wife until 2020 at the earliest but there was a worldwide pandemic which compromised resale opportunities and, in August 2018 the holiday company couldn't have foreseen what the market conditions would be in 2020 - it also says that the management company's website says that members can register their interest to sell a membership entitlement;
- there's no reference in the documents that Mr G has provided from the time of sale to show that the holiday company had said that a resale scheme would be available and I've seen no evidence to show any steps that Mr G and his wife have taken to try to re-sell their membership credits;
- neither Mr G nor his representative has provided a detailed account of the circumstances in which the other alleged misrepresentations were made, the conversations that took place or the information that was provided to them and which caused the membership credits to have been misrepresented to them;
- I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the membership credits to Mr G and his wife, that they were mis-sold to them or that they were induced into buying them by any such misrepresentations;
- the claim letter also says that the holiday company is in liquidation and can't provide the service sold so is in breach of contract but Honeycomb Finance says that at no time have the rights of use and occupation of Mr G and his wife's membership been affected by the liquidation of the previous management company and the appointment of the new management company;
- I consider that the liquidation of the holiday company could be a breach of contract for which Honeycomb Finance might have liability under section 75 - but I consider the appointment of the new management company to have been a suitable remedy for any such breach of contract and I've seen no evidence to show that Mr G and his wife's use of their membership credits has been adversely impacted by the liquidation of the holiday company;
- I'm not persuaded that there's enough evidence to show that there's been any other breach of contract, or any breach of any applicable regulation by the holiday company for which Honeycomb Finance would be liable under section 75 in these circumstances;
- as well as claiming that the membership credits were misrepresented to Mr G and his wife and that there's been a breach of contract, the January 2022 claim letter makes other claims, including that: the terms of the agreement are so egregious as to be unfair; the payment of commission was hidden from view; the membership credits were sold to Mr G and his wife under extreme sales pressure and they weren't given the opportunity to consider any other creditors; no affordability checks were carried out on Mr G's ability to afford the loan; and his relationship with Honeycomb Finance was unfair;
- Mr G's representative says that the terms of the agreement are so egregious as to be unfair – but it hasn't provided the terms and conditions or said which of the terms it considers to be unfair;

- it would be for a court to determine whether or not any of the terms in the agreements that Mr G and his wife entered into in August 2018 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 Mr G and his wife 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 Mr G and Honeycomb Finance;
- Mr G's representative says the payment of commission was hidden from view but Honeycomb Finance says that there was no commission arrangement between it and the holiday company and I've not been provided with any evidence to show that Honeycomb Finance paid a commission to the holiday company;
- Mr G's representative says that no affordability checks were carried out on Mr G's ability to afford the loan but Honeycomb Finance says that there were full credit checks, including affordability and eligibility, and it's provided evidence showing that Mr G asked it for a settlement quote in November 2018 and then made payments of £10,000 and £9,204.87 later that month to settle the loan;
- Mr G says that he's still paying off the loan but neither he nor his representative has provided any evidence to show that the loan wasn't repaid in November 2018 or that the loan wasn't affordable for Mr G when it was made to him in August 2018;
- Mr G's representative says that Mr G and his wife weren't given the opportunity to consider any other creditors but Mr G confirmed that he'd seen and read the loan information document which said: *"The duration or term of the agreement is 180 months. If you want a shorter repayment period or to make separate purchases over a period of time you may wish to consider whether an alternative product is more suitable for your requirements"*;
- the loan was made to Mr G in August 2018 and he spoke with Honeycomb Finance in November 2018 to ask for a settlement quote but there's no reference in the file notes that Honeycomb Finance has provided to show that Mr G complained about the loan being unaffordable for him or that he wasn't given the opportunity to consider any other creditors and I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr G, that the loan was mis-sold to him or that Honeycomb Finance has acted incorrectly in connection with the loan;
- Mr G's representative says that the membership credits were sold to Mr G and his wife under extreme sales pressure but they'd bought other holiday products from the holiday company in July 2016 and August 2017 so I would expect them to have been prepared for the sales tactics that might be used by the holiday company before they went into the sales presentation in August 2018 and that, if they didn't want to buy the membership credits, they would have made that clear to the holiday company at that time;
- Mr G and his wife had the right to withdraw from the membership application agreement within fourteen days without giving any reason but I've seen no evidence to show that they contacted either the holiday company or Honeycomb Finance to withdraw from the membership application agreement within the withdrawal period;
- the loan agreement that Mr G electronically signed in August 2018 said that he had the right to withdraw from the loan agreement without giving any reason for a period of fourteen days but I've seen no evidence to show that he contacted Honeycomb

Finance to withdraw from the loan agreement within that period;

- I'm not persuaded that there's enough evidence to show that Mr G and his wife were unduly pressured into buying the membership credits in August 2018, that Mr G was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive commercial practices against them;
- Mr G's representative has also referred to breaches by the holiday company of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 and the Consumer Protection from Unfair Trading Regulations 2008 – and the addendum containing Mr G's additional arguments says that the holiday company failed to provide the necessary information required by the regulations;
- neither Mr G nor his representative has identified the information that was necessary for Mr G and his wife to make an informed decision regarding the purchase but 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 Mr G and his wife at the time of the purchase;
- Mr G and his wife have made other purchases from the holiday company 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 August 2018 and I'm not persuaded that there's enough evidence to show that there's been a breach of either of those regulations;
- having considered all of the information and evidence that Mr G and his representative have provided, I'm not persuaded that there's enough evidence to show that Mr G'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 Mr G and Honeycomb Finance in these circumstances;
- Mr G says that another finance provider has reimbursed its customers and that Honeycomb Finance should reimburse him – but the reimbursement policy of another finance provider is a matter for that finance provider and doesn't mean that Honeycomb Finance should also be required to offer to reimburse its customers - I can only require Honeycomb Finance to take any action in these circumstances if I consider that it's response to Mr G's claims wasn't fair or reasonable;
- I sympathise with Mr G for the issues that he and his wife had with their membership credits and the upset and disappointment that they feel, but I consider that Honeycomb Finance's response to the claims that had been made to it was fair and reasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Honeycomb Finance to refund to Mr G any of the money that he paid under the loan agreement, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 January 2024.

Jarrold Hastings
Ombudsman