

## 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. He's being represented in his complaint by a claims management company.

## What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follows:

*"Mr G and his wife entered into a membership application agreement with a holiday company in June 2018 to buy 6,000 holiday club membership credits. The purchase price of the credits was £18,360 and Mr G entered into a fixed sum loan agreement with Honeycomb Finance for a loan of that amount. He agreed to make 179 monthly loan repayments of £187.42 and a final payment of £187.61 to Honeycomb Finance.*

*Mr G's representative made claims to Honeycomb Finance in June 2019 under sections 75 and 140A of the Consumer Credit Act 1974 and for breach of fiduciary duty. It said that the holiday company was in breach of contract, there was a breach of fiduciary duty because Honeycomb Finance paid a commission to the holiday company but didn't obtain Mr G's informed consent to the commission, and the agreement, and the related agreement, are unfair. It also said that the credit intermediary wasn't regulated by the Financial Conduct Authority.*

*Honeycomb Finance said that the misrepresentation claims weren't evidenced and were in contradiction of the sales and compliance documentation received, signed and acknowledged by Mr G and his wife. It said that they'd purchased credits to utilise for a wide range of holidays and lifestyle experiences, from accommodation in varied locations (subject to availability) to luxury cars. It said that it was made clear in the product disclosure document that a resale facility for the sale of credits would not be available until five years after purchase. It said that it didn't pay commission to the holiday company, it identified the credit intermediary and said that its regulatory status was detailed in the pre-contract credit information, and it set out the reasons that its relationship with Mr G wasn't unfair.*

*Mr G wasn't satisfied with its response so a complaint was made to this service. His complaint form says that: Honeycomb Finance failed to conduct a proper assessment of his ability to afford the loan and paid a commission to the holiday company which wasn't declared to him; and the holiday company unduly pressured him into entering into the agreements; all of which rendered the agreement unfair pursuant to section 140A.*

*Our investigator recommended that Mr G's complaint should be upheld. He was persuaded that the holiday company most likely did tell Mr G that the credits were an investment that could be sold for a profit and he thought that it had misrepresented the credits as something that could be re-sold easily in the future, but the evidence suggested that that couldn't have been the case. He recommended that Honeycomb*

*Finance should: cancel the loan and refund all loan payments made, with interest; refund any membership fees that Mr G paid to the holiday company; and either procure his release from his obligations to the holiday company or agree to take over his points and/or indemnify him for any future maintenance costs.*

*Honeycomb Finance has asked for this complaint to be considered by an ombudsman. It has provided an explanation of how the credits work and a detailed response to our investigator's recommendation. It says, in summary and amongst other things, that:*

- there's been no evidence put forward by Mr G to back up his claims that the credits were misrepresented to him and the holiday company doesn't have any record of Mr G contacting it to initiate a sale;*
- it has referred to a compliance video that was recorded before and during the signing of the agreements in which Mr G confirmed that the rental and sales process were explained to him; and*
- it doesn't agree that he only bought the credits because they were an investment that could be sold for a profit in a short time as the credits offered him flexibility and he received additional benefits (including £1,250 cashback and £500 flight vouchers) which would have been unnecessary if Mr G had been told that the credits were an investment.*

*Mr G's representative has raised its serious concerns about the way that the finance was sold to Mr G".*

*I said in my provisional decision: "I don't consider that Mr G's complaint should be upheld for these reasons:*

- Mr G's complaint form says that Honeycomb Finance failed to conduct a proper assessment of his ability to afford the loan and paid a commission to the holiday company which wasn't declared to him; and the holiday company unduly pressured him into entering the agreements; all of which rendered the agreement unfair pursuant to section 140A;*
- 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;*
- Honeycomb Finance says that it assessed the affordability of the loan based upon the information provided by Mr G and by seeking information from credit reference agencies, and it deemed the loan affordable but it hasn't provided any other evidence of the affordability assessment that it conducted – it also says that Mr G confirmed during the compliance interview that the loan was affordable for him;*
- Mr G and his wife are both pensioners and Mr G says that £187.42 is a lot of money for them to pay each month but neither Mr G nor his representative has provided information about their income and expenditure to show that the loan wasn't affordable for Mr G - and I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for him in June 2018 when it was made to him or that Honeycomb Finance shouldn't have made the loan to him;*
- Mr G's representative says that it's aware that Honeycomb Finance paid a commission to the holiday company but it hasn't provided any more information or evidence to show that such a commission was paid and Honeycomb Finance says it didn't pay commission to the holiday company;*
- I'm not persuaded that there's any evidence to support Mr G's representative's*

*claim that Honeycomb Finance paid a commission to the holiday company;*

- Mr G's representative says that Mr G and his wife were forced to endure an extremely high-pressured presentation and were put under considerable pressure to make a decision on the day of the presentation but Honeycomb Finance says that, throughout the compliance video, Mr G and his wife demonstrated that they were meticulous in checking the documentation;*
- if Mr G and his wife had been forced to stay in the presentation or had been subjected to unacceptable sales practices and didn't want to buy the credits, I consider that it would be reasonable to expect them to have complained about those issues soon after they'd taken place but I've seen no evidence to show that they complained to the holiday company or Honeycomb Finance about those issues until June 2019, a year after they'd bought the credits;*
- I'm not persuaded that there's enough evidence to show that Mr G and his wife were unduly pressured into buying the credits in June 2018 or that Mr G was unduly pressured into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;*
- 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;*
- although Mr G's complaint form didn't refer to a claim under section 75, his representative's June 2019 letter to Honeycomb Finance referred to its liability under section 75 for breaches of contract, misrepresentations and negligence and said that the credit intermediary wasn't regulated by the Financial Conduct Authority;*
- that letter described the alleged misrepresentations that were made to Mr G and his wife by the holiday company but there's no further information in that letter about a claim for breach of contract or negligence – and 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);*
- I understand that the holiday company went into liquidation in May 2020 and I consider that the liquidation of the holiday company would be a breach of contract for which Honeycomb Finance would be liable under section 75;*
- but I also understand that a new management company has been appointed to provide the services in connection with the credits that Mr G and his wife had bought from the holiday company in June 2018 and that the credits are available for them to use;*
- I've seen no evidence to show that Mr G's use of the credits has been adversely impacted by the liquidation of the holiday company and I consider the appointment of the new management company to have been a suitable remedy for any breach of contract;*
- Mr G says the agreement has been cancelled, he's never used the credits and doesn't own them anymore but I've seen no other evidence to show that the agreement has been cancelled – the holiday company says that it sent relinquishment forms to Mr G and his wife but they hadn't been returned – the relinquishment of the credits would relieve Mr G and his wife from liability for any further management fees but wouldn't entitle them to a refund of the purchase price or settle Mr G's loan from Honeycomb Finance and he would continue to*

*have liability to repay the loan on the terms set out in the loan agreement;*

- Honeycomb Finance has identified the credit intermediary for Mr G's loan and details about it were included in the pre-contact credit information that was provided to Mr G - I'm not persuaded that Mr G's representative has provided any evidence to support its claim that the credit intermediary wasn't regulated by the Financial Conduct Authority when the loan was made to Mr G;*
- Mr G's representative's June 2019 letter says that Mr G and his wife were: advised that the credits they would be purchasing were an investment and the holiday company "assured [them] that they would be able to make a profit on the resale of the property a year after purchasing the same"; advised that the credits were worth the sum paid; advised that the credits would be sold within a short time and guaranteed that they would make a profit; assured that after entering into the agreement in 2016, they would be assigned accommodation with a sea view; and assured that they were members of an exclusive club and that the resort could only be utilised via membership;*
- it says that: Mr G and his wife have attempted to sell their credits via the holiday company and there has been no success; the credits are worth little or nothing; they will make a significant loss if their interest is sold; when they've utilised the agreement they haven't been assigned a room with a sea view; and the resort can be accessed by non-members via third party booking agencies;*
- I've been provided with a copy of the membership application agreement that Mr G and his wife signed in June 2018, the terms and conditions and the loan agreement that Mr G signed in June 2018 but I've not been provided with the other documents that it's likely that they would have also signed at that time;*
- Honeycomb Finance has provided extracts from a product disclosure document that it says would have been provided to Mr G and his wife but I've not been provided with a full or signed copy of that document and it has also referred to the compliance video but it hasn't provided that either;*
- the terms and conditions that Mr G and his wife signed say that the credits grant the right to use accommodation and other use on the terms set out in the rules of membership, reservation rules, deed of trust, club regulations and the standard information document;*
- one of the extracts from the product disclosure document that Honeycomb Finance has provided says that the credits can be exchanged for rights of occupation and use in a unit of accommodation or a yacht or use of other lifestyle products such as luxury cars at various locations;*
- another extract from that document says that the resale facility for credits for new members will be available five years following the start of membership;*
- neither Mr G nor his representative has provided any documentary or other evidence in support of Mr G's claim that the credits were sold to Mr G and his wife as an investment and I consider it to be more likely than not that they were aware that the credits could be exchanged as described in the product disclosure document;*
- nor have they provided any documentary or other evidence in support of the claim that Mr G and his wife have unsuccessfully attempted to sell their credits via the holiday company and Honeycomb Finance says that the holiday company doesn't have any record of Mr G contacting it to initiate a sale;*
- I also consider it to be more likely than not that they were aware that the resale facility for their credits wouldn't be available until five years later and I'm not*

*persuaded that it's likely that the holiday company would have guaranteed that Mr G and his wife would be able to sell their credits or that they would make a profit if they sold them;*

- Mr G and his wife considered that the credits were worth the sum paid and I consider that the credits clearly have value as they can be exchanged for accommodation and other experiences – but they give Mr G and his wife no interest in property and they can be used at various locations so aren't linked to one resort;*
- I'm not persuaded that it's likely that the holiday company would have told Mr G and his wife that any of the locations were exclusive to members of the club as that's not consistent with the way that the credits operate;*
- Mr G's representative says that Mr G and his wife were assured that after entering into the agreement in 2016, they would be assigned accommodation with a sea view but when they've utilised the agreement they haven't been assigned a room with a sea view;*
- Mr G and his wife bought the credits in June 2018 and Mr G says that they've never used them - I'm not persuaded that it's likely that they would have been assured that they would be assigned accommodation with a sea view and, if they've never used the credits, they can't have been assigned a room without a sea view;*
- I'm not persuaded that there's enough evidence to show that the holiday company sold the credits to Mr G and his wife as an investment, that it guaranteed that they'd be able to sell them for a profit, that the credits were misrepresented or mis-sold to them by the holiday company or that they were induced into entering into the membership application agreement by any misrepresentations;*
- 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;*
- Honeycomb Finance responded to Mr G's claims in December 2019 and I consider that it was fair and reasonable for it not to uphold those claims for the reasons that it gave - so I consider that its response to his claims was fair and reasonable in the circumstances; and*
- I sympathise with Mr G and his wife for the issues that they've had with their credits, but I find that it wouldn't be fair or reasonable for me to require Honeycomb Finance to refund to Mr G any of the money that he's paid under the loan agreement, to cancel the loan, to pay him any compensation or to take any other action in response to his complaint.*

*Mr G says that the monthly payment is a lot of money and, if he's struggling to pay it, I suggest that he contacts Honeycomb Finance and explains to it his financial situation. It's required to respond to any financial difficulties that he's experiencing positively and sympathetically”.*

Subject to any further comments or evidence that I received from any of Mr G, his representative and Honeycomb Finance, my provisional decision was that I didn't intend to uphold this complaint. Mr G's representative has provided a generic submission from counsel about “various consumer complainants and providers of consumer credit for purchase of [credits from the holiday company]”.

## **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.

That includes consideration of the generic submission from counsel that has been provided by Mr G's representative but I'm not persuaded that I should change the findings that I set out in my provisional decision. I don't consider that the generic submission contains enough evidence to show that the holiday company misrepresented the credits to Mr G or that Mr G's relationship with Honeycomb Finance was unfair. And I don't consider that it contains enough evidence to cause Honeycomb's response to Mr G's claims under section 75 and 140A to be unfair or unreasonable.

For the reasons set out in my provisional decision, I'm not persuaded that there's enough evidence to show that: the credits were misrepresented or mis-sold to Mr G and his wife by the holiday company; that they were induced into entering into the membership application agreement by any misrepresentations; or 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.

I sympathise with Mr G and his wife for the issues that they've had with their credits, but I find that it wouldn't be fair or reasonable for me to require Honeycomb Finance to refund to Mr G any of the money that he's paid under the loan agreement, to cancel the loan, 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 21 August 2023.

Jarrold Hastings  
**Ombudsman**