

The complaint

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

What happened

Mr C and his wife entered into a membership application agreement to buy 6,000 membership credits from a holiday company in May 2018. The membership price was £17,100 and Mr C also entered into a fixed sum loan agreement with Honeycomb Finance for a loan of that amount. He agreed to make 179 monthly repayments of £174.56 and a final payment of £173.93 to Honeycomb Finance.

Mr C wrote to the holiday company in August 2018 about some issues with his membership and it was agreed that, amongst other things, the holiday company would pay him and his wife £1,500. Honeycomb Finance confirmed in August 2019 that the loan had been repaid.

Mr C's representative, on Mr C's behalf, then made claims to Honeycomb Finance under sections 75 and 140A of the Consumer Credit Act 1974 in July 2020. It said that: the product was misrepresented to Mr C; the contract between Mr C and his wife and the holiday company was breached; commission was paid between Honeycomb Finance and the holiday company which wasn't disclosed to Mr C which created a breach of fiduciary duty and an unfair relationship; the loan agreement was unaffordable; and the holiday company is no longer trading.

Honeycomb Finance said that it was unable to uphold Mr C's complaint. It said that a new management company had been appointed and was able to fully service Mr C and his wife's membership in accordance with the terms and conditions of their agreement and that Mr C and his wife had agreed that a resale facility would be available from 2023. It also said that the value of the membership was in the experiences and holidays taken and that the membership shouldn't be regarded as an investment. Mr C wasn't satisfied with its response so a complaint was made to this service.

Mr C's complaint form says that: the holiday company and Honeycomb Finance failed to conduct a proper assessment of his ability to afford the loan; Honeycomb Finance paid a commission to the holiday company which wasn't declared to him and the holiday company unduly pressured him and his wife into entering into the membership application agreement and him into entering into the loan agreement; all rendering the loan agreement unfair pursuant to section 140A.

Our investigator didn't recommend that Mr C's complaint should be upheld. He wasn't persuaded that there was a misrepresentation at the time of sale and he didn't think that the holiday company had breached the contract. He said that he hadn't seen enough to suggest that the relationship between Mr C and Honeycomb Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He thought that Honeycomb Finance's checks before it lent to Mr C were reasonable and

proportionate and he wasn't persuaded that Honeycomb Finance had a reason to think that the lending was likely to have been unsustainable and unaffordable for Mr C.

Mr C's representative, on Mr C's behalf, has asked for this complaint to be considered by an ombudsman. Mr C says that he was told that there was a guaranteed return on investment and that the misrepresentation will come to the surface when he tries to sell his credits to be told that they aren't worth anything. He also says that he's been told that his membership continues until 2043 but he wouldn't have signed a contract for that long and he was sold the membership on the basis that it was for five years. He says that he didn't mention the return on investment and resale value of the credits when he complained to the holiday company in August 2018 because he then had no idea that they might not hold any value and it was only after being contacted by claims companies and doing some subsequent research that he became concerned that what was sold to him may not be as described.

Mr C's representative says that non-payment of maintenance fees results in the cancellation of the membership but not the loan agreement which makes Mr C's relationship with Honeycomb Finance unfair. It has also referred to a decision issued by this service on a complaint about a different type of product in which it was found that the management charges were unfair. It says that there are significant hidden charges and liabilities found within the document for the membership credits which are unfair and which should give rise to a successful claim under section 140A. It has also provided a generic submission from counsel about the holiday company and the unfair terms that it uses and it has raised its serious concerns about the way that the loan was sold to Mr C. It also says that the repayments weren't affordable and that Mr C repaid the loan utilising a re-mortgage on his home.

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 C's complaint shouldn't be upheld for these reasons:

- Mr C and his wife entered into a membership application agreement in May 2018 to buy 6,000 membership credits and paid a membership application fee of £17,100 - I understand that they also signed other documents relating to their purchase and Mr C electronically signed the loan agreement;
- Mr C's representative made claims to Honeycomb Finance in July 2020 and Mr C then made a complaint to this service – the claim letter referred to claims under sections 75 and 140A, including that the points were misrepresented to Mr C and his wife, but his complaint form only referred to a claim under section 140A and didn't refer to a misrepresentation made by the holiday company;
- 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 C'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 July 2020 letter said that the holiday company represented to Mr C and his wife that the product was of some substance and that the purchase would be an investment as the product would increase in value and, after a few years, they would be able to sell it at a considerable profit – but it's now clear that the product is worthless and has no merit;
- Mr C has described the way that the credits were sold to him and his wife – he says the credits were described as points based with a limited membership period and would allow them to use a unit at a resort and after five years they would be able to sell the credits back for a guaranteed profit – he says that he still has the handwritten note from the salesperson which gave a figure of £4.40 for each credit that they could expect when selling them back – and he says that he was told that there was a guaranteed return on investment;
- Honeycomb Finance has provided a copy of the standard information form that it says was given to purchasers by the holiday company – it 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 ...”*; and: *“This Membership Agreement and Your rights of occupation and/or use shall continue from the ... Commencement Date for a period of twenty-five years ... or until ... You decide to sell, surrender or transfer [the credits] or utilise all of your [credits];*
- that form also says: *“The Resale Facility for [credits] will be available to be applied for as of the year 2023 and cannot be relied upon as the basis for entering into a Membership. Resale values or timeframes cannot be guaranteed and are subject to offer and demand”*;
- Honeycomb Finance says that all prospective purchasers attend a compliance interview with a compliance manager where every aspect of their purchase is explained to them before signing the documentation;
- Mr C wrote to the holiday company in August 2018 about some issues with his membership and it was agreed that, amongst other things, the holiday company would pay him and his wife £1,500, but there was no reference in that letter to the credits being worthless or having been sold as an investment – Mr C says that he then had no idea that they might not hold any value;
- I consider that the credits do have some substance as they 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, and I'm not persuaded that they're worthless;
- I've seen no written documentation that refers to a guaranteed return on investment and, if Mr C and his wife had been told that they were guaranteed a return on their investment, I consider that it would be reasonable to expect them to have ensured that it was referred to in the documents that they signed;
- Mr C says that he wouldn't have signed a contract for 25 years and he was sold the membership on the basis that it was for five years but I've seen no written documentation that refers to the membership being for five years – the standard information form says that the resale facility would be available to be applied for from 2023 (which was five years after Mr C and his wife entered into the membership application agreement) but the resale value wasn't guaranteed;
- I'm not persuaded that there's enough evidence to show that the holiday company sold the credits to Mr C and his wife as an investment - nor am I persuaded that there's enough evidence to show that the credits were misrepresented to Mr C and his wife by the holiday company or that they were induced into entering into membership application agreement by any such misrepresentations;

- the July 2020 letter also says that the holiday company has stopped trading so has committed a repudiatory breach of contract - Honeycomb Finance says that a new management company has been appointed and was able to fully service Mr C and his wife's membership in accordance with the terms and conditions of their agreement - 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 consider the appointment of the new management company to have been a suitable remedy for that breach of contract, and I've seen no evidence to show that Mr C and his wife's use of their credits has been adversely impacted by the liquidation of the holiday company and I'm not persuaded that they would be entitled to terminate the membership application agreement in these circumstances;
- Mr C's representative says that commission was paid between Honeycomb Finance and the holiday company which wasn't disclosed to Mr C which created a breach of fiduciary duty and an unfair relationship but Honeycomb Finance says that there was no commission arrangement between it and the holiday company;
- I've not been provided with any evidence to show that Honeycomb Finance paid a commission to the holiday company or to show what commission, if any, was paid by Honeycomb Finance to the holiday company and I'm not persuaded that there's been a breach of any fiduciary duty by Honeycomb Finance in these circumstances;
- Mr C's representative says that the loan agreement was unaffordable for Mr C and Mr C's complaint form says that the holiday company and Honeycomb Finance failed to conduct a proper assessment of his ability to afford the loan;
- Honeycomb Finance says that Mr C's loan application was underwritten subject to its lending criteria at the time which would have included validation of information on the application form and a check against a number of databases, including credit reference agencies, before arriving at the decision to approve the lending;
- Honeycomb Finance has provided evidence to show that Mr C was in full time employment with an annual income of £35,235 and that it obtained information from him about his expenditure and credit commitments – and it says that it used that information to calculate that he had a monthly disposal income of £598.87;
- Mr C has provided copies of his bank account statements for the period from February to September 2018 but I don't consider that those statements show that the loan wasn't affordable for him in May 2018 when it was made to him;
- I consider that the checks that were conducted by Honeycomb Finance were reasonable and proportionate and I don't consider that it would be reasonable to expect Honeycomb Finance to have made more detailed checks about the affordability of the loan for Mr C - I find that it was fair and reasonable for it to conclude on the basis of the checks that it made that a loan with a monthly payment of £174.56 was affordable for Mr C;
- Mr C's representative says that the repayments weren't affordable and that Mr C has repaid the loan utilising a re-mortgage on his home – the loan was repaid in August 2019 but I'm not persuaded that there's enough evidence to show that the loan was mis-sold to Mr C, that Honeycomb Finance shouldn't have made the loan to him or that it has acted incorrectly in its dealings with Mr C about the loan;
- Mr C said in his August 2018 letter to the holiday company that he wasn't told that the monthly loan repayment would be £174 per month for the term of the loan and that he was expecting the payment to be £82 – he also says that he was told that the loan was for £17,100 and at no point during the sales presentation did anyone tell him that the repayable amount was £31,000;

- Mr C electronically signed the loan agreement which said: *“As you are entering into this agreement electronically, by clicking in the space provided below and confirming, you are signing this agreement and agree to be legally bound by its terms”*; and he also confirmed that he’d read the pre-contract credit information and the loan explanation documents;
- I consider that it was clear from the loan agreement and the pre-contract credit information that the cash price of the credits and the amount of credit provided to Mr C was £17,100, that the total charge for the credit was £14,320.17; that the total amount payable was £31,420.17 and that Mr C was to make 179 monthly loan repayments of £174.56 and a final payment of £173.93;
- Mr C’s complaint form says that the holiday company unduly pressured Mr C and his wife into entering into the membership application agreement and Mr C into entering into the loan agreement;
- Mr C and his wife had the right to withdraw from the membership application agreement within 14 calendar days without giving any reason, so if they were concerned about the way that the credits had been sold to them and didn’t want to buy them, I consider that it would be reasonable to expect them to have contacted the holiday company within the withdrawal period to withdraw from the membership application agreement but I’ve seen no evidence to show that they did so;
- the loan agreement that Mr C electronically signed clearly set out his right to withdraw from the loan agreement without giving any reason within 14 days, so if Mr C was concerned about the way that the loan had been sold to him, I consider that it would be reasonable to expect him to have contacted Honeycomb Finance within the withdrawal period to withdraw from the loan agreement but I’ve seen no evidence to show that he did so;
- Mr C wrote to the holiday company in August 2018 about some issues with his membership but there was no reference in that letter to him and his wife being unduly pressured and he concluded that letter by saying: *“If you can do all of those things to my satisfaction I will be happy to keep the membership and we can all move forward happily. I would like to put on record [name of specified person] has been very helpful and has responded promptly and effectively to any correspondence from me”*;
- I’m not persuaded that there’s enough evidence to show that Mr C and his wife were unduly pressured into entering into the membership application agreement, that Mr C was unduly pressured into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mr C’s representative has provided a generic submission from counsel about the holiday company and the unfair terms that it uses and says that non-payment of maintenance fees results in the cancellation of the membership but not the loan agreement which makes Mr C’s relationship with Honeycomb Finance unfair and it has also referred to a decision issued by this service on a complaint about a different type of product in which it was found that the management charges were unfair;
- it would be for a court to determine whether or not any of the terms in those agreements were 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 C 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 C and his wife and Honeycomb Finance;

- the decision referred to by Mr C's representative related to a fractional holiday ownership product which was sold as an investment and related to a specified property – Mr C and his wife bought membership credits from the holiday company which didn't relate to a specified property and which I don't consider were sold to them as an investment;
- both products were often sold in similar ways and may have had similar contractual documentation but the operation and effect of the contractual documentation would be significantly different for a fractional product than for the membership credits bought by Mr C and his wife;
- I'm not persuaded that there's enough evidence to show that Mr C'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 C and Honeycomb Finance in these circumstances;
- I sympathise with Mr C for the issues that he and his wife have had with their membership credits but I consider that Honeycomb Finance's response to the claims that had been made to it was fair and reasonable in these circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Honeycomb Finance to refund to Mr C any of the money that he's 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 C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 October 2023.

Jarrold Hastings
Ombudsman