

## **The complaint**

Mr H complains that a timeshare product was mis-sold to him. Because the purchase was financed with a loan from Honeycomb Finance Limited, he says that it is responsible, along with the seller, for the mis-sale and other concerns he has raised.

I'll refer to the lender as "Honeycomb" in this provisional decision. Mr H has been represented by a claims management business, so when I refer to his arguments and submissions, I include those made on his behalf.

## **What happened**

Mr and Mrs H had been members of Club Infiniti ("the Club"), a timeshare and holiday club, since 2008. The Club says that they have entered into five contracts for timeshare and similar products.

In August 2019 Mr and Mrs H entered into a contract with Leisure Dimensions Ltd, a company registered in Ireland, for the purchase of 56,000 membership points. Mr and Mrs H could trade the points on an annual basis for holiday accommodation at various resorts linked to or operated by Club Infiniti. The points would expire at the end of 2060.

The total cost of buying 56,000 membership points was £11,003.65. This was financed with a loan for that amount, provided to Mr H by Honeycomb. The loan was arranged by the seller.

In January 2022 Mr H contacted Honeycomb to say that he thought the timeshare product and the loan had been mis-sold. In summary, he raised the following issues:

- pressure selling;
- lack of availability of accommodation;
- affordability of the loan;
- misrepresentation;
- breach of contract; and
- unfairness of the relationship with Honeycomb.

Honeycomb did not accept that there had been any mis-sale or that it had any liability to Mr H. It noted in particular:

- Mr and Mrs H had been members of Club Infiniti for many years, so would have been familiar with its operation – including booking arrangements and the fee structure.
- They had in fact booked several holidays.
- They had signed various declarations indicating their satisfaction with the sales process and the loan application.
- Honeycomb had considered information about Mr and Mrs H's income before agreeing the loan.

Honeycomb also sought the comments of the seller, Leisure Dimensions Limited. It noted that the purchase of 56,000 points in August 2019 took Mr and Mrs H's total holding to 300,000 points. This was enough to buy a property in Tenerife, which Mr and Mrs H had said had been their intention. They had built up their points holding over the years with that in mind. Leisure Dimensions also noted that Mr and Mrs H had unpaid management fees, which meant that they were unable to use their club points while they were outstanding.

Honeycomb noted as well that much of Mr H's complaint concerned representations which he said were made to him when he and Mrs H bought points in 2016 and 2017. Those purchases had not however been financed by Honeycomb.

Mr H did not accept Honeycomb's response and referred the matter to this service. Our investigator did not however recommend that the complaint be upheld. Mr H asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

*I would comment generally that Mr H's submissions about what he says happened in August 2019 are vague and unspecific. And, as Honeycomb has noted, much of what he has said appears to relate to earlier purchases, which were not financed by Honeycomb. His complaint is therefore to a large extent a general expression of dissatisfaction with his timeshare arrangements, rather than a complaint about a specific event or events.*

*More specifically, Honeycomb's response to the complaint included a very clear reference to Mr and Mrs H's express wish to bring their points holding up to 300,000, so that they could trade in those points for property. But Mr H has not sought to answer the observations about his wider aims in buying additional points, either by reference to the sales contract and Club rules or otherwise.*

*Nor, having said in his initial complaint that booking holidays was difficult because of lack of availability, has Mr H challenged what was said about the use he has had of timeshare products over the years.*

### **Sections 56 and 75 of the Consumer Credit Act 1974**

*Under section 56 of the Consumer Credit Act, statements made by a supplier in relation to a transaction financed or proposed to be financed under pre-existing arrangements between a credit provider and the supplier are deemed to be made as agent for the creditor.*

*In addition, one effect of section 75(1) of the Consumer Credit Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a credit provider. Those conditions include:*

- that the credit financed the contract giving rise to the claim, either in whole or in part; and*
- that the credit was provided under pre-existing arrangements or in contemplation of future arrangements between the credit provider and the supplier.*

*The supplier here was Leisure Dimensions Limited, the company which sold the points and associated club membership. That company was also named as the credit intermediary. I'm satisfied therefore that the arrangements between it and Honeycomb are such that sections 56 and 75 could apply. I have therefore considered what Mr H has said about representations made at the point of sale and about breaches of contract.*

## **Misrepresentation**

*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.*

*As I have indicated, Mr H's allegations are largely vague and unsupported by any evidence, either of what was said or that it was untrue.*

*One of his main allegations is however that he was told that he needed to purchase more points in order to sell timeshare products bought before 2019. If that were the case, however, I would expect him to challenge – ideally with supporting evidence – the claim that his purchase in 2019 was in fact driven by a desire to achieve 300,000 points to enable him to acquire a property.*

*In addition, Mr and Mrs H signed a declaration which included a statement that they had not received any promises not in writing. I do not believe they would have done that if their decision to buy the points had been based on something they had been told orally.*

## **Breach of contract**

*Mr H has not, in my view, identified any breach of the 2019 contract. It appears that he has been provided with the service he paid for.*

*Mr H has alleged that there was a requirement that he buy further Club points in order to be able to sell existing timeshare products. He says that is an unfair term. It appears however that this allegation is made in respect of the earlier contracts in 2016 and 2017. In any event, Mr H also alleges that this was not explained to him, and he has not explained how the existence of such a term could give rise to a claim against Honeycomb.*

## **Section 140A claims**

*Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments.*

*In considering whether a credit agreement creates an unfair relationship, a court can have regard to any linked transaction.*

*I am satisfied that the timeshare agreement in this case was a “linked transaction” within the meaning of section 19 of the Consumer Credit Act.*

*I have therefore considered whether the sale and subsequent events are likely to mean that the loan agreement created an unfair relationship. I think it most unlikely that they did.*

*Only a court can make orders under section 140A and 140B of the Consumer Credit Act. I can however make a wide range of awards, and could, if I thought it fair and reasonable to do so, require a lender to, for example, refund loan payments or write off a loan. I do not believe however that I should do so here.*

*Again, Mr H's allegations are vague and not supported by evidence. For example, Mr H says that he and Mrs H were pressured into buying. They said the same about earlier purchases as well. But, far from supporting their case, the fact that they were familiar with the sales process indicates to me that Mr and Mrs H knew they did not have to buy more points.*

*That's consistent too with the seller's claim that they were buying points to reach 300,000 in total.*

*I note as well that the Club's standard documentation include declarations from sellers that they had not been pressured into buying. It's likely in my view that Mr and Mrs H signed such declarations here; they wouldn't have done so if they were not true.*

*In addition, Mr H had 14 days in which to cancel both the sale and the loan agreements. If he felt he had been subjected to undue pressure, I think he would have taken advantage of that opportunity.*

*I do not believe the seller was under any duty to disclose any commission it might have received from Honeycomb. It was not acting as Mr H's adviser or agent. It was selling a timeshare product and arranging (as Honeycomb's agent) finance to support the sale. Mr H was under no obligation to take out finance – either with Honeycomb or with any other borrower. I believe that was made clear to him.*

### **Affordability**

*Mr H says that Honeycomb did not assess properly whether he could afford the loan. There is however no evidence to suggest that it was not affordable, and Honeycomb says the loan had been cleared.*

I gave the parties until 6 February 2024 to provide me with any further evidence or arguments they wanted me to consider. I have however received nothing further in response to my provisional decision.

### **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 information following my provisional decision, I see no reason to reach a different conclusion in this final decision. In saying that, however, I stress that I have considered everything afresh before issuing it.

### **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 25 April 2024.

Mike Ingram

**Ombudsman**