DRN-4761621

The complaint

Mr H complains that Mitsubishi HC Capital UK PLC trading as Novuna ('Novuna') is liable to pay him compensation following a complaint made about timeshares he bought using loans provided by Novuna.

At the time the loan agreements were taken out Mitsubishi HC Capital UK PLC was using the trading name 'Hitachi'. However, as it is now known as Novuna I shall use this name throughout.

The loan agreements were taken out in Mr H's sole name, so Mr H is the only eligible complainant here. However, as the purchases were made by both Mr and Mrs H, I shall refer to both of them in this decision where it is appropriate to do so.

What happened

Mr and Mrs H were on a promotional holiday provided by a timeshare company (the 'Supplier'), and on 7 August 2013 they attended a sales presentation by the Supplier. As a result of this presentation they purchased a trial timeshare membership at a cost of £3,995. This entitled them to five weeks of holidays in the following 34 months (up until June 2016) at any of the Supplier's resorts. As a condition of this purchase Mr and Mrs H were required to take their first holiday as a 'Prelude Holiday'.

This trial membership was purchased using finance from Novuna, taken in Mr H's name. He entered into a 3-year Fixed Sum Loan Agreement (the 'Credit Agreement 1') for £3,995 with the total amount payable with fees and interest being £5,185.[1]

Whilst on the 'Prelude Holiday' on 17 February 2014 Mr and Mrs H attended a sales presentation and purchased membership of an asset-backed timeshare called the Fractional Property Owners Club ('FPOC') from the Supplier. They bought 1,010 Fractional Points at a cost of £14,807.

Under the terms of the FPOC membership, Mr and Mrs H could exchange their Fractional Points for holidays. And at the end of their projected membership term, they also had a share in the net sales proceeds of a property tied to their membership ('Allocated Property 1'). As their interest in Allocated Property 1 was limited to a share in its net proceeds, they didn't have any preferential rights to stay in the Allocated Property or use it in any other way.

This FPOC membership was paid for with finance provided by Novuna in Mr H's sole name. He entered into a 15-year Fixed Sum Loan Agreement (the 'Credit Agreement 2') for £18,967 which consolidated Credit Agreement 1. The total payable including interest being £53,602.[2]

On 25 October 2015, again whilst on holiday, Mr and Mrs H made a further purchase from the Supplier of 2,090 points for membership of the 'Signature Collection' (another asset-backed timeshare). This membership entitled Mr and Mrs H to take a specified week's

[1] Credit Agreement 1 was cleared by being consolidated by Credit Agreement 2
[2] Credit Agreement 2 was cleared with a lump sum payment on 17 April 2014

holiday every other year (commencing in 2017) in a specified resort with guaranteed availability. Like their previous membership, it gave Mr and Mrs H a share in the net sales proceeds of a property linked to this new membership ('Allocated Property 2'). It appears that Mr and Mrs H's existing FPOC membership was traded in as part of this purchase.

The Signature Collection membership cost Mr and Mrs H £8,623 and this was paid for by finance from Novuna. Mr H entered into a 15-year Fixed Sum Loan Agreement (the 'Credit Agreement 3') for £8,623 with the total payable after interest being £17,928.[3]

It seems Mr and Mrs H made a further purchase from the Supplier on 12 November 2015. It is unclear how this was financed but it was not by way of a loan from Novuna and does not form part of this complaint.

On 13 September 2016 Mr and Mrs H wrote to the Supplier to surrender their memberships (those they bought on 25 October and 12 November 2015).

On 20 December 2016 Mr H wrote to Novuna to cancel Credit Agreement 3 and to inform it that he would be ceasing his repayments. He said that as the related timeshare contract had been cancelled, Credit Agreement 3 was null and void. Novuna replied to him on 4 January 2017 and explained that while he may no longer wish to make use of his timeshare membership, that did not remove his obligation to maintain payments to Credit Agreement 3.

On 14 January 2019 Mr H complained to Novuna. In essence he said, at the time of sale the Supplier had told him:

- he would be joining a members only club, guaranteeing exclusivity at the resorts;
- there would be no problem with holiday availability; and
- the maintenance fees would only increase with inflation.

He went on to say that he and Mrs H had been subjected to a high-pressured sales presentation and convinced to purchase a trial membership. And the accommodation provided was not of the standard they had been led to expect.

On 14 March 2019 Novuna sent Mr H its final response to his complaint, which it did not uphold. It said, in summary:

- There were some unassigned rental units from the developer's stock at selected resorts which were available for non-members to book. However, there was no detriment caused to any member, and there are specific benefits to membership which are not available to non-members.
- It was explained in the documentation and literature provided to Mr and Mrs H that availability is on a first come first served basis, and a specific destination at a specific time cannot generally be guaranteed. However, their Signature Collection membership guaranteed a bi-annual week's usage at a specific apartment, so it did not agree that Mr and Mrs H would have struggled with availability.
- The annual management charges, and how they are calculated is fully covered in the relevant club rules, and they are set each year by the relevant committee. The rules do not say these will increase with inflation. As Mr and Mrs H's membership has increased over time so the Management fees have also increased in line with this.

[3] Credit Agreement 3 remains current, with a balance of £7,873.45 as of 7 May 2024

- The Supplier does not employ underhand or aggressive sales techniques and does not prevent anyone from leaving at any time. There was never an obligation to purchase a product.
- Mr and Mrs H were given a 14-day recission period.
- The type of apartment and the time of year affects the number of points required to book. The number of points charged normally determines the standard of the resort, so Mr and Mrs H were able to ascertain the standard when they were booking.
- Mr and Mrs H cancelled their membership in 2015 and said it was because their holiday plans had to change unexpectedly, and they were unable to achieve the holidays they wanted at short notice.

Mr H did not agree with Novuna's final response and referred his complaint to our Service where it was considered by an Investigator.

The investigator didn't think Novuna needed to do anything more. She thought this because she hadn't seen enough evidence to suggest that anything had happened during the sales processes which meant the credit relationships between Mr H and Novuna were unfair to Mr H. And she also hadn't seen enough evidence to persuade her that there were any actionable misrepresentations by the Supplier at the times of sale or any breach of contract to persuade her that Novuna's decision to turn down Mr H's Section 75 claims was unfair or unreasonable.

Mr H did not agree and asked for his complaint to be reviewed by an Ombudsman. A third-party, apparently representing Mr H, also wrote to the Investigator citing (*R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd; R. (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) (the 'Judicial Review')). The third-party said it could see no difference in Mr H's complaint and the ones considered in the above case, in which the Supplier had been found to have been at fault when it completed loan agreements with other financial institutions, so it asked for the Investigator's view to be reviewed.

No agreement on the outcome of this complaint could be reached between Mr H and the Investigator, so the matter has come to me for a 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.

And when doing that, the Financial Conduct Authority's (FCA) Handbook of Rules and Guidance requires that I take into account the following under Rule 3.6.4 of the Dispute Resolution Rules ('DISP'): relevant law and regulations; the regulator's rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

And where there is conflicting information available, or indeed a lack of definitive evidence because of the passage of time, I need to decide what I think is most likely to have happened on the balance of probabilities.

When bringing his complaint, Mr H set out that he was making claims to Novuna under Section 75 CCA, saying that the Supplier had made misrepresentations during the sale processes. But he also said he was pressurised by the Supplier into making the purchases

to which this complaint relates. This would ordinarily be a complaint made under Section 140A CCA, so I have reflected that in my approach to this complaint.

Mr H's complaint about the Supplier's Misrepresentations

Mr H says that there were misrepresentations made by the Supplier during the sale processes. It is not entirely clear from his submissions during which of the sales processes these misrepresentations were said to have occurred, so I have taken a holistic view and considered both sales.

Section 75 CCA says that, in certain circumstances, the borrower (Mr H) under a credit agreement has an equal right to claim against the credit provider (Novuna) if there's either a breach of contract or misrepresentation by the supplier of goods or services (the timeshare contracts). Once a claim under Section 75 is made, Novuna needs to properly consider the claim and pay compensation if needed. Mr H's complaint is that Novuna did not do that.

For me to say there was a misrepresentation made by the sales agent in any of the sales, I would have to say that there is evidence that Mr and Mrs H were told something that was not true, and that untruth played an important part in persuading them to make that timeshare purchase.

Mr H has said the following misrepresentations were made:

- He would be joining a member only club, guaranteeing exclusivity at the resorts;
- there would be no problem with holiday availability; and
- the maintenance fees would only increase with inflation.

With respect to any of the sales, I am unable to say with any degree of certainty what Mr H and Mr S were told by the Supplier. Other than the generic points made in his complaint, Mr H hasn't provided any evidence, either orally or in writing, of what he was actually told during the sales processes.

Mr and Mrs H joined three different types of timeshare memberships provided by the Supplier. And I can't see that any of these weren't 'exclusive'. It seems that other non-members were able to book some properties at the resorts used by the Supplier, but these were apparently not properties which formed part of the membership portfolio. Further, I have not been provided anything to show that non-members were able to stay at the Supplier's accommodation. So based on the available evidence, I cannot say any such representation was untrue.

I cannot know what Mr and Mrs H were told in relation to the availability of holidays during the sale processes, and Mr H has not provided any information to support this complaint point, and neither he nor Mrs H have provided their actual recollections of what they were told during the sale processes. However, I have seen a copy of the FPOC Information Statement which was given to Mr and Mrs H as part of the sales process on 17 February 2014, and I find this useful as a guide for me to understand the type of things Mr and Mrs H might have been told. And in one section it says *"All bookings are subject to availability and are handled on a first-come first-served basis."* And further *"Space is subject to availability and seasonal demand."*

So I think it is likely that Mr and Mrs H were told that holidays were subject to availability. I have not seen enough evidence to say, on balance, that any alleged false statements of existing fact were made to Mr and Mrs H by the Supplier in this regard.

And the same is true for the quality of the accommodation that Mr and Mrs H say they expected to receive. Mr H has not provided any evidence of his or Mrs H's recollections of what they were told the accommodation would be like, or that shows that what was offered or provided was not of a sufficient quality and of a quality that was less than what he'd been led to expect. And I've not seen anything which makes me think that he raised this as a problem with the Supplier at any time.

Mr and Mrs H's first trial membership had no membership or management fees payable. And these only became payable once Mr and Mrs H became members of the FPOC on 17 February 2014. In his letter of complaint to Novuna, Mr H has said he was told that the fees would only increase in line with inflation. But I've seen nothing in any of the documentation that he was provided at any of the sales which would indicate this. As I've said, I am unable to say with any degree of certainty what Mr and Mrs H were told during any of the sales meetings, but without a more detailed description of the conversation(s) and circumstances, I'm not persuaded that there was a misrepresentation in this regard.

So having considered everything, and without a more detailed description of the conversation(s) and circumstances, or any supporting evidence surrounding the alleged misrepresentations, Mr H's claim under Section 75 CCA doesn't have sufficient weight to succeed. So I do not think Novuna were unfair or unreasonable in declining Mr H's Section 75 CCA claim.

Mr H's Complaint about the pressure applied to him during the sales process

I've already explained why I am not persuaded that any of the contracts entered into by Mr and Mrs H were misrepresented by the Supplier. But there is another aspect of the sales processes in question that, being the subject of Mr H's dissatisfaction, I need to explore in more detail. This was that Mr and Mrs H were allegedly put under pressure to make the purchases. If I thought there was a high level of pressure that caused Mr and Mrs H to buy something they would otherwise have not, it is possible such pressure could have led to an unfair debtor-creditor relationship in the associated credit agreement. And this is something I could consider pursuant to Section 140A CCA.

Section 140A CCA gives the courts power to determine whether the credit relationship between the creditor and the debtor was unfair to the debtor, and where a court finds there is an unfair relationship, it has wide ranging powers to address the matter.

The unfair relationship can be as a result of how the creditor has acted in relation to its rights under the credit agreement, but can also be caused by any linked agreement – in this case the timeshare contracts - and anything done (or not done) by or on behalf of the creditor before or after the making of the credit or linked purchase agreement.

In this section of the decision I am considering all of the evidence to see if, on the balance of probabilities, it suggests the credit relationship between Novuna and Mr H was unfair to him. And having considered everything, I am not persuaded, in these particular circumstances, that is the case.

The Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code') sets out what was considered to be good practice at the time of the sales.

The RDO Code sets out, amongst other things, the Sales and Marketing Principles that the Supplier had to follow at the Time of Sale. It states, under Principle 2.2.2, that selling Members will ensure "appropriate selling methods that treat the consumer with respect and allow the consumer choice between purchasing and reflection".

Other than what has been said in Mr H's letter of complaint to Novuna, I've not seen sufficient evidence which leads me to think, on the balance of probabilities, that Principle 2.2.2 of the RDO Code was not adhered to for reasons relating to pressure. Although I accept that the sales processes may not have been particularly relaxing, and may have lasted several hours, Mr H has not said he was told he had to stay for the entire duration of the sales processes if he was not interested in making the purchase. It is also relevant that Mr and Mrs H went on to make a further purchase from the Supplier, and have not provided a credible explanation as to why they did that if the only reason they made the purchases in question was because they were pressured. And Mr and Mrs H were given a 14-day 'cooling off' period following each of the sales, during which time they could have cancelled the purchases and the associated credit agreements without penalty.

So as a result of everything I have seen, I am not persuaded that Novuna was party to a credit relationship with Mr H that was unfair to him.

The effect of the Judicial Review on the Assessment of Mr H's Complaint

I have considered the effect of the Judicial Review on my assessment of this complaint. When assessing any complaint, the role of an Ombudsman is to assess the evidence to come to a fair and reasonable outcome on the merits of the specifics of that complaint. Whilst trying to be consistent with previous decisions, the outcome will always be specific to the individual complaint as all circumstances are different. In the light of the facts and circumstances of this complaint, I do not think it should succeed.

Conclusion

Taking everything into account, I am satisfied that Novuna did not act unfairly or unreasonably when it dealt with Mr H's Section 75 CCA claim, and I am not persuaded that Novuna was party to a credit relationship with Mr H that was unfair to him. And I see no other reason why it would be fair or reasonable to direct Novuna to compensate Mr H.

My final decision

I do not uphold Mr H's complaint against Mitsubishi HC Capital UK PLC trading as Novuna.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 June 2024.

Chris Riggs
Ombudsman