

The complaint

Miss G complains that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance (Novuna) are holding her to the terms of a loan agreement she didn't enter into.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In November 2022 Novuna processed a loan application in Miss G's name. The loan was for £25,000 with a repayment term of 36 months. On 22 November 2022 the loan funds were paid into an account Miss G held with 'N'.

On 30 November 2022 Miss G called Novuna. In this and later calls she said that she hadn't taken the loan. Miss G said that she had become involved in an investment scam around cryptocurrency. She said the Novuna loan and others were paid into and then moved out from her accounts without her knowledge or consent. She said she first became aware of this on 25 November 2022 when the scammer said he'd taken these loans and had moved the funds on.

Novuna investigated and said that they wouldn't be treating this as a fraudulent application. They thought Miss G had applied for the loan and continued to hold her to its terms. Miss G complained and when Novuna maintained their position, the matter was referred to our service.

One of our Investigators considered the complaint and didn't recommend it should be upheld. She didn't think Novuna had treated Miss G unfairly. Miss G disagreed and asked for an Ombudsman to review her complaint. In February 2024 I issued a provisional decision in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm aware of Miss G's linked complaints and have familiarised myself with the broader circumstances of this complaint. But this decision only relates to the actions of Novuna. Overall, I'm intending to reach the same outcome as our Investigator. But as my reasons are slightly different, I'm issuing this provisional decision to give both sides a further opportunity to comment before finalising my decision.

Miss G hasn't been able to provide a great deal in terms of documentary evidence of what she said happened between her and the scammer. She says this is in part because the scammer used messages that delete themselves after a period of time and also because she was advised to wipe her phone as a security precaution when the scam was discovered.

In light of this, Miss G's testimony is an important factor in the consideration of this complaint. Broadly speaking Miss G's testimony to our Investigator was as follows. She

responded to an advert on social media and was contacted and talked through the process of investing which involved downloading screen sharing / remote access software on both her computer and phone. After her initial investments showed good returns, she wanted to withdraw her money. She says at this point the scammers were pressuring her to put more money in and asked her to take a loan to invest more. When she declined to do this, she says the scammer told her he had already taken four loans in her name (one of which was the loan with Novuna), which had been used to purchase cryptocurrency that he was now trading for her. Miss G says she didn't move any of the loan funds on and that this was all done by the scammer, presumably through the screen sharing / remote access software. Miss G says the scammer told her that he needed her help to "push through" a further loan from 'B' and that those funds would then mean that all her profits could be released. Miss G says she contacted B and chased up the loan. The loan funds were then moved through Miss G's accounts before being used to purchase cryptocurrency which she says was then lost to the scammer.

I don't find Miss G's testimony evidence to be credible or reliable. I say this for a number of reasons. Miss G says she had no involvement in or knowledge of the loans in her name until the scammer shared this with her on 25 November 2022. But part of the evidence provided by N on a linked complaint shows that on 23 November 2022 Miss G's mobile banking was logged into using a fingerprint and that her full statements were viewed. At this point two loans she disputes taking would have been visible on the statements as well as the outgoing payments that moved the funds on. One of these loans would have been the loan with Novuna. The use of a fingerprint to log in would have required physical possession of her phone and isn't something I think likely could have been done remotely as Miss G alleges.

And given I'm persuaded that, on balance, it was Miss G on that login, and the evidence provided shows that the statements were viewed, I think if she really had no knowledge of or involvement in those transactions and loans as she now states, she would have disputed this at the time.

Further to this there was another login on 24 November 2022 (again using a fingerprint to access the app). And during that session an outgoing payment for £10,000 was made which is one of the ones Miss G says she knows nothing about. And in my consideration of the linked complaint about N, I'm currently more persuaded by the technical evidence and think Miss G instructed that payment. There are other instances of logins to mobile and online banking with N but I won't list them all.

The Novuna loan application used the same email address and phone number for Miss G as those she has used to communicate with our service. Novuna evidenced that a code would have been sent to the mobile number and then entered online to electronically sign the loan agreement. Other lenders also sent similar emails to Miss G using the same email address, again before she says she knew about the loans. I think it's unlikely all of these emails were missed by Miss G, and it's therefore difficult to understand why the loans weren't disputed as soon as she received information about them.

Further to this, when reporting what had happened to the businesses involved, Miss G's testimony has changed. Specifically, when she contacted N, their call notes record that she said she was forced to take and then move the loans, before later claiming that she largely had no involvement in this at all.

The net result of all of this is that I think Miss G knows more about what went on than she has shared with our service. I find the evidence compelling that Miss G would have known about some of the loans sooner than she says she did. And as I've mentioned, in relation to the linked complaint, I'm not currently persuaded the movement of loan funds (from N) was unauthorised as she's alleged. Accordingly, it is difficult to put much weight on her testimony.

On balance, I think it's more likely than not that Miss G had involvement in the Novuna loan such that their decision to hold her to its terms and not consider it to be a case of ID Theft, is fair.

Miss G has also argued that the loan is unaffordable for her and that it shouldn't have been agreed on that basis. As I've mentioned above, the loan had a 36-month term. And the monthly repayments were to be around £802. Repayments of this amount and for the term involved represents a significant financial commitment. And Novuna fairly and reasonably ought to conduct reasonable and proportionate checks to ensure the loan was affordable for Miss G in a sustainable way. I can see that Novuna did conduct certain checks which included checking Miss G's declared income against information gathered from other sources. But in this case, I agree that I don't think the checks Novuna did at the point of agreeing the loan were sufficient. I think Novuna ought to have done more to investigate Miss G's financial situation at the time to ensure she would be able to maintain the contractual repayments on a sustainable basis.

So, I've next gone on to consider what would have happened had Novuna conducted these further checks. Miss G's statements from the time show that her monthly income from her employer was around £4,300. Taking into account Miss G's essential expenses at the time, I'm not persuaded a more detailed look at her financial circumstances would have concluded that the monthly loan repayments of around £802 weren't affordable and sustainable. As such, I don't think Novuna's lending decision was irresponsible or that the lending was unaffordable.

I understand much of Miss G's submissions on this point centre around the multiple loans being taken out in a short period of time. But it is common that loans won't immediately show on checks done with the credit reference agencies. And I can only assess Novuna's lending decision based on the information that was available to it at the time. Despite this I would still expect Novuna to work with Miss G and to treat her sympathetically and positively in relation to the outstanding debt. But there isn't a reasonable basis upon which I can require them to write off the lending as Miss G would like.

Miss G has made a number of further points which include Novuna's sharing of data with her, the identity checks done at the time and the use of email to send an agreement. I've considered these, but as I think she took the lending she is disputing, none of those points make a difference to the outcome of this complaint."

Novuna responded and said they had nothing further to add. Ms G responded with some further comments that I'll address below.

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.

Miss G has argued that the loan isn't recoverable because she says there is no legal contract, it is unaffordable and therefore void. She's made some legal arguments as to why this is the case which include "lack of consent, impossibility of performance and illegal consideration."

The crux of Miss G's argument is still largely coming from her position that she didn't enter into the agreement, and my on-balance finding is that Novuna concluding that she did, is fair. So I don't agree that this means Novuna can't pursue the outstanding debt or that the agreement is invalidated.

Miss G has also re-iterated her position regarding the affordability of the loan, she's also said she wants to know how I've concluded this loan was affordable for her. She says that she can't afford five loan repayments. But as I've set out before, my decision is specific to Novuna's lending decision based on the information available to it at the time (which wouldn't have included knowledge of other recent loans). And my conclusion on affordability is based on Miss G's account statements and the income and expenditure spreadsheet she provided to our service. Discretionary monthly spending wouldn't be taken into account when assessing affordability. Miss G's own assessment included nearly £1,000 of monthly spending on "*clothes / footwear, hairdressers, sport, fun money and holidays*" – none of which I would consider to be essential spending in the context of an affordability assessment. I maintain that there was sufficient remaining after essential expenditure and commitments each month to meet the requirements of the loan such that it wasn't unaffordable.

So whilst I would agree with Miss G that Novuna should have conducted more detailed checks prior to agreeing the loan, that isn't in itself enough to mean that the lending was unaffordable or for me to uphold the complaint. I don't think it likely Miss G would have disclosed anything at the time which would have impacted Novuna's decision to lend or that further checks at the time would have resulted in the lending being considered unaffordable.

Miss G mentioned that I acknowledged that credit files aren't updated instantaneously, something she considers to be a 'loophole'. I understand why Miss G says this, but it still doesn't change my mind as to the outcome of this complaint. Novuna would only ever have been able to make a decision based on information available to them. And I can't hold them responsible for the time credit reference agencies might take to update their systems.

I've considered everything Miss G has said, but nothing has persuaded me to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 23 April 2024.

Richard Annandale
Ombudsman