

The complaint

Mr N says that Mitsubishi HC Capital UK Plc, now trading as Novuna Personal Finance ("Novuna"), unfairly declined his claims under the Consumer Credit Act 1974 (the 'CCA') in relation to a timeshare he was sold.

Mr N has been represented by a professional representative at times and he entered into the purchase agreement with his wife. But as Mr N is named on the credit agreement, and for convenience, I will refer only to him in this decision. I mean no disrespect to his wife or his representatives when doing so.

What happened

I issued a provisional decision on this complaint in March 2024. An extract from that provisional decision is set out below.

In January 2020 Mr N purchased a timeshare membership with a company I will call "C". The purchase was funded through a fixed sum loan with Hitachi Capital (UK) Plc, who are now Mitsubishi HC Capital UK Plc and trade as Novuna.

Mr N first complained to Novuna in March 2023. He said he hadn't been presented with the requisite cooling off period; that the loan was unaffordable for him and that maintenance fees were not adequately explained. His representatives enlarged upon that complaint later in the year. Their claim was detailed but in essence they said Mr N had a claim under sections 75 and 140A of the Consumer Credit Act 1974 (CCA) as the agreement had been misrepresented to him and there had been an unfair relationship. They also said that adequate checks hadn't been conducted to ensure that the agreement was affordable for Mr N.

Novuna didn't uphold Mr N's complaint and, when he escalated it to this Service, neither did our investigator.

Mr N said he'd been pressured into the agreement by a business who should have known his decision making had been impaired by a recent stroke. He insisted that the cooling off period had been inadequate, and he said that maintenance fees had been hidden and that the extent of payments only became apparent much later. He said Novuna hadn't adequately assessed his finance application as they hadn't taken into account the fact he was on reduced earnings due to his illness. Mr N asked for a decision by an ombudsman.

What I've provisionally 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.

I know it will disappoint Mr N, but I'm not currently inclined to uphold his complaint. I'll explain why.

I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take

into account the relevant, laws and regulations, regulators rules, guidance, and standards, codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act (2000). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my final decision.

This Service is usually only able to consider a consumer's complaint after a business has been able to consider it and provide a response. I can't see that Novuna have had a chance to formally respond to all of the points Mr N has raised, but they have engaged in many of the arguments, and given the time that has already elapsed, and all of the circumstances, I think it's fair for me to consider all of the points Mr N and his representatives have raised.

The claim under the CCA

When something goes wrong and the payment was made with a fixed sum loan, as was the case here, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Section 56 of the CCA is relevant in the context of section 140A of the CCA that Mr N also relies on, as the pre-contractual acts or omissions of the credit broker or supplier will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mr N and the lender.

It's not for me to decide the outcome of a legal claim Mr N may have under sections 75 or 140A but I'm required to take the provisions into account when deciding whether the lender was reasonable to reject Mr N's claims.

Section 75 of the CCA

If Mr N was given a false statement of fact or law, and if that false statement was a significant reason why he entered into the agreement, I may think the agreement had been misrepresented to him. In those circumstances, I may think Novuna were unreasonable not to consider and uphold a claim under section 75.

Mr N complained about poor availability of accommodation. He said dates were unavailable and that holidays needed to be booked a long time in advance. The Owners Club Guide explains that "All (reservations) are subject to availability, on the principle of first come first served, and member and seasonal demands". I'm not persuaded that Mr N was, therefore, given a false statement of fact about the availability of accommodation he could book through his membership. I don't think it's likely that a court would think there had been a misrepresentation on that basis.

Mr N also says that the maintenance fees were unclear, but I don't think there is evidence a false statement was made in that respect either. They are set out on page seven of the

Standard Information Form where it is also explained that they may increase.

Section 140A of the CCA

We know it is common that these sales presentations often lasted for a number of hours. Mr N says he was pressured into the transaction. I've therefore considered whether there is evidence that Mr N's ability to exercise choice was significantly impaired by the lengthy presentation and the pressure he says he experienced as that may have created an unfair relationship between him and the supplier. Mr N was trading in a trial membership so I think he would have been familiar with the sales process that was adopted and that he would have already had some experience with the product. I don't think, on that basis, it would be fair to suggest he didn't understand he could simply walk away and not enter into the contract.

Mr N's representatives have suggested that the timeshare agreement is unenforceable under Regulation 15 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 2010 Regulations) because the timeshare provider breached Regulation 12 by failing to provide the key information set out in Regulation 13 and detailed in Schedule 1. They say that as the key information wasn't supplied, Regulation 21 allows for an extension of Mr N's withdrawal rights from 14 days to three months and 14 days. That being the case, they say a payment was made to the supplier when it shouldn't have been – contrary to the relevant timeshare regulations (Regulation 25).

Mr N's representatives say that the details of the exact property and the season weren't supplied. But I disagree as no details of a unit location, unit size and unit number are required as the contract does not relate to an immovable property and the information concerning the exact period within which the right may be exercised, and its duration is stated in the "Standard Information Form".

I think the key information set out in the Standard Information Form meets the requirements of the 2010 Regulations, and I don't, therefore, think a court would consider there had been an unfair relationship in that regard or that there was a reason to extend the withdrawal period.

The purchase agreement and the related finance agreement both provided a cooling off period within which I think Mr N would have had the opportunity to reflect and withdraw from the agreement had he so wished.

I was sorry to hear that Mr N had suffered a stroke. He's suggested that the business should have taken that into account when negotiating the contract with him and that his decision making ability was impaired at that time. I've not seen evidence that Novuna, or the broker of the credit agreement, had been made aware of Mr N's illness, but even if I had I can see that the purchase agreement was in joint names, and I think it's fair to suggest it is likely Mrs N was able to support her husband when explaining the contract they were entering into, and that he was to provide finance for. I can't see Mr N's vulnerability was raised as an issue when the complaint was first made and I think, had it been a significant concern it would have been.

Affordability

Mr N says that Novuna were in breach of their obligations to carry out an adequate credit assessment to determine whether he could afford to repay the loan. He says they had strict obligations to complete a creditworthiness check under the Financial Conduct Authority's (FCA's) Consumer Credit Sourcebook (CONC) and failed to undertake those obligations.

However, when considering a complaint about unaffordable lending, a large consideration is whether the borrowing was likely to prove unaffordable in practice and whether the complainant has actually lost out due to any failings on the part of the lender. So even if I was persuaded that the lender did not do appropriate checks (and I make no such finding), for me to say it needed to do something to put things right, I would need to see that the credit granted by them was likely to be unaffordable and that Mr N suffered a loss as a result.

Mr N says that the income he reported could not have been relied upon in order to complete a credit check as he had been sick for some time and was receiving half of that income. I can't see how Novuna could have been aware of that, and even if they were I haven't been provided with sufficient information to suggest the agreement was unaffordable.

My provisional decision

For the reasons I've given above I'm not expecting to uphold this complaint.

Responses to my provisional decision

Neither party provided any 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 neither party provided any additional comments for me to consider, I have found no reason to change my provisional decision and that now becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 June 2024.

Phillip McMahon
Ombudsman