

The complaint

Mrs C complains that Mitsubishi HC Capital UK plc, trading as Novuna Personal Finance, won't refund to her the money that she paid to a holiday company for some holiday products. She's being represented in her complaint by a claims management company.

What happened

Mrs C and her husband entered into an agreement with a holiday company for a trial membership of a holiday club in July 2018. The purchase price was £4,395 and Mrs C entered into a fixed sum loan agreement with a lender that is now known as Novuna Personal Finance for a loan of that amount. She agreed to make 24 monthly repayments of £205.44 to Novuna Personal Finance.

Mrs C and her husband surrendered their trial membership and entered into a fractional property owners club application and purchase agreement with the holiday company in April 2019. The purchase price was £21,994 which they paid by bank transfer. The loan that Mrs C had taken out in July 2018 was repaid in May 2019.

Mrs C's representative says that Mrs C and her husband purchased 3,001 holiday club membership points from the holiday company in December 2019 which replaced and superseded their fractional membership. It says that the purchase price for those points was £40,055 from which a trade-in value of £22,620 for their fractional membership was deducted so the amount due from them was £17,435. Mrs C entered into another fixed sum loan agreement with Novuna Personal Finance for a loan of that amount and it says that the loan was repayable by 180 monthly payments of £201.38. Novuna Personal Finance says that the loan was repaid in May 2020.

Mrs C's representative made claims, on behalf of Mrs C, to Novuna Personal Finance under sections 75 and 140A of the Consumer Credit Act 1974 in February 2023 about Mrs C and her husband's three purchases of holiday products from the holiday company. It said that Mrs C has a claim for misrepresentation against the holiday company for which Novuna Personal Finance is jointly and severally liable under section 75 and the misrepresentations and practices in the sales presentations made the finance agreements unfair under section 140A. The representative's letter to Novuna Personal Finance says that Mrs C and her husband were told that they could consider the membership points that they bought in December 2019 as an investment and the letter describes the difficulties that Mrs C and her husband have experienced with those membership points, including the lack of availability, the standard of the accommodation and the lack of exclusivity. The letter made other claims including that the sales presentations included practices that were prohibited under the Consumer Protection from Unfair Trading Regulations 2008 and that no assessments were done to assess Mrs C's creditworthiness before the loans were made to her.

Novuna Personal Finance responded to those claims in detail and set out the reasons that it wasn't upholding them. Mrs C wasn't satisfied with its response so she complained to this service. Our investigator didn't recommend that her complaint should be upheld. She said that the price of the fractional membership was paid by bank transfer so Novuna Personal Finance wouldn't be liable to answer for claims relating to it and she didn't include it in her

findings. She said that she hadn't seen enough to suggest that the relationship between Mrs C and Novuna Personal Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She wasn't persuaded that there were misrepresentations at the times of sale of the trial membership and the membership points and she also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs C.

Mrs C didn't agree with, and didn't accept, our investigator's recommendation and said that she'd like an ombudsman to make a final decision on her complaint. Her representative says that Mrs C and her husband were told by the holiday company that the fractional membership involved buying shares or fractions in a property, which would be sold after 19 years, and the proceeds of sale would be split between all the owners.

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

- Mrs C and her husband signed a trial membership agreement with the holiday company in July 2018 and they also signed other documents with the holiday company at that time including the agreement conditions, a separate standard form of the withdrawal notice that could be given to withdraw from the agreement, a member's declaration and a standard information form;
- Mrs C entered into a loan agreement with Novuna Personal Finance for a loan of £4,395 to pay for the trial membership and I've been provided with an unsigned copy of the loan agreement – Novuna Personal Finance says that the loan was repaid in May 2019;
- Mrs C and her husband surrendered their trial membership and signed a fractional property owners club application and purchase agreement with the holiday company in April 2019 – they also signed the terms and conditions, a separate standard form of the withdrawal notice that could be given to withdraw from the agreement, a member's declaration and a standard information form;
- Mrs C's representative says that the purchase price of the fractional membership was £21,994 which Mrs C and her husband paid by bank transfer – as the purchase price was paid by bank transfer and not using finance provided by Novuna Personal Finance, Novuna Personal Finance would have no liability to Mrs C and her husband for the issues that they had with their fractional membership;
- Mrs C's representative says that Mrs C and her husband purchased 3,001 holiday club membership points from the holiday company in December 2019 which replaced and superseded their fractional membership – and Novuna Personal Finance says that Mrs C and her husband purchased a holiday club membership from the holiday company in December 2019 and that the purchase was financed by a loan from it to Mrs C of £17,435, but it says that the loan was repaid in May 2020;
- I've not been provided with a copy of the purchase agreement for the December 2019 purchase or any of the other documents that I consider it to be likely that Mrs C and her husband would have entered into with the holiday company at that time – and nor have I been provided with a copy of the loan agreement that Mrs C entered into with Novuna Personal Finance in December 2019;

- Mrs C's representative made claims, on behalf of Mrs C, to Novuna Personal Finance under sections 75 and 140A in February 2023: 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 those claims as only a court would be able to do that but I'm considering whether or not Novuna Personal Finance's response to them was fair and reasonable in the circumstances;
- the February 2023 letter says that Mrs C and her husband made no use of the trial membership and that they purchased the membership points in December 2019 in reliance on actionable misrepresentations and they were misled and lied to – and it says that that Mrs C and her husband were told that they could consider the membership points as an investment and it describes the difficulties that Mrs C and her husband had experienced with the membership points, including the lack of availability, the standard of the accommodation and the lack of exclusivity;
- neither Mrs C nor her representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to Mrs C and her husband before their purchases;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs C and her husband that the membership points were an investment, that the trial membership or the membership points were misrepresented to Mrs C and her husband by the holiday company or that they were induced into entering into the trial membership agreement in July 2018 or the purchase agreement in December 2019 by any such misrepresentations;
- the February 2023 letter also says that the misrepresentations and practices in the sales presentations made the finance agreements unfair under section 140A and the letter says that the sales presentations included practices that were prohibited under the Consumer Protection from Unfair Trading Regulations and that no assessments were done to assess Mrs C's creditworthiness before the loans were made to her;
- Mrs C and her husband had signed a separate standard form of the withdrawal notice that could be given to withdraw from the trial membership agreement within fourteen calendar days without giving any reason – and they signed a similar form in April 2019 – so I consider that they ought reasonably to have been aware that they had the same right to withdraw from the purchase agreement that they entered into in December 2019 but I've seen no evidence to show that Mrs C contacted either the holiday company or Novuna Personal Finance to withdraw from the trial membership agreement or the purchase agreement within the applicable withdrawal periods;
- Mrs C and her husband signed the trial membership agreement in July 2018 and the purchase agreement in December 2019 but I've seen no evidence to show that Mrs C complained to either the holiday company or Novuna Personal Finance about the sales practices that were used by the holiday company until her representative's February 2023 letter – if they'd been subjected to unacceptable sales practices and didn't want to buy the trial membership or the membership points, I consider that it would be reasonable to expect Mrs C to have contacted either the holiday company or Novuna Personal Finance about those issues sooner than she did;

- I'm not persuaded that there's enough evidence to show that the holiday company used unacceptable sales practices on Mrs C and her husband or that the sales presentations included practices that were prohibited under the Consumer Protection from Unfair Trading Regulations;
- Novuna Personal Finance says that it searched Mrs C's credit record and used it with other information provided on the application to calculate an overall credit score which exceeded its minimum lending criteria – it says that it also utilises a third-party affordability product from a credit reference agency and there were no indications that Mrs C would struggle to service the loans;
- the July 2018 loan agreement shows that Mrs C was an employed home-owner with a gross income of £50,000 and Novuna Personal Finance says that it estimated that her net monthly income was £3,084 – it also says that her credit record showed that she was paying £598.95 each month for her existing credit commitments so, after paying that and her monthly loan repayment of £205.44, she would be left with approximately £2,280 for other monthly expenses which it says is generally sufficient to meet the other expenses which are typical to someone with similar circumstances so there were no concerns about lending her £4,395;
- Novuna Personal Finance says that Mrs C told it in December 2019 that her gross annual income was £50,000 and it validated a minimum income of £35,000 using data obtained from credit reference agencies from which it estimated that her net monthly income was at least £2,277 – it also says that her credit record showed that she was paying £282.81 each month for her existing credit commitments so, after paying that and her monthly loan repayment of £201.38, she would be left with approximately £1,793 for other monthly expenses which it says is generally sufficient to meet the other expenses which are typical to someone with similar circumstances so there were no concerns about lending her an additional £17,435;
- the loan that was made to Mrs C in July 2018 was repaid in May 2019 and the loan that was made to her in December 2019 was repaid in May 2020 – Mrs C's representative says that the December 2019 loan was discharged in 2020 by Mrs C and her husband re-mortgaging their home due to the loan's high interest rate, but neither Mrs C nor her representative has provided any detailed information about Mrs C's financial situation in July 2018 and December 2019;
- I've seen no evidence to show that Mrs C complained to Novuna Personal Finance about the affordability assessments that it had made until her representative's February 2023 letter – if the loans were unaffordable for her I consider that it would be reasonable to expect her to have contacted Novuna Personal Finance about that sooner that she did;
- I'm not persuaded that there's enough evidence to show that the loans weren't affordable for Mrs C when they made to her, that Novuna Personal Finance didn't assess the affordability of the loans for her or that it has acted incorrectly in connection with the loans;
- having carefully considered all of the information and evidence that Mrs C and her representative have provided, I'm not persuaded that there's enough evidence to show that Mrs C's relationship with Novuna Personal Finance was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mrs C and Novuna Personal Finance in these circumstances;
- I sympathise with Mrs C for the issues that she and her husband have had with the holiday products that they purchased from the holiday company but I consider that Novuna Personal Finance's response to the claims that had been made to it was fair and reasonable in the circumstances; and

- I find that it wouldn't be fair or reasonable for me to require Novuna Personal Finance to refund to Mrs C any of the money that she's paid under the loan agreements, to pay her any compensation or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 3 April 2024.

Jarrold Hastings
Ombudsman