DRN-4191566

The complaint

Mr B complains that he and his wife were mis-sold a trial holiday club membership. Because it was financed with a loan from Hitachi Capital (UK) Plc (now Mitsubishi HC Capital UK Plc), Mr B says that it should reimburse him.

Mrs B has in part acted as Mr B's representative in bringing this complaint, so when I refer to his arguments and submissions I include those made on his behalf.

The lender trades as Novuna Personal Finance, and I'll refer to it as "Novuna".

What happened

In 2018 Mr and Mrs B were told that they had won a holiday and some vouchers. In order to collect the vouchers and qualify for the holiday, they would need to attend a seminar – which they did.

Following the seminar Mr and Mrs B bought from Club La Costa (UK) Plc ("CLC") a three-year trial membership of Destinations Club Azure (a holiday club operated by the CLC group of companies) and membership of Interval International, a timeshare and holiday accommodation exchange service.

The terms of the trial membership allowed Mr and Mrs B to take up to five weeks holiday within three years, in addition to the free holiday. Holidays had to be taken by the end of May 2021. The free holiday (described as a Prelude promotion) had to be taken first.

The total cost of membership was £4,395, which was financed by a loan from Novuna in Mr B's name.

Shortly after they bought the holiday club membership, Mr and Mrs B separated. They booked the free holiday for a week in October 2019, but cancelled shortly before that because of other family commitments.

As a result of the Covid-19 pandemic, many CLC resorts were closed in 2020 and 2021, and travel restrictions meant that many flights were not available. Mrs B has explained that she was made redundant because of the pandemic. CLC extended the time available to those who had bought trail memberships and who had been unable to use them because of the pandemic. In the case of Mr and Mrs B, that meant they had until 24 November 2023 to use their five weeks – an extension of nearly 30 months. They have not used any of those weeks.

Mr and Mrs B complained to Novuna. They said it was unfair that they had paid (and continued to pay) for a product they had not used and could not use. They said they had been pressured into the purchase and had been told that it was not a timeshare, when in fact it was.

Novuna did not uphold the complaint, and Mr and Mrs B referred the matter to this service. Our investigator did not recommend that it be upheld either. Mr B asked that an ombudsman review the matter.

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

I should explain first of all that, although Mrs B was a party to the contract with CLC, the loan was in Mr B's sole name. That means that only he has a relationship with Novuna and only he can refer this complaint to the Financial Ombudsman Service. I have however considered carefully what Mrs B has said about the sale and subsequent events.

Sections 56 and 75 of the Consumer Credit Act 1974

Under section 56 of the Consumer Credit Act statements made by a broker in connection with a consumer loan are to be taken as made as agent for the lender.

In addition, one effect of section 75 of the 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 lender. Those conditions include:

- *that the lending financed the contract giving rise to the claim; and*
- *that the lending was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.*

CLC was both the seller of the trial membership and the credit intermediary named on the loan agreement. I am satisfied therefore that the loan was provided under pre-existing arrangements between Novuna and CLC and that sections 56 and 75 of the Consumer Credit Act are relevant.

The timeshare sale

Mr B has said that the sale was pressured and that he was told that he was not buying a timeshare.

On the first point, Mr B says that he had to be woken from his car to sign the agreement, having been working night shifts. CLC denies this. I note however that he had a 14-day "cooling-off" period in respect of both the membership agreement and the loan. If he and Mrs B had thought they had been pressured or coerced into buying the membership, I think they would have sought to cancel the purchase within that period.

I note as well that they signed a declaration which included:

"We understand clearly what we have purchased and, having carefully considered this and our other financial commitments, are able to pay the amounts due on the dates agreed and in the case of purchases made with the assistance of finance agree that we are not aware of any future event that may prevent us from meeting the monthly repayments."

In the circumstances, I am not persuaded that Mr and Mrs B agreed to buy the trial membership as a result of undue pressure.

The trial membership is not a traditional timeshare, in the sense that Mr and Mrs B did not buy the right to use fixed accommodation for a fixed week or weeks each year. It was however a "timeshare contract" within the meaning of The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010. Those regulations implement a European directive which was referred to in the declaration I have referred to above:

"We have received a copy of our Agreement together with the notices and Information Statement required under the EU Timeshare Directive 2008/122/EC."

Since the declaration included mention of the "Timeshare Directive", I think it unlikely that Mr and Mrs B were told they were not buying a timeshare. Be that as it may, the fact that the club membership fell within the meaning of "timeshare" in the Directive and the Regulations meant that they had additional consumer protections – significantly, the right to cancel within 14 days.

Finally, I note that the declaration also included:

"We understand that this Member's Declaration, together with the Agreement and the Prelude Promotion, is the entire written contract between the parties, anything additional shall only be valid if signed and stamped on behalf of the Company."

So, even if I thought CLC had told Mr and Mrs B that the membership was not a timeshare (or given them any other inaccurate information), I would need to consider the effect of that statement.

Events after the sale

Mr and Mrs B say they were pressured into booking the free holiday – that is, the Prelude promotion. In my view, however, it was clear that they needed to book this before they could use the trial membership. As they had only limited time in which to use the five weeks they had bought, it does not seem unreasonable of CLC to encourage Mr and Mrs B to put themselves in a position where they could do so. In any event, it does not seem to me that this could give rise to a claim against Novuna.

Throughout much of 2020 and 2021 the Covid-19 pandemic meant that Mr and Mrs B could not use the trial membership. That was, potentially, a breach of contract for which Novuna might have been liable. However, I note that CLC extended the membership until November 2023. That was, in my view, a reasonable remedy.

I acknowledge of course that Mr and Mrs B have had no use of their trial membership and have, in effect, received nothing for their money other than the right to book accommodation – which they haven't used.

However, the reasons for that appear to relate primarily to their own domestic arrangements. There is nothing to suggest that CLC and other companies involved in its resorts would not have provided the services that Mr and Mrs B bought, had they been asked to do so.

It is not for me to say whether Mr B has a claim against CLC or, if he does, whether he could successfully bring that claim against Novuna. I must however have regard to relevant law in deciding what's fair and reasonable – including the legislation I have referred to above. Having done so, however, I think that Novuna's response to his claims was fair.

Responses to my provisional decision

Mrs B responded to my provisional decision on behalf of Mr B. As well as repeating some of their earlier submissions, she said, in summary:

- They had booked their "free" holiday for April 2020, but had had to cancel it at short notice. They had intended to rebook.
- The cost of flights meant however that they could not in the event afford to rebook and so, rather than winning a free holiday, they ended up with nothing.

- They had tried to contact their sales representative to cancel the purchase, but were unable to do so.

Novuna had nothing to add.

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.

Your text here

There is nothing in Mr B's further submissions which has caused me to change my view here.

Whilst I can understand Mr B's frustration that he appears to have paid for something he is unable to use, it does not appear to me that this is the fault of CLC or Novuna. Rather, it appears that the situation arose because of changes in the family circumstances. I have no reason to think that CLC would not have provided holiday accommodation if it had been booked.

Mrs B has now said that she and Mr B tried to cancel the contract – although she does not say when. The timeshare agreement provided an address in London to which any cancellation notice could be sent; but it also said that other means of communication could be used, as long as the notice was in a durable medium (including email). Had a valid cancellation notice been sent, I think it likely that Mr B would have retained a copy and taken steps to ensure that it was acted on.

I am not therefore persuaded that I should reach a different conclusion from that set out in my provisional decision.

My final decision

For these reasons my final decision is that I do not uphold Mr B's complaint and do not require Mitsubishi HC Capital UK Plc to take any further steps to resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 October 2023.
Mike Ingram
Ombudsman