

## **The complaint**

Ms H complains that Novitas Loans Ltd treated her unfairly in relation to a fixed sum loan agreement she entered into.

## **What happened**

Ms H, via her solicitors, approached Novitas for a loan in September 2014 to fund her divorce proceedings. The loan facility was for £100,000 and was secured against her marital home. Ms H was provided with a revolving credit facility where she needed to authorise any drawdowns made by her solicitors up to the maximum amount of £100,000. The interest charged under the agreement was 18% per year. Ms H was not required to repay the loan facility until her divorce proceedings were finalised.

Prior to entering into the loan agreement, Novitas requested that Ms H obtain independent legal advice (from someone other than her divorce solicitors) concerning her liabilities under the loan agreement. Another solicitor provided Novitas with confirmation that this advice had been given to Ms H.

In March 2015, an extension to the loan facility was requested by Ms H's solicitors. This was to borrow an additional £100,000, taking the total loan to £200,000. Ms H signed a new loan agreement in May 2015 for the additional borrowing on broadly the same terms as the previous agreement. Ms H also signed a separate waiver saying she didn't wish to seek independent legal advice in relation to this new extension on the loan as she understood the agreement and she received advice in relation to the first loan.

Ms H instructed new solicitors and in August 2015, a final extension to the loan facility was requested by Ms H's new solicitors. This was to borrow an additional £30,000, taking the total loan facility to £230,000. Ms H signed a new loan agreement the same month on broadly the same terms as the previous two agreements. Ms H also signed another waiver declaring she didn't wish to seek independent legal advice before entering the new loan.

In January 2016, Ms H paid off the loan facility by refinancing it with another loan provider (who I'll refer to as "R"). Including interest, she paid off £259,105.30.

In February 2021, Ms H complained to Novitas. She raised a number of issues in this complaint as well as in numerous follow up complaints. Novitas responded with several different final response letters to address the various complaint points Ms H had raised. Novitas didn't uphold the vast majority of her complaints, but it did accept that it had unfairly charged her interest for a period of time while it had failed to provide compliant annual statements for her loan. It refunded her over £7,000 in interest charges.

Ms H also raised complaints about her solicitors (both the first and second) as well as R. Ms H's complaints about her solicitors have been referred to another ombudsman scheme and the Solicitors Regulation Authority. The complaints about R have been dealt with in Court. I don't therefore think it's appropriate for me to consider anything that the Court has already decided, nor do I have any jurisdiction to consider any complaint about Ms H's solicitors.

However, much of what Ms H complains about is closely connected to all the parties involved in her divorce proceedings. We've asked her to specify the points she would like our service to make findings on in relation to Novitas' actions. She's provided a detailed account of her concerns and I've summarised the key issues below:

- Her solicitors unfairly pressured her into the loan agreements. They were acting as agents of Novitas as per section 56 of the Consumer Credit Act 1974 and therefore Novitas are responsible for their failings. The loan agreement was misrepresented as regulated by the Consumer Credit Act 1974 when it wasn't and was a mortgage.
- Novitas and her solicitors were aware she was vulnerable and had she not been struggling with many vulnerabilities she would not have entered into the loan agreement. Novitas had failed in its duty to treat a vulnerable customer fairly. The solicitor that was supposed to give her independent legal advice about the loan facility was not independent as her divorce solicitors had taken her to them and they were not qualified to advise on loan agreements.
- Novitas didn't complete adequate due diligence before entering into the agreement as it didn't carry out appropriate checks to ensure she could afford to pay back the loan facility. Her solicitors had inflated the value of her assets and this wasn't questioned by Novitas.
- There were multiple breaches of CONC (the Consumer Credit Sourcebook within the Financial Conduct Authorities Handbook) by Novitas around affordability checks and pre-contract disclosures. It also purported to have completed credit checks before lending but there is no evidence it did this, and if it did, it did so without her consent.
- Her solicitors (acting as Novitas' agent) were also in breach of credit broking rules within CONC.
- The Novitas loans were actually funded by another provider and this was not disclosed to Ms H at any time.
- Novitas were in breach of various provisions of the Consumer Credit Act 1974, including not providing a copy of the unexecuted agreement or a copy of the signed agreement. It also failed to honour her right to withdraw from the credit agreement.
- Novitas breached the terms of their own loan agreements on multiple occasions.
- The loan agreements contained illegal and unfair contract terms. For example, Ms H says it prevented her from having free choice as to which solicitors would represent her in her divorce proceedings.
- The rate of interest on the loan agreements was sometimes missing and was at all times incorrectly stated as 18% when it was actually much higher.
- There are around £98,000 worth of drawdowns on the loan for which Novitas can't provide any signed confirmation from Ms H that she authorised them.
- She said that Novitas had paid her solicitors a secret commission as well as various benefits in kind which hadn't been disclosed and which they continued to deny. She also raised a number of concerns about the actions of both sets of divorce solicitors and their relationship with Novitas as well as Novitas' relationship with R.

I sent Ms H and Novitas my provisional decision on 16 January 2023. I explained why

I thought the complaint should be upheld in part. I've copied the relevant extracts of my provisional findings below:

*Ms H is unhappy with the conduct of two different solicitors, R and Novitas. I'll only be considering the actions of Novitas and whether I think they acted fairly and reasonably in their dealings with Ms H when it set up and administered her loan agreements.*

*I think the crux of Ms H's complaint against Novitas is that the loan agreements were unfair and therefore she believes she shouldn't have to pay everything that was charged under those agreements. She has given numerous reasons for why she believes the agreements to be unfair, I've mentioned some of those in the background to the complaint above (see: "what happened"). I haven't however, detailed everything she's mentioned, nor in the same level of detail. No discourtesy is meant by this, it simply reflects the informal nature of our service. Although I haven't mentioned everything, I have nevertheless considered everything Ms H has said and provided when deciding what is fair and reasonable in this case.*

*Our investigator concluded that the Novitas loans were unaffordable to Ms H and he didn't think Novitas had completed proportionate affordability checks before lending. Both Novitas and Ms H have accepted that conclusion. I therefore don't see any reason to analyse that aspect further. However, for completeness, I'm also persuaded that Novitas didn't carry out adequate affordability checks.*

*What is in contention is what remedy should apply given the loans were unaffordable and that Novitas ought not to have entered into the loans with Ms H on that basis. When putting things right, I think it would be fair and reasonable to try and place Ms H (as close as possible) back in the position she would have been in, but for the unfair lending decision by Novitas.*

*However, as Ms H has already received the money under the loans and this has been used as part of her divorce proceedings, it isn't possible to unwind what has happened. Ms H would have needed to fund her divorce proceedings in some way, so as a starting point I think it's fair and reasonable that she pays back the capital that she borrowed. Any interest, fees and charges that were applied by Novitas under the loans should however be refunded to her (where it hasn't already).*

*Ms H refinanced her Novitas loans with R, the refinancing included the interest that had been charged on the Novitas loans. This means Ms H continued to pay interest on the interest, fees and charges applied by Novitas under her new loan with R. I think it would be fair and reasonable to ensure these costs are factored into any redress due to Ms H.*

*I understand the loans with R were at an interest rate of 9% compounded annually. Ms H tells us the Decree Absolute was granted in September 2016, but that the financial aspects of the divorce are still to date not fully resolved. I think it's fair that Novitas pays interest at 9% compounded annually on the refund of interest, fees and charges. However, I don't think it's reasonable it does so indefinitely.*

*In thinking about what a fair remedy should be, I've considered what Ms H has told us about her divorce proceedings. I understand further court directions concerning the sale of the matrimonial home were made later in 2016 and 2017 and it wasn't until early 2018 that Ms H became the sole owner of the property in order for her to sell it. Until that point she tells us that her ex-husband had been obstructing the sale of the property which prevented her from accessing funds she needed to pay off her*

loans.

*While I accept the property still hasn't been sold and aspects of the financial side of the divorce are still ongoing, I can't be sure exactly why it has taken this long, nor do I think it's appropriate for me to make any specific finding on that point as it concerns the actions of third parties I have no jurisdiction over. Taking into consideration the facts and evidence I've been presented with, I think it would be reasonable to say that Novitas should pay 9% interest (compounded annually) on the refund it provides until August 2018. This I think will have given a reasonable amount of time for Ms H to have sold the property after being granted sole ownership of it and it seems this was broadly when Ms H also says R began to seek repayment of the loans from her. I don't think it would be reasonable for Novitas to pay interest for any further period of time, given R's loans were expected to be repaid at around this time.*

*Ms H argues that some or all of the capital amount she borrowed for her divorce proceedings should also be refunded along with all the interest and charges that were applied.*

*Ms H has provided many reasons for why she feels the Novitas agreements were unfair and that this unfairness means it wouldn't be reasonable for her to incur all the costs charged by her solicitors. However, even if I agreed with every point Ms H has made, I don't think it would be fair and reasonable to say she should receive a refund of any of the capital that was borrowed. I'll explain why.*

*The loan agreements Ms H entered into with Novitas set out the terms under which she will be required to pay back what was borrowed on her behalf by her solicitors. I'm satisfied Ms H saw those loan agreements as she signed them to say she accepted the terms.*

*The capital she borrowed was used to pay for her and her solicitors legal costs in her divorce proceedings. Ms H argues that she ought to have been advised to go to mediation instead which would have resolved her divorce at a fraction of the cost. I'm not persuaded that was likely. I say this because Ms H has provided details of her divorce proceedings which have been long and seemingly hard fought by both sides especially when trying to determine the financial aspects of the divorce.*

*How much the solicitors billed Ms H for their work is a matter between her and the solicitors. Novitas just needed to ensure that Ms H had agreed to each of the individual capital drawdowns under the loan. Ms H says that Novitas hasn't been able to provide proof of her acceptance to every drawdown. While this is true, I'm persuaded that it's likely Ms H did authorise each of the drawdowns.*

*I say this because I've seen evidence that Ms H did authorise other drawdowns and when she refinanced with R, she didn't complain about any discrepancy in the amount that had been borrowed. Nor did she raise any such complaint until many years later. If she hadn't authorised the drawdowns (which amounted to tens of thousands of pounds) I would have expected her to have complained at the time of refinancing with R (or very soon after).*

*Further, Ms H has already made various complaints about her solicitors to another ombudsman scheme which concern among other things the fairness of the costs that were incurred. The outcomes of those disputes will have determined whether Ms H was rightly due a refund of any of the capital amounts she borrowed. Anything she received there could have been used to reduce her current outstanding liability with R.*

*Novitas didn't have any responsibility for the costs Ms H's solicitors charged for legal work and fees. Whether or not Novitas' conduct (or its agent(s) on its behalf) when it arranged the loans and when it administered them was unfair, I haven't seen anything to persuade me that this ought to mean a reduction in the amount of capital Ms H borrowed would be fair and reasonable. This is because Ms H has received the legal advice and assistance that the capital borrowed was used to pay for, when pursuing her divorce proceedings. If I were to direct a refund of any of the capital, this might place Ms H in a better position than she would ever have been in. If Ms H believes her solicitors didn't provide her with the services it should have or charged her too much, as I've said above, this is a matter between her and those solicitors.*

Novitas accepted my provisional decision. Ms H didn't agree that she should have to pay any or all of the capital amount borrowed to Novitas. She said that Novitas' actions and inactions created an unfair relationship between her and Novitas and an appropriate remedy would be a reduction in the capital borrowed. Ms H provided a detailed response setting out the various ways in which she believes there was an unfair relationship. She also provided a number of documents to support her position. Further, she said that the 9% interest refund should be calculated for a longer period as she couldn't reasonably have sold her property in that time.

### **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.

Both parties accept the loan was unaffordable and shouldn't have been approved. Both parties also agree that the interest and charges applied to the loans should be refunded to Ms H. The issues left to decide concern whether Ms H should repay all of the capital borrowed and how much her reasonable financial loss is relating to further interest charged under the loan given by R.

Ms H feels very strongly that the relationship between her and Novitas was unfair and that various actions and inactions by Novitas caused her unfairness. As I set out in my provisional decision, even if I agreed with every point Ms H has made, I still don't consider it fair and reasonable to direct Novitas to refund the capital that was borrowed.

I say this because the capital was used by her solicitors to fund her divorce proceedings. If Ms H feels her solicitors charged her too much or didn't complete work to an adequate standard, this is a matter between her and those solicitors. I understand Ms H has raised a separate complaint about her solicitors through another ombudsman scheme and therefore any remedy she might receive through that can be used to reduce any capital amount she borrowed. If I were to make a direction for a reduction in the capital amount borrowed, it might result in Ms H receiving more than she is reasonably entitled to or placing her in a better financial position than she ever would have been in.

I've considered Ms H's comments in relation to the interest element of my proposed award and I'm satisfied the conclusions I reached in my provisional decision are fair and reasonable. While it's possible a buyer had been difficult to find for her property at the asking price she says she wanted, I haven't seen anything to persuade me that a longer time period would be reasonable.

It seems the division of the financial aspects of the divorce have been contentious and hard fought by both sides. However, Ms H was the sole owner of that property from early 2018 and it was within her power to secure the sale from that point on. While the property wasn't sold in the time I've suggested is reasonable, I've not seen anything to persuade me that it

was an unrealistic or unreasonable timeframe. Ms H says it wasn't, as a certain sales price needed to be achieved, however, she's not provided sufficient evidence to persuade me the house couldn't have been sold for less than that price. The Court documents she provided have the key financial information redacted, but from what I can see, it appears to suggest a lower sales figure was possible and foreseeable without significantly impacting the division of assets.

I understand this will come as a disappointment to Ms H, but I'm satisfied that the outcome I reached in my provisional decision is fair and reasonable for the reasons I've given above.

### **My final decision**

For the reasons given above, I uphold this complaint in part and direct Novitas Loans Ltd to:

- Refund all interest and charges applied to the loan (that haven't been refunded already), adding 9% interest on that compounded annually. The interest should be calculated from the date Ms H settled the Novitas loans to August 2018. As this additional 9% interest award is a refund of a financial loss Ms H incurred as a result of Novitas' actions, no deduction of tax should be applied.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 26 April 2023.

Tero Hiltunen  
**Ombudsman**