

## **The complaint**

Mrs R complains that Mitsubishi HC Capital UK plc, trading as Novuna Personal Finance, won't refund to her the money that she paid for some holiday club membership point rights. Her partner is also involved in her complaint and she's being represented by a legal adviser.

## **What happened**

Mrs R and her partner entered into an acquisition agreement to buy 1,000 holiday club membership point rights from a holiday company in August 2019. The purchase price was £10,499 and Mrs R also entered into a fixed sum loan agreement with a lender that is now known as Novuna Personal Finance for a loan of £13,775, which included £3,276 to consolidate an existing loan. Mrs R agreed to make 180 monthly repayments of £159.11 to Novuna Personal Finance.

Mrs R's representative made claims, on behalf of Mrs R, to Novuna Personal Finance under sections 75 and 140A of the Consumer Credit Act 1974 in August 2022. The representative's letter said that: the acquisition agreement and the loan were misrepresented to Mrs R; the credit broker wasn't authorised to carry on a regulated activity; Mrs R doesn't remember an affordability assessment being carried out which amounts to irresponsible lending; the membership point rights were sold as an investment; the sales company was in liquidation; the terms of the acquisition agreement are unfair; and the relationship between Mrs R and Novuna Personal Finance is unfair.

Novuna Personal Finance responded to those claims in detail and set out the reasons that it was unable to uphold them. Mrs R wasn't satisfied with its response so a complaint was made to this service.

Our investigator didn't recommend that Mrs R's complaint should be upheld. He wasn't persuaded that there was a misrepresentation at the time of sale. He said that he hadn't seen enough to suggest that the relationship between Mrs R and Novuna Personal Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He also said that he hadn't seen anything persuasive to suggest that the lending was unaffordable for Mrs R and he wasn't persuaded that the loan agreement wasn't arranged by an authorised credit broker. He didn't consider that the liquidation of the sales company gave rise to a claim under section 75 or caused Mrs R's relationship with Novuna Personal Finance to be unfair.

Mrs R's representative says that Mrs R doesn't accept our investigator's recommendation. Mrs R's representative has raised concerns about the way that the finance was sold to Mrs R and has provided further evidence from Mrs R about irresponsible lending, including a statement reflecting the process on the day of signing for the loan and an income and expenditure sheet showing her finances at the time, with supporting evidence.

## **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 R's complaint shouldn't be upheld for these reasons:

- Novuna Personal Finance has provided a copy of the acquisition agreement, the terms and conditions, a separate standard form of the withdrawal notice that could be given, a standard information form, a member's declaration and a loan consolidation instruction, all of which were signed by Mrs R and her partner in August 2019, and a copy of a loan application and the loan agreement that were signed by Mrs R also in August 2019;
- Mrs R's representative made claims to Novuna Personal Finance in August 2022 under sections 75 and 140A: 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;
- Mrs R's representative's August 2022 letter says that Mrs R was told that: she had purchased an investment and that her timeshare would considerably appreciate in value; she would have a share of a property and its value would considerably increase so she was promised a considerable return on investment; and she could sell the membership point rights back to the resort or easily sell them at a profit; and she was led to believe that she would have access to the holiday apartment at any time all year round;
- I consider it to be clear from the acquisition agreement that Mrs R and her partner bought 1,000 holiday club membership point rights with a term of fifteen years expiring in December 2034 – and the standard information form says: *"The Vacation Club is a multi-resort holiday Points system which allows Members to acquire their Points each year to use and enjoy the various Resorts located worldwide held within the Vacation Club from time to time"*; and: *"Points Tables and examples of the various reservations and internal usage possibilities are set out in the Members Guide and Directory"*;
- the member's declaration was signed by Mrs R and her partner and Mrs R had also initialled next to each of the numbered paragraphs of the declaration – it says: *"We understand that any points we may purchase will be for a limited duration and expire on 31/12/2034 (Term) and that we have the flexibility to use such Points when we wish to reserve holidays during the Term. All reservations are made strictly on a first come basis and subject to availability"*;
- the member's declaration also says: *"We understand that [the holiday company] does not and will not run any resale or rental programme and will not repurchase Vacation Club Points other than as a trade against future property purchases ..."*; and: *"We understand that the purchase of our membership in Vacation Club is for the primary purpose of holidays and is not for the purposes of a real estate interest or an investment in real estate and [the holiday company] makes no representation as to the future price or value of the Vacation Club Holiday product"*;

- the holiday company says that Mrs R and her then husband had been a member of the holiday club for fourteen years so Mrs R was very familiar with the concept but the membership now belonged to her ex-husband and that Mrs R and her partner only enjoyed a promotional holiday for one week in August 2019 and they made no further attempt to use their membership and stopped paying the management fees in 2022 so their membership was suspended from use;
- neither Mrs R 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 R and her partner before their August 2019 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs R and her partner that the membership point rights were an investment, that the membership point rights were misrepresented to them by the holiday company or that they were induced into entering into the acquisition agreement by any such misrepresentations;
- Mrs R's representative's August 2022 letter also says that the sales company started a liquidation procedure in December 2020 meaning that Mrs R wouldn't be able to recover any amounts that were expected to be awarded to her by the courts – and our investigator said that that wasn't an allegation of misrepresentation or breach of contract and that he couldn't see why it would be relevant to an assessment of unfairness under section 140A;
- I've seen no evidence to show that the holiday company has stopped trading and I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company for which Novuna Personal Finance would be liable under section 75 in these circumstances;
- Mrs R's representative's August 2022 letter also says that the credit broker wasn't authorised to carry on a regulated activity but the credit intermediary was identified on the loan agreement and I can see that that credit intermediary was authorised by the Financial Conduct Authority in August 2019 and I'm not persuaded that Mrs R's representative has provided enough evidence to show that the loan was arranged for Mrs R by an unauthorised credit broker;
- the letter also says that Mrs R doesn't remember an affordability assessment being carried out which amounts to irresponsible lending and Mrs R's representative has provided further evidence from Mrs R, in response to our investigator's recommendation, about irresponsible lending, including a statement reflecting the process on the day of signing for the loan and an income and expenditure sheet showing her finances at the time, with supporting evidence;
- Mrs R signed a loan application in August 2019 which said that she was an employed home-owner with a gross annual income of £55,000 and she signed the loan agreement which also included that information and she declared on the loan agreement that the information that she'd given was correct;
- Novuna Personal Finance says that Mrs R's income was validated using a third party service and that it estimated her net monthly income to be £3,369 – and that after deducting monthly payments of £1,549.13 for her credit commitments, her share of the mortgage and the loan repayment of £159.11 she would be left with £1,366 for other monthly expenses which is generally sufficient to meet the other expenses which are typical to someone with similar circumstances to Mrs R and, given that there were no indications of financial stress from her credit file, there were no concerns about lending to her;

- the statement from Mrs R gives more information about her financial situation in August 2019 and describes other difficulties that she's experienced – it says that her income was reduced from £3,710 to £2,075 in March 2020 as a result of the government imposed restrictions in response to the pandemic and the income and expenditure sheet shows that her expenditure was more than her income in August 2019 – but the earned income that she's used on the sheet is £2,076 and the bank account statement that she's provided for August 2019 shows a salary payment of £2,103.61 and other income of £897.81;
- the member's declaration says: *"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"*;
- Novuna Personal Finance has provided a statement for Mrs R's loan account which shows that she's made all of the loan repayments when they've been due;
- having carefully considered all of the information that Mrs R has provided, I'm not persuaded that there's enough evidence to show that the loan was unaffordable for Mrs R in August 2019 when it was made to her and I consider that it would have been reasonable for Novuna Personal Finance to have concluded on the basis of the information that Mrs R had provided that she could afford a loan with a monthly repayment of £159.11 at that time;
- I'm not persuaded that there's enough evidence to show that Novuna Personal Finance should have done more to assess the affordability of the loan for Mrs R, that the loan was mis-sold to her or that Novuna Personal Finance has acted incorrectly in connection with the loan;
- the statement from Mrs R also says that she feels that the whole process was intimidating and that in the end she and her partner signed the acquisition agreement because they needed to get out of the sales meeting and had been worn down;
- Mrs R and her partner had signed the separate standard form of the withdrawal notice that could be given to withdraw from the acquisition agreement within fourteen days without giving any reason but I've seen no evidence to show that they contacted the holiday company to withdraw from the acquisition agreement within the withdrawal period;
- the loan agreement clearly set out Mrs R's right to withdraw from the loan agreement without giving any reason for a period of fourteen days but I've seen no evidence to show that she contacted Novuna Personal Finance to withdraw from the loan agreement within the withdrawal period;
- if Mrs R and her partner had been unfairly pressurised into entering into the acquisition agreement and didn't want to buy the membership point rights, I consider that it would be reasonable to expect them to have contacted the holiday company or Novuna Personal Finance soon after they'd entered into the agreement but I've seen no evidence to show that Mrs R complained about any such unfair pressure until the statement that she made in response to our investigator's recommendation;
- I'm not persuaded that there's enough evidence to show that Mrs R and her partner were unduly pressurised into entering into the acquisition agreement or that Mrs R was unduly pressurised into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mrs R's representative's August 2022 letter says that the terms of the acquisition agreement are unfair – but it would be for a court to determine whether or not any of

the terms in that agreement or the other documents that Mrs R and her partner entered into with the holiday company are unfair;

- I don't consider that the presence of an unfair (or potentially unfair) term alone is likely to mean that a court would conclude that it created an unfair relationship between a debtor and a creditor as the court would consider how the term operated in practice and whether the operation of that term caused the relationship to be unfair;
- I'm not persuaded that there's enough evidence to show that the terms of the documents have been applied or operated unfairly against Mrs R and her partner and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the documents created an unfair relationship between Mrs R and Novuna Personal Finance;
- I'm not persuaded that there's enough evidence to show that Mrs R'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 R and Novuna Personal Finance in these circumstances;
- I sympathise with Mrs R for the issues that she and her partner have had with their membership point rights and the financial difficulties and other issues that she's described in her statement but I consider that Novuna Personal Finance's response to the claims that had been made to it was fair and reasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Novuna Personal Finance to refund to Mrs R any of the money that she's paid under the loan agreement, to cancel the loan agreement, to pay her any compensation or to take any other action in response to her complaint.

If she hasn't already done so, I suggest that Mrs R contacts Novuna Personal Finance and explains her financial situation to it. It's required to respond to any financial difficulties that she's experiencing positively and sympathetically.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 14 February 2024.

Jarrold Hastings  
**Ombudsman**