

## **The complaint**

Mr R, who is represented by a professional representative ("PR") complains that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ("Novuna") rejected his claim under the Consumer Credit Act ("CCA") 1974 in respect of a holiday product purchased from a company I will call C. The purchase was made by Mr R and his partner, but the loan is in Mr R's name alone and so he is the eligible complainant. For the sake of simplicity I will refer to him as the sole owner.

## **What happened**

Mr R purchased trial membership of a holiday club and in February 2020 took a free holiday as part of that agreement. He had to attend a presentation and during that he agreed to buy another holiday product at a cost of £12,269. He took out loan with Novuna for £16,681 which I believe was used to pay off the earlier loan he had on the trial membership.

According to a statement Mr R's partner says they have taken no holidays with C. It says Mr R never had a holiday request turned down and between 2020 and April 2023 he took seven weeks of holidays.

In September 2022 PR submitted a letter of claim to Novuna. Both parties are aware of the details so I will set out a brief summary in this decision. It claimed that the product had been misrepresented and the agreement was handled incorrectly and so was null and void. It claimed C had breached statute and regulations. PR said the contract was null and void under Spanish law and that there was an unfair relationship under s.140 CCA. It said that Novuna had not carried out a proper creditworthiness assessment.

PR brought a complaint to this service and Novuna provided a final response letter rejecting the claims. The complaint was considered by one of our investigators who didn't recommend it be upheld. He didn't consider there was evidence of misrepresentation or breach of contract. Nor did he think that the complaint that there had been an unfair relationship should be upheld. Finally he did not think the loan was unaffordable.

PR didn't agree and chose not to submit counter arguments save for the matter of affordability. It said that Mr R would be sixty-four when the loan came to an end. It said the application showed his income as £35,000, but his tax statements for 2018/19 and 2019/20 showed £28,000 and 10,248 respectively. The bank had not undertaken an income and expenditure review and had not supplied details of their credit assessment.

## **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.

When doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account the:

"(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time."

And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don't think this complaint should be upheld. I will explain why. PR has chosen not to pursue its original arguments about misrepresentation, breach of contract, the alleged unfair relationship and the validity of the contract. Our investigator has set the reasons why he did not consider the complaint should be upheld in regard to those issues and in the interests of brevity I will simply confirm my agreement with our investigator's conclusions. I do not consider there is merit in the claims and I do not consider the complaint covering these matters should be upheld.

#### Affordability

The remaining issue is the question of affordability. PR has said that Novuna didn't carry out the appropriate checks. It has referenced a letter to another bank by the Financial Conduct Authority ("FCA") and also it claims that Novuna has made settlement offers on similar purchases. Mr R's partner said the sales representative had arranged the loan in Mr R's name rather than joint names which she thought odd. She said that although they had maintained the payments this had been hard and covid had impacted their earnings as both were self-employed.

Novuna in its final response letter set out the checks it had carried out. It explained that it was not obliged to disclose confidential information about its methodology but went on to explain what checks had been carried out on Mr R's application. It said it had validated his income from credit reference agencies and identified his likely outgoings. It concluded that after paying the monthly loan repayments he would have some £1,000 spare.

Novuna, like other lenders is obliged to carry out reasonable and proportionate checks. The notable discrepancy is what was reported to HMRC and what was recorded on the application form. I have been given no explanation for this or why Mr R accepted the application if it was incorrect. Novuna says it validated this from data provided by credit reference agencies. As PR has pointed out these agencies do not hold details of a person's income but they can provide data which assists lenders in evaluating an individual's financial status. It seems from this data that Mr R passed Novuna's checks.

As for the bank statements PR has supplied these do not give me a clear view of Mr R's financial situation as it provides only a very partial picture and it is clear he and/or his partner have other accounts. None of the evidence supplied by PR demonstrates that the loan was unaffordable. It seems that Novuna carried out what it deemed to be appropriate checks and granted the loan and in turn Mr R accepted it and has been able to maintain payments ever since.

When considering a complaint about unaffordable lending, a large consideration is whether

the complainant has actually lost out due to any failings on the part of the lender. So, if Novuna 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 Mr R lost out as a result of its failings. I do not consider I have seen this. He was able to maintain the payments and while I note that I have been told he struggled financially subsequently I have been given no evidence which shows this was due to the Novuna loan. As such I cannot see that I am in a position to uphold this complaint on affordability grounds.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 March 2024.

Ivor Graham  
**Ombudsman**