

The complaint

Mrs A 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.

What happened

Mrs A and her husband entered into an acquisition agreement to buy 1,000 holiday club membership point rights from a holiday company in June 2019. The purchase price was £16,123 and Mrs A 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 180 monthly repayments of £186.22 to Novuna Personal Finance but she says that she's repaid the loan in full.

Mrs A wrote to the holiday company in September 2021 and said that she'd decided to end her membership and, as she'd not used it since her introductory holiday in June 2019, she requested a refund of all payments made. The holiday company said that it was unable to comply with her request to cancel her membership or to provide any form of refund and said that it was able to provide the product purchased in complete accordance with the contractual agreement.

Mrs A then contacted Novuna Personal Finance about those issues. It set out the reasons that it didn't uphold her complaint and Mrs A then complained to this service. She says that she's not used any service from the holiday company since she and her husband signed the agreement in 2019 and that a company related to the holiday company and which sold the introductory holiday to them went into administration in January 2021.

Our investigator didn't recommend that Mrs A's complaint should be upheld. She said that Mrs A had made a claim for breach of contract under section 75 of the Consumer Credit Act 1974 and that it was only the timeshare sales operations of the holiday company that went into administration and the members clubs and resorts had continued as normal and remained open for members to book and take holidays. She also said that there wasn't evidence to demonstrate that the holiday company had failed to fulfil one or more of the terms of the agreement, or that there had been any financial loss even if there had, so she wasn't persuaded that Novuna Personal Finance had to take any steps to put things right.

Mrs A didn't accept our investigator's recommendation so I've been asked to issue a decision on her complaint. Mrs A says that her complaint was raised against the company that she contacted about a holiday that she'd already paid for as she and her husband were sold a contract whilst they were on holiday which was paid for separately as a promotion package (and that they also paid for another separate package to return for another visit) but they haven't visited any of the holiday company's resorts since then. She says that all that she's after is getting her money refunded as she hasn't received the service that she paid for.

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 A's complaint shouldn't be upheld for these reasons:

- Mrs A says that she, her husband and their four children, visited one of the holiday company's resorts in June 2019 as a promotional offer and they paid £150 for their stay;
- during that stay, Mrs A and her husband entered into the acquisition agreement to buy 1,000 holiday club membership points rights with a term of fifteen years from the holiday company – they signed the acquisition agreement, its terms and conditions, a standard information form, the separate standard form of the withdrawal notice that could be given to withdraw from the agreement, and a member's declaration and Mrs A also signed the loan agreement for a loan to pay for the membership point rights;
- Mrs A says she'd booked another promotional holiday for October 2021 but she was unable to confirm, reschedule or transfer it and was unable to receive a refund for it;
- Mrs A complained to the holiday company and then to Novuna Personal Finance – her claim to Novuna Personal Finance would be that there had been a breach of contract by the holiday company for which Novuna Personal Finance is liable under section 75;
- 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);
- I'm not determining the outcome of that claim as only a court would be able to do that but I'm considering whether or not Novuna Personal Finance's response to Mrs A claim was fair and reasonable in the circumstances;
- Mrs A had used the loan from Novuna Personal Finance to pay for her and her husband's purchase of 1,000 membership point rights from the holiday company in June 2019 so Novuna Personal Finance would only be liable to Mrs A if there had been a breach by the holiday company of the acquisition agreement;
- the promotional holiday that she and her family took in June 2019 and the promotional holiday that she'd booked for October 2021 weren't paid for using the loan so Novuna Personal Finance would have no liability to Mrs A for any issues with those holidays;
- Mrs A says that she and her husband haven't used their membership points rights but the holiday company says that it's able to provide the product purchased in accordance with the terms of the acquisition agreement – and I've seen no evidence to show that there's been a breach of contract by the holiday company for which Novuna Personal Finance would have any liability to Mrs A under section 75 in these circumstances;
- Mrs A has provided a letter about the administration of a company related to the holiday company but our investigator said that it was only the timeshare sales operations of the holiday company that went into administration and the members clubs and resorts had continued as normal and remained open for members to book and take holidays;
- I've seen no evidence to show that the holiday company is in administration, that it isn't able to provide the services to Mrs A and her husband under the acquisition

agreement or that Mrs A and her husband's use of their membership point rights has been adversely impacted by the administration of that company;

- the member's declaration that was signed by Mrs A and her husband in June 2019 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 ..."*; and: *"We understand that our agreement is legally binding on both parties at the time of signing"*;
- Mrs A and her husband had also signed the separate standard form of the withdrawal notice that set out their right to withdraw from the acquisition agreement within fourteen calendar days without giving any reason – but I've seen no evidence to show that they tried to withdraw from the agreement within that period;
- I'm not persuaded that Mrs A and her husband were entitled to a refund of the purchase price in September 2021 when Mrs A said to the holiday company that she'd decided to end her membership and I'm not persuaded that they're now entitled to a refund of the purchase price;
- I sympathise with Mrs A for the issues that she and her husband have experienced, but I consider that Novuna Personal Finance's response to the claim 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 A any of the money that she paid under the loan agreement, 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 A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 15 April 2024.

Jarrold Hastings
Ombudsman