DRN-4998560

The complaint

Mr H's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna ("Novuna") acted unfairly and unreasonably by being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the "CCA").

What happened

In April 2017, Mr H, along with his wife, purchased a 'trial membership' from a timeshare supplier ("the Supplier"). This trial membership provided a set number of holidays to be taken in a three-year period and cost £3,995. Mr H paid for this by taking credit from a lender other than Novuna.

In November 2017 ("the Time of Sale"), Mr H traded in trial membership for a different type of membership with the Supplier called Fractional Property Owners Club ("FPOC") membership. Under FPOC membership, every year members were granted a number of 'points' that they could exchange for holidays at the Supplier's holiday resorts. But FPOC membership was also 'asset backed', in that members also bought a share in the sale proceeds of a property ("the Allocated Property") that they would get once the Allocated Property was sold that the end of the membership term. Mr H and his wife entered into an agreement to take out FPOC membership ("the Purchase Agreement"), the price of which, as stated on the Purchase Agreement, was £17,119.

Mr H paid for FPOC membership by taking a loan from Novuna ("the Credit Agreement"). Mr H borrowed £20,914 to pay for both FPOC Membership and to refinance the earlier loan taken to pay for the trial membership from the Supplier. The loan was in Mr H's sole name and so only he is able to bring this complaint.

In June 2022, Mr H, using the help of a professional representative ("PR"), made a complaint to Novuna. PR argued that the way FPOC Membership had been sold and the way it operated led to Novuna being a party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of s.140A CCA. It said that Novuna needed to pay compensation to Mr H because of this.

Novuna responded, rejecting the complaint on every ground.

Mr H then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold FPOC Membership as an investment to Mr H at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations"). And, given the impact of that breach on his purchasing decision, the Investigator concluded that the credit relationship between Novuna and Mr H was rendered unfair to him for the purposes of s.140A CCA. Our Investigator made the following recommendation of what would be a fair way to settle this complaint:

"As I think that [Mr H] would not have purchased [FPOC] membership but for the Supplier's failings, I think it would be fair and reasonable to put him back in the position he would have been in had he not purchased membership or borrowed the money to do so provided he agree to:

1. *Relinquish his [FPOC] membership if it hasn't already been terminated; or, if relinquishment isn't possible*
2. *Assign to the Business his Fractional Points or hold them on trust for the Business if that's possible.*

So, the Business should:

a. *Ask the Supplier to reinstate* any previous membership he had prior to the purchase in question (if relevant). If [Mr H] doesn't want his previous membership reinstated and he is happy to accept this redress without reinstatement, the Business can ignore this step.*

b. *Return to [Mr H] the repayments under the relevant credit agreement along with the annual management charges he paid the Supplier as a result of [FPOC] membership. The Business should then deduct:*
   i. *the repayments he would have made towards any consolidated loan he took to pay for any previous membership;*
   ii. *the cost of any promotional giveaways given to him at the Time of Sale;*
   iii. *the market value** of the holidays he took using [FPOC] membership – if any;*

   and/or

   iv. *the difference between the annual management charge(s) he paid as a result of [FPOC] membership and the same charge that would been payable as a result of any previous membership for years in which he didn't use his [FPOC] membership to holiday.*

(the 'Net Repayments').

c. *Cancel the outstanding balance of the loan in question if [Mr H] still owes the Business money under the credit agreement entered into at the Time of Sale. If relevant, he still needs to repay any outstanding balance insofar as it relates to any existing membership. But he should only do so at an interest rate that's equivalent to the rate he was paying on the loan originally taken to pay for any existing membership if the Business' current interest rate is higher.*

d. *Pay 8% simple interest per annum*** on each of the Net Repayments from the date each payment was made to the date this complaint is settled.*

e. *Remove any adverse information recorded on [Mr H's] credit file in connection with the loan.*

f. *If relevant, if relinquishment of the Fractional Club membership isn't possible, as long as [Mr H] agrees to hold the benefit of their interest in the Allocated Property for the Business (or assign it to the Business, if that can be achieved), the Business must indemnify him against all ongoing liabilities as a result of his Fractional Club membership.*

**If [Mr H] would like his existing membership reinstated when it isn't possible, I will, of course, consider what else (if anything) the Business needs to do to put things right*

in this complaint.

***If it isn't possible to determine the market value of such holidays, I don't think it would be unreasonable to use annual management charges payable under the [FPOC] membership as a guide as to what a reasonable deduction for usage might look like.*

****HM Revenue & Customs may require the business to take off tax from this interest. If that's the case, the business must give the consumer a certificate showing how much tax it's taken off if they ask for one."*

PR, on behalf of Mr H, accepted what our Investigator had said 'in principle', but it noted that it could not agree everything until it had sight of what the proposed redress was in practice. In addition, PR made the following comments:

- Mr H did not want or require his trial membership to be reinstated;
- Mr H was given a tablet computer when he signed up for FPOC Membership and PR suggested a £300 deduction to compensation was appropriate for this;
- Compensation could be reduced by £1,024 for the holidays Mr H took using FPOC Membership (calculated with reference to the annual maintenance fees); and
- Deductions could be made for the cost of the trial membership.

Novuna responded to our Investigator and said it agreed to uphold Mr H's complaint, but it said it needed further information from the Supplier before it was able to work out the compensation owed.

Novuna wrote directly to PR once it had worked out the compensation it thought it owed to Mr H. But PR responded to ask for more information on how Novuna had worked out the benefits to be deducted, how it calculated the cost of holidays Mr H had taken and how Novuna had calculated interest.

Novuna responded to say it had calculated Mr H had paid a total of £17,875.44 to the loan, but it deducted from this:

- £3,795 which was for the consolidated loan taken to pay for trial membership;
- £310 for the tablet computer;
- £50 for a taxi transfer; and
- £1,200 'cash back' that had been paid to Mr H when he took out FPOC Membership.

Novuna said Mr H paid a total of £2,724.92 in maintenance fees and had taken two holidays during his membership – Novuna valued these at £3,664.97. So it also took an additional £940.05 from the compensation.

PR wrote to say that it was not clear that interest had been calculated properly by Novuna on each of the payments Mr H made and asked for our service to consider this further. It also argued that the deductions made for Mr H's holidays were too high and led to Novuna making a double recovery as Mr H had also paid for a trial membership that, in effect, he did not use. So he would be repaying the outlay for the trial membership as well as making a deduction for the holidays taken. PR accepted the proposed deductions for the tablet computer and the cashback payments. In response, Novuna stood by its offer.

As the parties could not agree the amount of compensation, the complaint was passed to me for a decision. Having considered everything, I issued a provisional decision, setting out in some detail the compensation that I thought Novuna needed to pay Mr H. I started by setting out the way I approached Mr H's complaint and what legal and regulatory matters I had in

mind when doing so. I noted that my role as an Ombudsman was not to address every single point that had been made to date. Instead, it was to decide what is fair and reasonable in the circumstances of this complaint.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I said I was required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I considered to have been good industry practice at the relevant time.

I said that I would refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I was satisfied that of particular relevance to this complaint was:

- The CCA (including Section 75 and Sections 140A-140C).
- The law on misrepresentation.
- The Timeshare Regulations.
- The Unfair Terms in Consumer Contracts Regulations 1999.
- The Consumer Protection from Unfair Trading Regulations 2008.
- Case law on Section 140A of the CCA – including, in particular:

    - The Supreme Court's judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') (which remains the leading case in this area).
    - *Scotland v British Credit Trust* [2014] EWCA Civ 790 ('*Scotland and Reast*')
    - *Patel v Patel* [2009] EWHC 3264 (QB) ('*Patel*').
    - The Supreme Court's judgment in *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34 ('*Smith*').
    - *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*').
    - *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*').
    - *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS'*).

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint knew, I was also required to take into account, when appropriate, what I considered to have been good industry practice at the relevant time – which, in this complaint, included the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

Caselaw on s.140A CCA

I was mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney* and *Kerrigan* (respectively) on relief in s.140A CCA claims.

In *Carney*, HHJ Waksman QC said the following in paragraph 101:

> *"[…] the Court has a wide discretion as to any relief to be ordered once the unfair relationship has been found. In that regard I adopt paragraph 71 of the Bank's written closing submissions which I did not understand to be challenged. This is that if the court decides to make an order, then it "should reflect and be proportionate to the*

nature and degree of unfairness which the court has found": Patel v Patel [2010] 1 All ER (Comm) 864 at [79]-[80]. It should not give the Claimant a windfall, but should approximate, as closely as possible, the overall position which would have applied had the matters giving rise to the perceived unfairness not taken place: Link Finance Limited v Wilson [2014] C.T.L.C. 145 at [77]; Chubb & Bruce v Dean.[2013] EWHC 1282 (Ch) at [24]; Nelmes v NRAM Pic [2006] EWCA Civ 491 at [116]."

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court may make an order if it determines that the relationship is unfair to the debtor. […]

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So here, when granting relief under s.140B CCA, I noted that a court's approach is the need to remedy whatever unfairness is found in the credit relationship. The relief granted ought to be proportionate and linked to the unfairness found, having regard to all of the relevant circumstances. And, from *Carney*, the relief ought to approximate the position that would have applied had the matters giving rise to the unfairness not taken place and ought to not give the claimant a windfall.

What I considered to be fair compensation

Our Investigator thought that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling FPOC membership to Mr H as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and Novuna unfair to him for the purposes of s.140A CCA. It followed that, as he found Novuna was a party to an unfair credit relationship with him, Novuna needed to do something to remedy the unfairness found. In a subsequent email sent to our Investigator, Novuna said it agreed to uphold him complaint, so it appeared that Novuna accepted our Investigator's findings. Given that, I said I would proceed on the basis that it was not in dispute that there was an unfair debtor-creditor relationship for the reasons found by our Investigator.[1]

I explained that I must take into account the relevant law, but ultimately I must reach an outcome I find to be fair and reasonable. I was also mindful that I was not deciding a legal claim made under s.140A CCA as a court would do, rather I was considering what I find to be fair compensation for Novuna participating in an unfair credit relationship. I set out in my provisional decision what I thought fair compensation would look like and I explained I thought a court could properly reach the same conclusion when determining a claim under s.140A CCA. However, I said that if I was wrong about that, I would depart from the law to

[1] I invited Novuna to let me know if it disagreed with this approach, but it did not respond to this point. I also explained that, for the avoidance of doubt, I agreed with our Investigator on the merits of this complaint for the same reasons.

reach what I found to be a fair and reasonable outcome.

Here, the unfairness that our Investigator found in the credit relationship between Mr H and Novuna was as a result of the way the Supplier sold FPOC membership, due to the operation of s.56 CCA. Further, I agreed with our Investigator that had Mr H decided not to purchase FPOC membership, he would not have entered into the Purchase Agreement and the Credit Agreement. I thought the unfairness our Investigator found was fundamental to the way in which the two Agreements came about, so I thought the fair way to remedy that unfairness was to put Mr H in the position he would be in now had those two Agreements not come about (so far as was possible). So I agreed that Novuna needed to refund the payments Mr H made to it under the Credit Agreement, cancel any outstanding balance and refund any maintenance fees paid. I did not think this was in dispute. But what was in dispute were the values of any deductions for benefits Mr H received under the Purchase Agreement and how Novuna ought to calculate interest on the compensation.

Finally, before I set out the elements of the redress I proposed to direct to be paid, I set out the background to how Mr H's memberships were designed to work. Mr H took out a trial membership from the Supplier. The idea of these was that a customer would buy five holidays from the Supplier to use over a set period, normally three years, to sample the accommodation the Supplier offered its full members. But before they could access these holidays, the customer would attend a 'prelude' holiday, which was a marketing holiday in which, for exchange for free accommodation, a customer would attend a sales presentation. If a customer bought a full membership whilst having a trial membership, the remaining 'value' of that membership was set off against the full membership so it effectively became a deposit.

In Mr H's case, he took out FPOC Membership whilst on his prelude holiday and at that point he had not used any of the five weeks of holiday purchased with his trial membership. Therefore, the full amount of £3,995 was used as a part payment for FPOC membership, meaning in reality it cost £21,114 (£17,119 + £3,995), as he gave up all of the fixed holiday rights he had previously purchased. Novuna disagreed with this figure as it said Mr H traded in the trial membership at a value of £3,795, but I explained why I disagreed with Novuna's approach. That figure was the amount of the outstanding loan with the other lender that was consolidated at the Time of Sale into the Credit Agreement. But, as Mr H had not used any of the holidays purchased, as I understood it from the Supplier's normal sales process, the full cost of the trial membership was accounted for when taking out FPOC membership. It followed, I thought that the real cost of FPOC membership was actually £21,144. [2]

Deductions

There were a number of deductions Novuna wished to take from Mr H's compensation. I considered each in turn.

Novuna wished to deduct £310 for the cost of the tablet computer, which Mr H was given at the Time of Sale. Mr H had the benefit of this computer, so I said it is right that the compensation is adjusted to reflect that. I did not think the sum was in dispute, but for the avoidance of doubt, I agreed that £310 was a reasonable value to be placed on it, so Novuna could deduct it from the compensation payment. Given that the tablet was provided at the Time of Sale, this could be deducted from the first repayment that needed to be refunded.

Mr H was also given £1,200 as 'cash back' by the Supplier and again it was not in dispute that this needed to be accounted for. As I understood it, this was paid at £100 a month by

[2] I invited Novuna to respond to this finding if it disagreed, but I received nothing further.

the Supplier to Mr H for twelve months. So I said Novuna could reduce the nominal amount of the first twelve months of loan repayments by £100 per month.

Novuna had taken £50 from the compensation to reflect the cost of a taxi transfer that the Supplier provided Mr H at the Time of Sale. It appeared that this was to collect and return Mr H and his wife from the airport to the Supplier's offices at the start and end of the holiday. However, I could not see that Mr H would have been charged this amount had he decided not to go along with FPOC membership at the Time of Sale so, mindful of thinking what would have happened had he not gone ahead with the purchase, I could not see that this was a fair deduction. So I said this amount ought not be de deducted.

Novuna said it wished to deduct £3,795, which was the amount refinanced by to cover the loan outstanding for Mr H's trial membership – this was something our Investigator said was appropriate. However, having considered everything, I disagreed.

Mr H gave up his entitlement to his five trial holidays when he bought FPOC membership, which was the only benefit he had under his trial membership. Further, as set out above, I thought the cost of trial membership was used as a deposit for FPOC membership. So this was part of the cost of FPOC membership and the starting point was that this too ought to be returned to Mr H as part of the compensation and Novuna ought not to allow a deduction for it. I thought this also resolved any potential for Novuna to account twice for any holidays taken as PR suggested would happen.

However, I did say the £3,795 could be deducted if it was possible to restore Mr H's trial membership and allow him the opportunity to use the five holidays he originally purchased. I looked into the Supplier's current operations and I could not see that it was taking on new members, nor offering any new trial memberships, although its resorts are still in operation and open to existing members. So I thought it would be possible to direct Novuna to ask the Supplier to allow Mr H to use its resorts as if he had a newly arranged trial membership. But I did not think that was the fair outcome at this stage. I said that as I was not sure whether the Supplier would agree to that, nor that Mr H was still be able to use the Supplier's resorts over the full three years. Further, the purpose of trial membership was to be able to sample the Supplier's resorts and decide on whether to take out a full membership. But as that is no longer possible, I did not think the same trial membership could be restated with the same terms and purpose. I thought it was simpler and cleaner to not reinstate any earlier trial membership and also not allow any deduction for the refinanced loan. I also thought this meant Novuna needed to add £200 to the compensation, being the difference between the cost of the unused trial membership and the amount refinanced. I said it should add this to the first repayment due after the Time of Sale when calculating compensation.

Finally, I considered whether it would be better to say Novuna could deduct two fifths of the cost of trial membership to reflect the holidays Mr H actually took, but for the reasons I explained, I did not think that was the best way to deal with this complaint.

Holidays

Mr H took two holidays using his FPOC membership. On 11 October 2019, he stayed at the Supplier's 'Santa Cruz Suites' for one week and on 18 April 2021 he took a one week canal boat holiday at 'Hilperton Marina'. Novuna said that the cost of these holidays can be worked out with reference to the Supplier's information and other publicly available information, PR said the maintenance fee costs ought to be used. I did not think it was in dispute that some deduction was required, given that Mr H had the benefit of these holidays.

Novuna supplied information from the Suppler to show that it put the cost of the holiday at

Santa Cruz Suites at €1,974[3] which, using the applicable exchange rate at the time of the holidays, was £1,762.97. Novuna also provided information that the cost of a similar canal holiday was £1,249 in April 2026.

In contrast, Mr H's maintenance fees were £887.21 in 2018, £914.53 in 2019 and £923.18 in 2020 (these fees were paid in advance for the following year, so the amount paid in 2018 covered Mr H's usage in 2019). These maintenance fees were not the cost of the holidays Mr H took, rather they were the annual charge levied by the Supplier for its operating costs to, amongst other things, maintain the resorts and Mr H's Allocated Property. Mr H had to pay these fees to have access to his fractional points the following year and, in time, to have access to the proceeds of sale of the Allocated Property.

I noted that the holidays Mr H could take using the Supplier's accommodation were not normally available through the open market, rather it was through an internal, closed market available to members using their points. I understood the Supplier has provided Novuna a price it said was the cost of the holiday Mr H actually took, but I did not think this was a fair benchmark to use to work out the market value of the holidays, i.e. what someone was actually willing to pay for it. Rather, the figure provided by the Supplier for the value it put on the 2019 holiday was not necessarily the objective market value of the holiday, rather it was the value in the eyes of the Supplier. But as these holidays were not available on the open market, accurate figures simply are not available and, therefore, I had to look at something else to work out a fair market rate. I said I must also consider whether it would be fair and reasonable to put Mr H in a position that was not attainable at the time, which is something I would be doing if I were to agree to the deduction at the rate provided by the Supplier.

Since Mr H took his 2019 holiday, the Supplier's 'Santa Cruz suites' were acquired by a different business, so I looked at the cost of staying there to see if it could give any indication of the likely open market cost. But when doing so, I acknowledged that the new supplier's business model appeared to have a different way of acquiring customers, i.e. by selling accommodation on the open market, rather than using a timeshare model.[4] I also noted that the cost of such holidays today may not be reflective of an open market benchmark in 2019, given the substantial number of factors in determining the likely costs of holidays. Bearing that in mind, I looked at website through which people can book the Supplier's Santa Cruz Suites (since renamed) directly and, for a similar week in 2023 to when Mr H stayed in 2019, apartments were available at a rate of between €140 and €338 per night. So that would give a weekly rate of €980 to €2,366 per night, although the range only went to €1,610 if I excluded apartments with hot tubs or private pools (I was not aware Mr H had access to these extras).

But a similar search on an online booking website gave a price range of £732 to £870 without a hot tub or pool or £1,582 with a private pool. This was significantly less than the figure provided by the Supplier for Mr H's actual stay in 2019 of £1,762.97, which did of course not account for any inflation in the interim. On balance, I was not persuaded that the figure of £1,762.97 provided by the Supplier was indicative of a fair market rate to use when calculating Mr H's compensation.

With respect to Mr H's canal holiday in 2021, this took place shortly after the holiday market reopened after the Covid pandemic. I noted that at this time, holidays could be purchased for less than in previous years. Further, an archived web search showed that in 2021 there were significant price reductions available on similar holidays.

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[3] This was the value the Supplier said applied in 2018 and 2020 as well.

[4] Further, the new supplier appears to employ a flexible pricing strategy, so the rates are dependent on availability and demand at any given time. I do not think such a dynamic pricing model is likely to give a fair indication of the open market value of Mr H's stay several years earlier.

I undertook a search of what was available from Hilperton Marina for a similar week in April 2025 as to the one Mr H took in 2021. That gave a price range of £1,104.15 to £1,784.15 for a weeklong hire for four people. Although this figure aligned with what Novuna had suggested it found in its searches, I said it was not clear evidence of what Mr H's actual holiday would have cost on the open market in 2021. Without further evidence on how the prices of these types of holidays have changed over time, I did not think this was the appropriate way to value past holidays.

In conclusion, I said that the number of factors in pricing a holiday at any given time were wide and varied and I did not think it was possible to look at the costs of holidays today and to try to extrapolate back in any meaningful way when calculating an appropriate benchmark. I also did not think it was as simple as asking a given supplier what value it would put on a holiday, not otherwise available on the open market, when trying to determine the open market cost of such a holiday. So I thought a different benchmark was needed in Mr H's case.

Mr H's maintenance fees in 2018 were £887.21 and in 2020 were £923.18, which covered the periods in which he took holidays using his FPOC membership. As noted above, these figures are not indicative of the actual market cost of the holidays taken, nor were they designed to be. However, the 2018 cost was closer to the actual cost of a similar holiday now than that suggested by Novuna and the 2020 cost was only around £300 less than what Novuna suggested a similar holiday would cost next year. Again, none of this accounted for any inflation over a five-year period.

I said that I was mindful that when deciding complaints, I have to decide what I find to be fair and reasonable in all of the circumstances. Here, I did not think taking the figures suggested by Novuna would lead to a fair or reasonable outcome for Mr H in the circumstances of this complaint. I thought taking the annual management fees would be a fair way of working out compensation as they were broadly in line with the likely holiday cost and did not, in my view, give Mr H a windfall or unduly high compensation.

I also considered whether it would have been fair to take the cost of a holiday as paid for under Mr H's trial membership, which would have been £799 a holiday. But I was not sure he would have been able to take either of the holidays that he did using his trial membership and so I thought it was fairer to take the higher maintenance fee cost in this instance. So I proposed to direct Novuna to use the maintenance fees paid in 2018 and 2020 as a proxy for the market rate of Mr H's holidays. It followed, these fees do not need to be refunded.

Interest

The interest that is normally paid (at 8% per year simple) is designed to compensate a consumer for the time they are out of pocket. Given that, I said that the period of interest should run from the time Mr H made a payment to Novuna that put him out of pocket. Here, Mr H took out the Credit Agreement and the Purchase Agreement when he otherwise would not have done, so it was the payments he made arising from those agreements (that he otherwise would not have paid) that attract interest.

I then set out an example of how I expected Novuna to calculate compensation. I said Novuna needs to refund the first payment Mr H made under the loan agreement, plus £200 for the unused trial membership, minus £310 for the tablet computer and £100 for the 'cash back'. I said that if the figure reached is a positive number, it needs to add interest from the date Mr H made that first payment to the date he receives compensation at the rate of 8% per year simple. If the figure reached is a negative, Novuna needs to carry that over to the next month.

For the second repayment Mr H made, I said Novuna needs to take off £100 for the 'cash back' (and it needs to do this for the first twelve repayments). It also may need to adjust the compensation sum to account for any carry over from the first repayment as described above and it may need to adjust subsequent repayments too on the same basis. Again, interest needs to be paid on this sum from the date of payment to the date of settlement.

I also said that Novuna needs to pay Mr H a sum equivalent to the maintenance fees he paid the Supplier, save for the fees paid in 2018 and 2020. Again, interest on these sums runs from the date Mr H paid them to the date of settlement.

Novuna responded to my provisional decision to say it did not dispute my overall findings.

PR, on behalf of Mr H, responded to say it broadly agreed with what I said about compensation, but questioned how any allowance for holidays taken should impact the interest paid.

What I have 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.

As neither party has asked me to reconsider anything I said in my provisional decision, I will not depart from my provisional findings as set out above.

PR has however asked how any allowance or reduction for holidays taken ought to impact the interest paid. Here, I have said I think a fair resolution to the complaint would be for Novuna to take the amounts Mr H paid in 2018 and 2020 as a fair way of working out compensation in this case. So Novuna does not need to make any deductions for the two holidays Mr H took, but nor does it need to refund the 2018 and 2020 maintenance fees or interest on those fees. It follows that there ought not to be any effect on the compensatory interest awarded, which should only be paid on sums Mr H paid toward the Credit Agreement and maintenance fees from other years.

Putting things right

I direct Novuna to do the following, whether or not a court would award such compensation[5]:

1. Novuna should refund all sums Mr H paid towards the Credit Agreement, save for the deductions set out above, and cancel any outstanding balance if there is one.

2. In addition to (1), Novuna should also refund the annual management fees Mr H paid as a result of FPOC Membership, save for the fees paid in 2018 and 2020.

The sums calculated under (1) and (2) are the "Net Repayments"

3. Simple interest[6] at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date Novuna settles this complaint.

4. Novuna should remove any adverse information recorded on Mr H's credit file in connection with the Credit Agreement.

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[5] Conditional that any compensation is paid on the condition that Mr H agrees to assign to Novuna his fractional points or hold them on trust for Novuna if that cannot be achieved.
[6] HM Revenue & Customs may require Novuna to take off tax from this interest. If that is the case, Novuna must give Mr H a certificate showing how much tax it has taken off if he asks for one.

5. If Mr H's FPOC membership is still in place at the time of this decision, as long as he agrees to hold the benefit of his interest in the Allocated Property for Novuna (or assign it to Novuna if that can be achieved), Novuna must indemnify him against all ongoing liabilities as a result of his FPOC membership.

My final decision

I uphold Mr H's complaint against Mitsubishi HC Capital UK PLC trading as Novuna and direct it pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 October 2024.

Mark Hutchings
Ombudsman