

The complaint

Mrs J's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna ("Novuna") declined her claim that a credit agreement she'd entered into with them is unenforceable.

What happened

In or around October 2019 (the "Time of Sale"), Mrs J (together with another party) agreed to upgrade an existing timeshare trial membership (the "Trial Membership") with a timeshare provider (the "Supplier"). In doing so, they purchased a full timeshare membership (the "Timeshare") from the Supplier which included 1,100 annual points rights to be used against holiday accommodation and experiences provided by the Supplier (the "Timeshare Agreement").

The price agreed of £14,287 was funded under a Fixed Sum Loan Agreement (the "Credit Agreement") provided by Novuna in Mrs J's sole name. The total amount lent under the Credit Agreement was £16,125 and included refinance of an existing loan provided by another lender to finance the purchase of the original Trial Membership.

In July 2023, Mrs J, using a claims management company (the "CMC"), submitted a claim to Novuna which included:

1. Misrepresentations by the Supplier at the Time of Sale giving Mrs J a claim against BPF under Section 75 of the CCA ("S75"), which Novuna failed to accept and pay.
2. Novuna being party to an unfair credit relationship under the Credit Agreement and related Timeshare Agreement for the purposes of Section 140A of the CCA ("S140A").
3. Alleged breaches of the regulations that applied rendering the Timeshare and Credit Agreements null and void.

In December 2023, the CMC submitted a further complaint to Novuna on Mrs J's behalf. The CMC said that there had been a breach of contract by the Supplier under the Timeshare Agreement, and under S75, Mrs J has a like claim against Novuna for that breach.

In January 2024, the CMC submitted an additional claim to Novuna on Mrs J's behalf. They said that the information included within the Credit Agreement didn't comply with the requirements of Section 55 of the CCA, rendering the credit agreement unenforceable unless approved by a court order.

Novuna didn't uphold the claims submitted in July and December 2023 and the CMC have confirmed they didn't progress those any further. Furthermore, Novuna also didn't accept that the Credit Agreement was unenforceable for the reasons suggested by the CMC.

In June 2024, the CMC referred Mrs J's complaint to this service. Specifically, her complaint that the Credit Agreement is unenforceable due to the non-disclosure of information as required under Section 55 of the CCA.

One of this service's investigators considered Mrs J's complaints. Having done so, our investigator didn't think Mrs J's complaint(s) should be upheld. In particular, our investigator wasn't persuaded that there was likely to have been any actionable misrepresentations by the Supplier. Or that there was any evidence that the Supplier had failed to fulfil one or more of the terms of the Timeshare Agreement such that there'd been a breach of contract.

that Novuna could be held liable for. Our investigator also didn't see anything to suggest the relationship between Mrs J and Novuna was unfair pursuant to S140A.

The CMC didn't accept our investigator's findings. They suggested that Mrs J's complaint from January 2024 - relating to Novuna's alleged failure to disclose information within the Credit Agreement - hadn't been properly considered. The CMC reiterated their belief that the alleged breach of Section 55 of the CCA renders the credit agreement unenforceable making the relationship between Mrs J and Novuna unfair pursuant to S140A.

Mrs J's complaint was passed to me to consider. Having done that, I issued a provisional decision ("PD") on 8 October 2024 giving Mrs J and Novuna the opportunity to respond to my findings before I reach a final decision.

In response to my PD, the PR confirmed that they have nothing more to add. So, Mrs J's complaint was passed back to me.

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.

For completeness, in my PD I said:

Relevant Considerations

When considering what's fair and reasonable, DISP 3.6.4R of the Financial Conduct Authority ("FCA") Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S140A looks at the fairness of the relationship between Mrs J and Novuna arising out of the Credit Agreement (taken together with any related agreements). And because the Timeshare was funded under the credit agreement, they're deemed to be related agreements. Only a court has the power to make a determination under S140A. But as it's relevant law, I've considered it when deciding what I believe is fair and reasonable.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made 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 evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address, in my decision, every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

Mrs J's complaint

When referring Mrs J's complaint to this service, the CMC confirmed that following Novuna's response to the initial claim and complaint alleging misrepresentations, breach of contract and an unfair relationship pursuant to S140A, they didn't progress matters any further.

The CMC refers to Mrs J's subsequent complaint in January 2024 - that the Credit Agreement with Novuna is unenforceable due to the non-disclosure of information in it. And in doing so, said, "*we are therefore submitting the claim to*" this service.

With this in mind, and for the purpose of this decision, it is only this particular complaint that I've considered.

The suggestion is that because the Credit Agreement didn't specifically set out what was being funded under it, it breached the requirements of Section 55 of the CCA. Specifically, that section says:

Disclosure of information.

- (1) Regulations may require specified information to be disclosed in the prescribed manner to the debtor or hirer before a regulated agreement is made.*
- (2) If regulations under subsection (1) are not complied with, the agreement is enforceable against the debtor or hirer on an order of the court only (and for these purposes a retaking of goods or land to which the agreement relates is an enforcement of the agreement).*

The CMC said that the Credit Agreement should've provided a clear breakdown of what was being funded to include both the Timeshare purchase amount and the refinance of the existing loan with another lender. But it didn't do that. To support their view, the CMC have also referred to the Consumer Credit (Agreements) Regulations 2010 (the "CCR").

Schedule 1 of the CCR is headed "*Information to be included in regulated consumer credit agreements*" and sets out in detail the information required. The CMC says that the Credit Agreement didn't include that information, and pursuant to Section 55 CCA, is unenforceable.

It isn't the role of this service to ask a business to alter their policies, procedures or systems. Nor is it our role to impose improvements on the level of service offered to their customers. These aspects fall firmly within the remit of the regulator – in this case, the Financial Conduct Authority ("FCA"). Further, this service isn't afforded powers enabling it to decide whether a credit agreement is unenforceable. Again, that is the role of the FCA. But it is our role to examine and decide whether a business has been fair and reasonable in the manner in which their policies and procedures are applied in the individual circumstances of Mrs J's experience with them.

The CMC suggest that the failure to include the required information within the Credit Agreement resulted in detriment for Mrs J and renders her relationship with Novuna unfair under S140A. But I can't see that the CMC have been clear in quantifying how any such failure to provide information has caused Mrs J loss.

There's no suggestion that Mrs J didn't receive the Timeshare she paid for. Or that the previous loan wasn't repaid under the loan with Novuna. In any event, as I've already said, only the FCA can decide whether the loan is enforceable (or not). Ultimately, if the CMC are right that Novuna can't enforce Mrs J's loan, all this means is that Novuna can't pursue the debt through a court. But that doesn't mean that Mrs J doesn't owe the money, or that she is entitled to any money back. And should Mrs J decide not to repay the loan, the provisions of Section 55 CCA mean that Novuna could still apply for an order from the court to enforce it.

The unfair relationship claim under S140A

The court may make an order under S140B in connection with a credit agreement if it determines that the relationship between the creditor (Novuna) and the debtor (Mrs J) is unfair to the debtor because of one or more of the following (from S140A):

- a) any of the terms of the agreement or of any related agreement;
- b) the way in which the creditor has exercised or enforced any of the rights under the agreement or any related agreement;
- c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

Mrs J took the loan with Novuna and knew she had it, the amount she'd borrowed and what it was for – the timeshare purchase and refinance of the existing loan with another lender. After all, it seems she's since not had to make any repayments for the previous loan. So, even if the Credit Agreement was found to be unenforceable - and I make no such finding here - I can't see why it caused something that requires compensation or cancellation of the loan with Novuna.

There's no suggestion that Novuna have taken any action to enforce Mrs J's Credit Agreement. So, I think it unlikely that a court would find that any alleged failure to include information within the Credit Agreement in order to comply with Section 55 of the CCA resulted in the relationship between Mrs J and Novuna, under the Credit Agreement, being unfair.

I do appreciate that Mrs J may well be disappointed by my findings above. However, having considered all the evidence and information, I can't reasonably conclude that Novuna have acted unfairly or unreasonably. So, I don't currently intend asking Novuna to do anything more here. However, the parties to this complaint now have until the deadline I've set to submit any new evidence and/or arguments before I consider my final thoughts.

The CMC have confirmed they have nothing further to add to my provisional findings. And while Novuna haven't yet responded, given it was my intention not to uphold Mrs J's complaint, I see no reason why I should vary from those findings in my final decision.

My final decision

For the reasons set out above, I don't uphold Mrs J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 12 November 2024.

Dave Morgan
Ombudsman