

The complaint

Mrs F has complained to us about a credit agreement with Mitsubishi HC Capital UK Plc (previously known as Hitachi Capital UK Plc), trading as Novuna Personal Finance ("Novuna").

What happened

In September 2017 Mrs F entered into a hire agreement for a car. The minimum period of the hire was 36 months, with the option to continue thereafter. In August 2021 Mrs F contacted Novuna to make enquires about buying the car. The sale went through in September 2021.

This complaint is about certain bills raised by Novuna for excess mileage charges and monthly rental payments, just prior to and after the sale of the car. The total was £1,150.31, which was made up of the following:

August 2021 rental payment	£301.62
September 2021 rental payment	£211.14
Excess mileage charge	£637.55

Novuna said they sent invoices and reminders for these to Mrs F. She told us she didn't receive some of these. Ultimately Mrs F paid (although there is disagreement about the date; Mrs F thinks it was 5 January 2022 and Novuna told us it was 18 January 2022).

In 2023, Mrs F learned that Novuna had registered a default on her credit file regarding the £1,150.31. She was unhappy about this and complained to them. Novuna sent their final response letter on 10 November 2023. They said they had posted three invoices, three arrears notices and a liability letter. They had phoned her twice but were unable to get through. They said the default was properly notified and the default marker would stand. In addition they also apologised for an error where an outstanding amount of £512 been left on her credit report, and they said this had been corrected.

Mrs F remained unhappy with this and complained to this service. She said she wanted the default removed from her credit file. Our investigator looked into the complaint and said they were of the opinion that it shouldn't be upheld. They said that Novuna had made attempts to contact Mrs F and had been sufficiently diligent. Because Mrs F didn't accept the investigator's findings the complaint was passed to me to decide.

On 25 October 2024 I issued a provisional decision. In it I said:
"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

I've looked at this complaint on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence. Mrs F's complaint is about a hire agreement. Entering into this type of consumer credit contract is a regulated activity, so I'm satisfied I can look into this. Having done so, I think the complaint should be upheld and I'll explain why.

In deciding what's fair and reasonable I've taken into account relevant regulations and good practice including the FCA's consumer credit sourcebook ("CONC") and the Information Commissioner's Office ("ICO") guidance. The latter is named "Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies" and is published online. It is industry-wide guidance about the information financial businesses report on the credit files of individuals.

The hire period

In relation to a hiring period outside of the 36 months, the agreement entered into by Mrs F and Novuna said:

"After the minimum period expires, the hiring of the Vehicle will continue for up to a maximum of six months, provided that both of us wish it to do so."

And in addition:

"2.4 During any secondary hire period, you will continue to pay rentals and additional service payments at the rates and frequency set out in the Agreement. If the secondary period is terminated early under clause 1.4, your final liability to pay rentals and additional service payments during this secondary hire period will be calculated by us pro rata on a daily basis. Any shortfall between this final liability and the monthly payments you have made during this secondary hire period will be immediately payable by you: any excess will be repayable to you."

I note that the agreement envisaged the secondary hire period should come to an end after six months. It also stated that any shortfall from a secondary hire period would be immediately payable. But in this particular case Novuna and Mrs F agreed to continue the hire period beyond this. Novuna has referred to this as an "informal extension" and said that any monthly rental invoices were "billed in arrears." I will deal with this in more detail below.

Additional background

I also note that there was a previous complaint made in June 2021 by Mrs F. This seems to have been concluded and resolved by final response letter sent by Novuna dated 9 August 2021. I'm not looking into that complaint here but I've considered this letter and surrounding circumstances (including the overall account history) as part of the background to this complaint. In the same vein I can see that there were prior arrears during the course of the agreement. I can see that Novuna wrote to Mrs F about these on occasions and that they were cleared by Mrs F.

Outstanding sum and communication

Novuna gave us copies of the invoices for the rental payments they sent to Mrs F. The dates were 31 August and 30 September 2021, and the excess mileage invoice was dated 29 September 2021. Novuna also sent arrears notices on the 21 October, 1 November and 9 November 2021. After these they sent a "liability" letter, and left two voicemails for Mrs F on 15 and 22 November 2021. The copy of the liability letter which I've seen said Mrs F should contact Novuna within 7 days or the debt would be passed to a debt collecting firm.

Mrs F told us she didn't receive some of these (I will deal with the communications she did receive below). She told us that it wasn't a matter of an incorrect address because although she had moved house, Novuna had her correct address. She told us it's possible that the invoices and letters were not sent because there was a mix-up due to the sale of Hitachi to Novuna. She also told us that she didn't get a final notice, or a default notice and she wasn't warned that the debt would be passed to a debt collection firm.

Mrs F told us that she did receive a letter from Novuna dated 21 October 2021. This said that her direct debit had failed for the amount of £301.62. So she emailed Novuna about this

on 27 October 2021. They replied in an email on the same date. This reply explained the debt and had all three invoices attached to it.

Mrs F also told us she received a missed call from Novuna on 15 November 2021. From Novuna's records, on this date they called her and left a voicemail to call them back.

As I said above, Novuna later passed the debt to a debt collection firm. This firm contacted Mrs F and she paid the full amount. Mrs F told us that this took place on 5 January 2022 when she was recovering from a medical procedure which took place in December 2021. Novuna's information is that she paid later in January.

In March 2024, having learned of the default on her credit report, Mrs F emailed Novuna as follows:

"During the call yesterday, I was told that my account was closed on 20th September 2021 with nothing outstanding on my account. I received no contact, at any time, regarding any outstanding money on this account."

I pause here to note this wasn't correct; Mrs F did have contact regarding outstanding monies. At the very least she told us that she had received the three invoices with the email from Novuna on 27 October 2021. She also had the letter dated 21 October 2021, and the missed call on 15 November 2021.

Default notification; fair and reasonable

Under the hire agreement the monthly repayment was £301.62. In relation to missing payments the agreement stated:

"Missing payments could have severe consequences and may make obtaining credit more difficult. If you do experience difficulties in making payments, or you believe that you can no longer afford to make payments please contact us on 01635 589728 to discuss your options."

And:

"2.2 Prompt payment is vital to and a condition of this Agreement."

Having considered the above, I'm satisfied that the agreement made it sufficiently clear that missing payments could affect Mrs F's credit rating.

I've also had regard to the FCA Sourcebook. It states:

"CONC 7.3.2.

When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under *Principle 6 (Customers' interests) to treat its customers fairly."

Looking at the ICO guidance, it states:

"A record lodged with a CRA must be a reliable reflection of an individual's credit standing."

This also says that as a general guide;

"The lender must have notified you of their intention to register a default against you at least 28 days before doing so, in order to give you time to make an acceptable payment or reach an agreement..."

And:

"a default may be recorded when you are three months in arrears, and normally by the time you are six months in arrears".

I'm prepared to consider that some of the letters may have not reached Mrs F's address. But in and of itself this isn't determinative of anything. There were other instances when it's clear Mrs F was notified of the debt. I'm satisfied that she knew about all the invoices following the email sent to her by Novuna dated 27 October 2021.

Mrs F complained that she was entitled to a default notice under the Consumer Credit Act. Certain provisions of this Act require a default notice to be sent before certain steps can be taken. For example, one such step is to enforce any security. But it doesn't cover the procedure for reporting to credit reporting agencies. However, in general terms default notices are an important part of the obligations imposed on creditors by this Act. As I've explained above, the Information Commissioner's Office guidance does cover reporting to credit reporting agencies. The guidance doesn't mean that it's an absolute rule that a default notice is required to be sent every time before a default can be registered. Depending on what reminders or invoices have been sent, it might be possible that the borrower could be reasonably expected to know that their account was in default and a default about to be registered with CRAs. So I've borne all of this in mind this in mind when considering this complaint.

Next I've considered that Novuna told us that during the informal extension of the agreement any monthly rental invoices were "billed in arrears." And Novuna confirmed in correspondence that the bills due from Mrs F were not payable immediately; in their email dated 27 October 2021 they told Mrs F that the September rental payment and the charge for excess mileage were not due to be paid until the end of that month (i.e. October). And their attempt to take the direct debit for the August rental payment was also at the end of September, which tends to suggest that that payment was due around that time.

Looking at the timing of what happened, the default was entered as 15 November 2021. By that date approximately six weeks had passed since the August rental payment bill had fallen due, and only fifteen days had passed since the due date of both the September rental and the excess mileage bill. Mrs F was in arrears but Novuna at this point was deciding that Mrs F was in default. I accept that under Novuna's process they had sent a significant number of letters and reminders and the liability letter. But I think it's worth repeating the ICO guidance here:

"a default may be recorded when you are three months in arrears, and normally by the time you are six months in arrears".

It's not the case that a business must always wait three months before deciding that a customer is in default. It will depend on the circumstances of each situation. But the time periods of six weeks and fifteen days are significantly shorter than what's set out in the guidance. On balance I think it's unlikely Mrs F could reasonably have known a default was about to be entered at this time.

I've also noted that on prior occasions when Mrs F had arrears, Novuna did send her Notices of Sums in Arrears and default notices. Mrs F cleared those arrears. The fact that in this situation Novuna didn't send these documents to Mrs F doesn't mean their actions are automatically unfair. As set out above, I've considered all the surrounding circumstances and available information. But overall I'm satisfied that not sending a Notice of Sums in Arrears and a default notice means that Novuna wasn't as clear with Mrs F about its intentions as it could have been. On balance, given all the available information and the due dates in this complaint I think Novuna rushed to enter the default notification to the CRAs.

I understand that Novuna might take the view that in relation to the ICO guidance what matters is the amount of the debt, not time. So from Novuna's perspective the amount Mrs F owed was equal to an amount which was greater than three months' of cumulative monthly rental payment. But I don't think that is a fair interpretation of the guidance. On that interpretation anyone who owed an excess mileage charge that was higher than three months' worth of rental payments, and who failed to pay by the due date, would immediately be in default. This would be inconsistent with the content of a default notice, which always

allows some time to pay. In addition, even if I concluded this interpretation was right, it doesn't explain the failure to send a Notice of Sums in Arrears or a default notice.

Based on all the available information, I'm of the view that the speed with which Novuna determined Mrs F's account was in default wasn't fair or reasonable, and I think it's most likely that if Novuna had sent clearer warnings like a Notice of Sums in Arrears or a default notice, Mrs F would have avoided a default. I think in order to put this right Novuna should remove the default from Mrs F's credit report.

My provisional decision

I intend to uphold this complaint and to direct that Mitsubishi HC Capital UK Plc (previously known as Hitachi Capital UK Plc), trading as Novuna Personal Finance arrange for the default on Mrs F's credit report to be removed."

I asked both Mrs F and Novuna to let me have their responses to the provisional decision. Both replied to say they accepted the decision.

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.

I've looked at this complaint on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence.

I've reconsidered the available information in this complaint, and the responses from Novuna and Mrs F. Having done so, I consider the findings in my provisional report to be fair and reasonable and for the reasons set out therein I'm satisfied that the complaint should be upheld.

Putting things right

Novuna should put things right as set out below.

My final decision

I uphold this complaint and direct that Mitsubishi HC Capital UK Plc (previously known as Hitachi Capital UK Plc), trading as Novuna Personal Finance arrange for the default on Mrs F's credit report to be removed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 30 December 2024.

Katrina Hyde
Ombudsman