

The complaint

Mr and Mrs C, who are represented by a professional representative ("PR") complain that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance ("Novuna") used an unauthorised credit broker in granting them a loan.

What happened

On 23 May 2011 ("the Time of Sale"), Mr and Mrs C purchased membership of a timeshare (the 'Timeshare') from a third party (the 'Supplier'). They took out a loan from Novuna to pay for it.

In January 2024, Mr and Mrs C made a complaint to Novuna on the grounds that the Credit Agreement was unenforceable because the credit broker (the 'Broker') who arranged the loan was not regulated by the Financial Conduct Authority ("FCA") to do so, in breach of the General Prohibition set out in section 19 of the Financial Services and Markets Act 2000 ("FSMA"). They argued that s. 27 FSMA rendered the Credit Agreement unenforceable and entitles Mr and Mrs C to unwind the Credit Agreement and seek compensation.

Novuna didn't agree and so Mr and Mrs C brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. She noted that at the time the loan was brokered the relevant regulatory body was the Office of Fair Trading ("OFT") and the right to recover money under s.27 FSMA did not exist. She also noted that Novuna had explained that the broker was not as named on the credit agreement and this had been an administrative error. The remaining documentation carried the name of the broker which regulated at the time.

Mr and Mrs C didn't agree and suggested that our investigator had mistakenly presumed that the company that Novuna said had brokered the loan and the one shown on the credit agreement were the same. They said the loan was unenforceable and they also referenced separate complaints about another loan which is not the subject of this complaint.

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 have every sympathy with Mr and Mrs C, but I do not consider I can uphold their complaint. I will explain why.

At the time the finance agreement was brokered by the Supplier, the brokering of such credit agreements was regulated by the OFT and not the FCA. I have noted that the claim that the company whose name is on the credit agreement wasn't regulated at the time. So, if I accept that the agreement was brokered by an unregulated broker (and I make no such finding) I have to consider what should happen.

There is no provision in the regulatory regime at the time which would afford someone in Mr and Mrs C's position redress. So even if I were to find that the Supplier was not properly

licenced to broker credit in May 2011, (and I make no such finding) I would not be able to tell Novuna to pay Mr and Mrs C any compensation here. The regulations to which Mr and Mrs C refer do not apply. Furthermore, the alleged failure would only mean that the loan was unenforceable, not that it be unwound or that compensation be paid.

But I am not persuaded that the loan was brokered by an unregulated broker. I think Novuna's explanation is reasonable and I have noted that all the other documentation gives detail of the regulated broker and the inclusion of the name of the unregulated one on the credit agreement was an administrative error. That would lead to the conclusion that there was no material error. The reality is that Mr and Mrs C wished to borrow the money and Novuna agreed to give them a loan. They obtained the money they needed to make the purchase they wanted. That is the substance of what happened and I do not think Novuna was unreasonable in rejecting the claim.

I would add that I can see that our investigator was not suggesting that the two companies were the same, just that an incorrect name was noted on the credit agreement.

Ultimately this is a matter for the courts to decide, but I do not consider Novuna was wrong to reject the claim.

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 C and Mrs C to accept or reject my decision before 20 January 2025.

Ivor Graham
Ombudsman