DRN-5241997

The complaint

Mr W's complaint is, in essence, that Mitsubishi HC Capital UK PLC, trading as 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'). Mr W alleges that he has been charged interest at a higher rate than the one stated on the Credit Agreement.

What happened

Mr W agreed to borrow £5,080 from Novuna to help fund the purchase of a timeshare membership in September 2015. The Credit Agreement was set to run over 124 months with Mr W needing to make 120 repayments of £75.71 after a four-month deferral period. The total charge for credit shown on the Fixed Sum Loan Agreement regulated by the CCA (the 'Credit Agreement') was £4,005.20, together with an interest rate of 7.6% and an Annual Percentage Rate ('APR') of 12.9%.

Mr W – using a professional representative (the 'PR') – wrote to Novuna on 22 July 2024 (the 'Letter of Complaint') to complain about Novuna having charged too much interest on his loan. Mr W alleges that Novuna has applied interest to the debt at the rate quoted as the APR on the Credit Agreement. Mr W says that Novuna ought to have applied interest at the Contractual Rate of Interest stated on the Credit Agreement.

PR, to support Mr W's claim, has provided several documents which it considers demonstrates the application of an incorrect rate of interest to the debt, and/or unenforceability of the Credit Agreement. These include:

- Screenshots of an online loan repayment calculator using the interest rates 7.6% and 12.9%.
- An online article authored by a barrister looking at the issue of enforcing defective credit agreements.
- A 'FAQ' document for another of Novuna's credit products (not the product in question).
- An online article containing a definition of APR and an explanation of its meaning.
- An article from Novuna's website titled: *"What's the difference between interest rate and APR?"* and explains: "*At Novuna Personal Finance, there are no fees or surprise charges, so the interest rate and APR will be the same if you apply for a loan with us.*"

PR argues that as Novuna charged Mr W an incorrect interest rate from the commencement of the loan, it made the relationship unfair under s140A CCA. It also considers Novuna's practices fall foul of the Unfair Terms in Consumer Contracts Regulations 1999 ('UTCCR') because the APR shown on the Credit Agreement is mis-stated. So, the Credit Agreement is unenforceable without a court order.

PR also raised that the credit intermediary that brokered Mr W's loan with Novuna was unregulated.

Novuna dealt with Mr W's concerns as a complaint and issued its final response letter on 2

October 2024, rejecting it on every ground. It explained that:

- The interest rate and APR are two separate items to be included in the Credit Agreement.
- The provisions on the APR were set out at the time of the Agreement in Appendix 1.2 of the Financial Conduct Authority's ('FCA') Consumer Credit Sourcebook ('CONC').
- The rate of interest is (by contrast) not subject to those detailed provisions. Instead, the requirement is to state the rate of interest in the Credit Agreement.
- The argument presented is exactly the argument raised in *Brooks v Northern Rock (Asset Management) plc (formerly Northern Rock plc)* [2009] GCCR 9901. In that case, the Court decided that "the creditor could use either the nominal or the effective rate of interest or indeed some other rate without contravening the requirements of the regulations". Novuna's decision to use the effective rate of interest did not mean that it had "committed any breach of the regulations". The Court also decided it was "permissible to round the effective rate of interest rather than set it out in full".
- The Court's approach in Brooks was approved and followed by the High Court in *Sternlight & Others v Barclays Bank plc & Others* [2010] EWHC 1875 (QB).
- There can be (and often is) a difference between the rate of interest and the APR on a regulated credit agreement. The two requirements are not the same. The rate of interest does not need to be calculated in a particular way and any rate of interest can be used. If there are no interest and charges, this does not mean that the rate of interest is the same as the APR.
- The rate of interest used on the Agreement is a flat rate of interest (which does not assume any capital reduces over the term of the loan). The APR takes into account the fact that repayments are assumed to be made each month (and therefore the capital on which interest is charged reduces). This explains why the APR and the rate of interest are different figures.
- For all of these reasons, it has not breached any of the regulatory provisions. Mr W has not been overcharged either as alleged or at all. Mr W agreed to borrow money and repay it back by fixed monthly repayments. The agreement correctly states the rate of interest and the APR. It is therefore enforceable.
- The relationship arising out of the Credit Agreement is therefore not unfair to Mr W within the meaning of Section 140A of the CCA.
- UTCCR exclude from the assessment of fairness the appropriateness of the price payable. The interest payable is the price payable for the credit provided under the Credit Agreement: it therefore cannot be challenged for fairness.

Mr W then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. In summary, the Investigator found that the Credit Agreement clearly showed the interest rate that applied, the APR, the monthly repayment amount, the total charge for the credit, the loan term, and the total repayable amount. So, she was satisfied the correct information was provided for Mr W to understand the cost of the loan and based on that, Mr W decided to enter the agreement. She hadn't seen evidence to suggest that Novuna made an error when it calculated the interest applied to Mr W's account or when it calculated the APR. Finally, she was satisfied that the credit intermediary that brokered Mr W's loan with Novuna held the relevant permissions at the time of sale.

Mr W disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

Novuna since made a further submission setting out its calculations of the Interest Rate and a spreadsheet with the calculations of the APR. The interest rate was calculated as follows:

Charge for credit / Advance / Term in years.
£4,005.20/ £5,080 / (124 / 12) = 7.63%

Or, put another way:
Loan Amount: £5,080
Term: 120 months
Deferral Period: 4 months
Total Term: 124 months
Interest Rate: 7.63%
*Interest per year: £5,080 * 7.63% = £387.60*
*Total Interest: £387.60 * (124/12) = £4,005.20*
Total Payable: £4,005.20 + £5,080 = £9,085.20
Monthly Instalment: £9,085.20 / 120 = £75.71

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am 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 consider to have been good industry practice at the relevant time.

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

- The Consumer Credit (Agreements) Regulations 2010
- The Department for Business, Innovation and Skills' "Guidance on the regulations implementing the Consumer Credit Directive updated for EU Commission Directive 2011/90/EU (effective 1 January 2013)" [August 2010 (chapter 5 revised November 2012)]
- Appendix 1.2 of the FCA's Consumer Credit Sourcebook ('CONC').
- The Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
- Case law examining compliance with the Consumer Credit (Agreements) Regulations – including:
    - *Brooks v Northern Rock (Asset Management) plc (formerly Northern Rock plc)* [2009] GCCR 9901
    - *Sternlight & Others v Barclays Bank plc & Others* [2010] EWHC 1875 (QB)

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.

And having done that, I do not think this complaint should be upheld.

But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Section 140A of the CCA: did Novuna participate in an unfair credit relationship?

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mr W and Novuna was unfair.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and 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) (s.140A(1) CCA).

The reasons Mr W considers his relationship with Novuna is unfair are three-fold:

1) The credit intermediary that brokered Mr W's loan with Novuna was unregulated.
2) Novuna failed to apply the contractual rate of interest quoted on the Credit Agreement.
3) Novuna misstated the APR on the on the Credit Agreement.

I will consider each of these in turn.

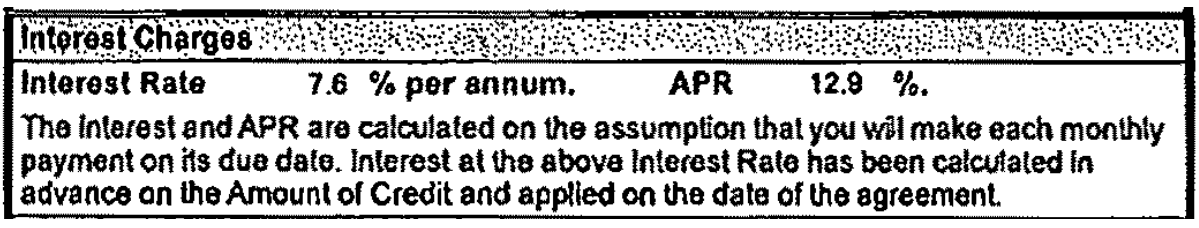
Was the credit intermediary that brokered Mr W's loan with Novuna authorised to do so?

In short, yes it was. I appreciate a search of the FCA's Financial Services Register will show that the credit intermediary's authorisation status started on 21 March 2016. But this ignores the fact that as a former holder of a consumer credit licence issued by the Office of Fair Trading ('OFT'), the credit intermediary held interim permission with the FCA since 1 April 2014, when the FCA commenced regulation of the consumer credit market.

So, Mr W can rest assured that his loan was brokered by a business authorised to do so. It does, however, mean that he/PR is mistaken is citing this as a reason for Mr W relationship with Novuna being unfair and I cannot uphold his complaint on this basis.

Has Novuna failed to apply the contractual rate of interest quoted on the Credit Agreement?

Mr W thinks he has paid too much interest because Novuna has applied a rate of interest above the Contractual Rate of Interest stated on the Credit Agreement – 7.6%, applying the APR of 12.9% instead. Mr W's Fixed Sum Loan Agreement (the Credit Agreement) sets out the following information about interest and charges:



Interest Charges			
Interest Rate	7.6 % per annum.	APR	12.9 %.

The interest and APR are calculated on the assumption that you will make each monthly payment on its due date. Interest at the above Interest Rate has been calculated in advance on the Amount of Credit and applied on the date of the agreement.

In its submissions, Novuna has confirmed the Contractual Rate of Interest applied to Mr W's loan was 7.63%. So, Mr W is correct to say the Contractual Rate of Interest Novuna applied

to his loan is higher than the rate stated on the Credit Agreement – but only by a nominal 0.03%. And that's not to say Novuna has acted unfairly when doing so – I'll explain why.

The Consumer Credit (Agreements) Regulations 2010 set out the information to be included in credit agreements. With regards to the Contractual Rate of Interest, Regulation 1(5) sets out:

> *(5) In these Regulations—*
>
> *(a) a reference to a repayment is a reference to—*
>
> *I. a repayment of the whole or any part of the credit,*
> *II. a payment of the whole or any part of the total charge for credit, or*
> *III. a combination of such repayments and payments.*
>
> ***(b) a reference to rate of interest is a reference to the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down.***

[my emphasis]

Regulation 1(5), however, stops short of specifying any format required for the provision of this information, such as the number of decimal places for example. There is, however, case law that has examined this precise issue. In the County Court judgment in *Brooks v Northern Rock* [2010], the court held that there was no reason why the Rate of Interest should not be rounded or go to any number of decimal points without being in breach of the regulations. This was later reinforced in the High Court judgment of *Sternlight & Others v Barclays Bank & Others* [2010], which held that as long as a creditor complies with clear disclosure requirements such as the APR, interest rate, repayment term, repayment amount and total charges for credit – there is no basis for the unenforceability and the relationship to be considered unfair under section 140A.

The Department for Business, Innovation and Skills in its "Guidance on the regulations implementing the Consumer Credit Directive updated for EU Commission Directive 2011/90/EU" said the following [page 48]:

"*10.25 Regulation 1(5) makes clear that a rate of interest must be expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down. This applies even if the period of the agreement is less than one year. Where the agreement provides for compounding, the effective annual interest rate should be shown and creditors should use the same assumptions to calculate the interest rate as they do for the APR (i.e. the assumptions set out in the schedule to the TCC Regulations).* ***The rate may be rounded to one or more decimal places*** *(although there are no permitted tolerances unlike the APR)."*
[my emphasis]

Novuna has explained that the rate of interest it has used on the Agreement is a flat rate of interest (which does not assume any capital reduces over the term of the loan). The calculations it provided following Mr W's request for this decision show that its approach arrives at a monthly repayment of £75.71 and a total charge for credit of £4,005.20 – precisely the amounts stated on the Credit Agreement. For the sake completeness, I've not found any error on Novuna's part.

PR provided screenshots from an online loan repayment calculator provided by a comparison website. They showed example monthly repayments of £59.80 for a loan of £5,080 over 120 months with an APR Interest Rate annually of 7.6%; and £73.46 for the same loan but with an APR Interest Rate annually of 12.9%. But an APR takes into account

the fact that repayments are assumed to be made each month (and therefore the capital on which interest is charged reduces), which is not the amortisation method adopted by Novuna. PR's quotations also failed to take account of the four-month deferral period at the start of the agreement. So again, I think PR is fundamentally mistaken to consider its alternative loan repayment quotations as evidence of wrongdoing, miscalculation or misstatement of the Contractual Rate of Interest applied to Mr W's loan.

In *Brooks v Northern Rock* [2010], the court held that creditors could use either the nominal or effective rate of interest and the agreement would be compliant. And that is what Novuna has done here.

I'm not persuaded, for the above reasons, that a court would consider Mr W's Credit Agreement unenforceable nor his relationship with Novuna unfair under section 140A. And I do not uphold Mr W's complaint for the same reasons.

Has Novuna misstated the APR on the Credit Agreement?

Mr W believes that as Novuna applies no additional charges other than contractual interest to his loan, the APR on the on the Credit Agreement should be the same as the Contractual Rate of Interest. But the Credit Agreement states the Contractual Rate of Interest as 7.6% and the APR as 12.9%. Because of this, Mr W thinks Novuna has stated an incorrect APR on the Credit Agreement rendering it unenforceable without a court order and his relationship with the lender unfair.

Appendix 1.2 of the FCA's Consumer Credit Sourcebook sets the Regulator's requirements for the calculation of APR at the time Mr W entered the Credit Agreement. In particular, CONC App 1.2.6R sets out the mathematical formula behind the calculation. It is a complex formula and I don't consider it necessary to go into it in any depth here other than to say it assumes the capital balance outstanding under the Credit Agreement decreases each time a repayment is made and the interest charged is calculated on the reducing balance. So, if the Credit Agreement is amortised this way, and no other charges are applicable, then the Contractual Rate of Interest and the APR are unlikely to differ significantly – which is the point PR/Mr W has made. But Mr W's Credit Agreement is *not* amortised in this way – it uses a flat rate of interest.

With a flat rate the interest is charged on the original amount borrowed, no matter the amount of capital that is repaid after each instalment. So even in the last year of the Credit Agreement, the interest Mr W will pay is calculated on the entire £5,080 he originally borrowed. Whereas, if I look at the breakdown of APR calculation provided by Novuna, it assumes a capital balance of around £280 remaining at the start of the final year of the loan – significantly less than the £5,080 Novuna used in its flat rate interest calculation.

The APR (diminishing rate) equivalent of the Contractual Interest Rate (flat) will inevitably be higher given the inverse relationship between the two – and this becomes more significant the longer the term of the Credit Agreement. I think it demonstrates why there is a requirement to state the APR on credit agreement so that prospective borrowers can make an informed comparison between lenders who may calculate interest differently as well as apply additional charges.

In summary, for the reasons given above, PR is mistaken in thinking that where no additional charges other than contractual interest apply to a Credit Agreement, the APR should always equal Contractual Rate of Interest. It follows, I've not seen sufficient evidence to show Novuna misstated the APR on Mr W's Credit Agreement – I find there being a 5.3% margin between the APR and Contractual Rate of Interest plausible.

I'm not persuaded, for the above reasons, that a court would consider Mr W's Credit Agreement unenforceable nor his relationship with Novuna unfair under section 140A. And I do not uphold Mr W's complaint for the same reasons.

Conclusion

In conclusion, given the facts and circumstances of this complaint I am not persuaded that Novuna was party to a credit relationship with Mr W under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct Novuna to compensate Mr W.

My final decision

For the reasons I've explained, I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 February 2025.

Stefan Riedel
Ombudsman