DRN-5451951

The complaint

Mr G has complained that Mitsubishi HC Capital UK PLC, trading as Novuna, did not apply the correct rate of interest to a loan it provided him, therefore being a party to an unfair credit relationship under s.140A of the Consumer Credit Act 1974 ("CCA").

What happened

In August 2018, Mr G took out a loan from Novuna (then trading as Hitachi Personal Finance) to pay for a timeshare membership, The membership cost £17,279 and the loan was taken for the full amount, to be repaid over fifteen years.

Mr G, using the help of a professional representative ("PR"), complained to Novuna in July 2024. The complaint was about the following issues:

- Mr G's loan was for £17,279 and set to run for 180 months at an interest rate of 7.2%. The APR was given as 11.9% and the monthly instalment was set at £199.58.
- The loan APR was to be calculated in accordance with the formula set out by the Financial Conduct Authority ("FCA") in its Handbook at CONC App 1.2.6.
- There were no additional fees or charges associated with the loan and there was no reason for the interest rate stated on the loan agreement to differ from the APR.
- Using an online loan calculator, the PR worked out that an interest rate of 7.2% gave rise to monthly payments of £155.05, whereas an interest rate of 11.9% gave rise to monthly payments of £199.62. It followed, Novuna incorrectly applied the interest rate at the APR rate, rather than the contractual interest rate of 7.2%.
- Further, PR argued that the APR calculation was incorrect and not in line with CONC App 1.2.6 (as it ought to have been the lower, contractual rate of 7.2%).
- All of this meant the loan agreement is unenforceable without a court order.
- PR argued that these issues gave rise to an unfair credit relationship under s.140A CCA, as well as breaching the Unfair Terms in Consumer Contracts Regulations 1999.[1]

Novuna responded to say it did not uphold the complaint. In summary, it said:

- The interest rate and APR were different things, the APR being a tool for comparison for consumers, so they understood the difference between loans. There was set way to calculate APR, but no set way to calculate the interest rate.
- PR's argument followed the unsuccessful one in *Brooks v. Northern Rock (Asset Management) plc (formerly Northern Rock plc)* [2009] GCCR 9901 ("*Brooks")*, where it was held that a lender could use the nominal, simple or effective interest rate without breaching the relevant regulations (as approved by *Sternlight & Others v. Barclays Bank plc & Others* [2010] EWHC 1875 (QB)).
- PR had quoted parts of Nouvna's website to show why it thought the two rates ought to be the same. But Novuna said the parts quoted had no relevance to Mr G's loan, which was a different type of loan arranged several years earlier.
- Novuna said there was no unfair credit relationship.

[1] Given the date of the loan, I think it is more likely the Consumer Rights Act 2015 applied.

Unhappy with Novuna's response, PR referred Mr G's complaint to our service.[2]

One of our Investigators considered the complaint, but did not think Novuna needed to do anything to put things right. She noted that neither the FCA Handbook, nor any other legislation or regulation set how a business is to work out the contractual interest rate (albeit the FCA do explain how an APR is to be calculated). Our Investigator thought that Novuna had set out everything it needed and she gave a narrative explanation of why both of the two rates (7.2% and 11.9%) were both correct. It followed, she did not think there was an unfair credit relationship.

PR responded with lengthy submissions. In summary, it said:

- Mr G relied on Novuna to correctly work out and charge the right amount of credit on the loan. He would not have known he was being overcharged at the time he took out the loan and only realised later.[3]
- PR explained that it disagreed with another decision issued by a different Ombudsman, rejecting a similar complaint to Mr G's, based on an allegation that Novuna had supplied factually incorrect information to the other Ombudsman.
- PR explained that its submissions were generic and therefore would apply to all if its clients making similar, APR based complaints.
- Novuna said that it used a flat rate of interest method to work out the monthly payments, but PR says that even then, it led to Mr G being overcharged. That was because the 'flat rate' method was not the contractual method set out in Novuna's credit agreement and other documents provided to Mr G. In other words, Novuna were not entitled to use such a method under the terms of the contract.
- PR points to the loan agreement that states that '*interest is calculated in advance on what is assumed will be the daily outstanding balance of the Amount of Credit*'. But when payments were made, the balance was reducing, so the interest should have been calculated on the daily reducing outstanding balance. When the PR used an online calculator to work out what a 'daily outstanding balance' model looked like, the total amount payable dropped when using a rate of 7.2%.
- PR says this all means there is an error in the credit agreement, meaning it is unenforceable and leads to an unfair credit relationship under s.140A CCA.

As Mr G did not agree with our Investigator, the complaint has been passed to me for a decision.

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.

In this case, I think the starting point is to look at the loan agreement and to consider whether the figures reflect the terms of the agreement.

On the face of the loan agreement, it sets out that the '*Amount of* Credit' as £17,279 (the

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[2] When doing so, PR provided a Complaint Form that set out the basis of the complaint. But this did not refer to any concerns with the interest rate, rather it referred a complaint made about the way in which Mr G's timeshare had been sold. However, this was not mentioned in the complaint to Novuna, nor was it referred to in the letter that accompanied the Complaint Form and set out the basis of the complaint, nor has PR mentioned it since in response to our Investigator. So, I do not think this was reflective of the actual complaint I have been asked to consider and I have not considered it.

[3] PR argued this meant our Investigator's reasons for saying the complaint had been made too late were incorrect, however as she did not say that in her view, I can only assume these submissions were made in error.

amount borrowed) and the '*Total Charge for Credit*' (the amount of the interest if the loan ran to term) was £18,645.40, meaning the total amount payable was £35,924.40. It also says that there were 180 monthly payments of £199.58. There is also a section titled '*Interest Charges'* that gives the interest rate at 7.2% per annum and the APR as 11.9%.

The Consumer Credit (Agreements) Regulations 2010 ("the Regulations") set out, at Schedule 1, what was to be included in Mr G's loan agreement. That included the total amount payable, the amounts or repayments, the duration of the agreement, as well as the rate of interest and the APR. All of those things were set out on the face of Mr G's credit agreement, and I do not now think PR are disputing this. I do note the Regulations include a separate requirement to include the rate of interest and the APR, which mean they must not have necessarily been the same thing.

Reg.1(5) of the Regulations reads:

> *"In these Regulations –*
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> *(a) a reference to a repayment is a reference to –*
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> *(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."*

So, there is no set format required for providing the interest rate, save for complying with the requirement of Reg.1(5)(b). I do not think that PR now argue that, if Novuna used a flat rate of interest, that would be improper or not comply with the Regulations. However, for the avoidance of doubt, neither do I.

Having looked at that the figures, I think 7.2% per annum is the correct rate of interest if it is taken as a flat rate of interest, not taking into account any capital reductions over the term of the loan (7.2% = (total charge for credit)/(term of the loan in years)/(amount of credit)*100%). That, in my view, fits Reg.1(5)(b) of the Regulations. This is the 'nominal rate'.

The APR stated by Novuna is a different figure and is expressing a different thing. That is the rate of interest that takes into account that payments are made each month to reduce the outstanding capital borrowed. This is a method of amortisation that provides a rate that can be used for comparison across different products and providers. But this is not the method that Novuna used to work out its repayments. This is the 'effective rate'.

I think that the reason Novuna used the nominal rate of interest was down to the way in which it ran Mr G's loan. Novuna 'front loaded' the interest, so his loan account showed that he owed £35,924.40 as soon as the loan was set up and then that was to be paid in 180 equal instalments. When doing this, it assumed that all the repayment would have made on time. But if, for example, Mr G paid off the loan early, there would be an adjustment to the overall balance owed to reflect this and an interest rebate would be paid.

In Brooks, it was held that lenders could use either the nominal or effective rate of interest and the agreement would have been compliant with the requirement of the terms of the regulations that were in force at the time. Since that judgment, the Regulations have been revised, and I have explained that I think both the rates provided by Novuna were compliant with the Regulations at the time it entered into the agreement with Mr G.

Originally, PR argued that Novuna's rates were wrong (something I disagree with for the reasons already explained). Now it has now made a different argument, saying that Novuna did not follow the terms of the agreement. Specifically, it says there was a contractual term that the loan repayments were to be worked out in a certain way. The relevant section reads:

> *"**Interest Rate: 7.2% per annum. APR 11.9%.***
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> *The interest and APR are calculated on the assumption that you will make each monthly payment on its due date. The interest is calculated in advance on what is assumed will be the daily outstanding balance of the Amount of Credit. If you fail to make a monthly payment in full on its due date, or make an overpayment, the interest due will be calculated on the actual outstanding balance."*

PR says that the written description means that the amount charged was wrong. That was because the loan agreement says that the interest was calculated on what was assumed to be the daily outstanding balance of the amount borrowed. PR says that Mr G's loan statements show that when he made repayments every month, that reduced the monthly balance outstanding. Therefore, PR argues that the rate of interest ought to be calculated on the *'daily reducing outstanding balance'*. But, in my view, this is simply a rephrasing the argument PR originally made that the interest rate is wrong. I will explain.

In its response to the complaint, Novuna said:

> *"The rate of interest we have 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."*

So, if, when working out the rate of interest, Novuna had assumed that every month a repayment was made, the outstanding balance would decrease, it would come up with an amortised rate of 11.9% - the same as the APR. But if the interest is front loaded and then the balance is paid off every month, it would have come up with the interest rate of 7.2%, based on the amount of total interest charged and the term of the loan. In other words, Novuna's description of how it worked out the interest that it gave on the loan agreement was right if you make the same assumptions that Novuna did. It is only if you make different assumptions (the ones PR say it should have made) that Novuna's rate is incorrect. PR's argument is, in reality, not that Novuna got the calculation wrong, but that it ought to have made different assumptions – that interest was worked out on the *'daily reducing outstanding balance'*. However, Novuna's calculation of a rate of 7.2% is based on the interest being front loaded in advance and on Mr G having made all of his repayments when they fell due, i.e. based on what he would owe on a given date if he made his repayments. In my view, this is in accordance with the description Novuna gave on the credit agreement.

I have thought about how this affects a number of different matters – whether the loan is unenforceable, whether there is an unfair credit relationship and whether Novuna has done anything wrong that means I ought to do anything further.

As I have said above, I do not think Novuna has made a mistake on the face of the loan agreement. So based on my findings, I do not think the loan is unenforceable. However, if I am wrong about that, I do not think a loan being unenforceable (in itself) means I ought to direct Novuna to do anything. In practice, if the loan was unenforceable, that means that Novuna could not pursue Mr G through the courts for the money owed if he stopped making repayments, unless it first got a court order saying that it could take that action. So even if I accepted that the loan was unenforceable (which is ultimately a matter for the courts), all it

would mean was that Novuna could not pursue Mr G. It does not mean that Mr G would be entitled to a return of what he paid. And in any event, as Mr G has been making his payments on time, I would not make any direction to Novuna in those circumstances.

I have also considered whether any of the issues identified by PR would, in my view, give rise to an unfair credit relationship between Mr G and Novuna.[4] As set out above, I do not think there was any mistake in the way PR alleges. And, having considered everything, I cannot see how the credit relationship was unfair the reasons alleged or for any other reason – for example, I do not think there was an unfairness caused by having the two different rates provided on the face of the credit agreement. However, I have also considered whether there would have been an unfair relationship if PR's allegations were right, but I do not think it would have been.

The credit agreement set out the details of the loan between Novuna and Mr G. So, when Mr G took out his loan, he knew many the facts about it, including the amount he borrowed, for how long and how much the monthly payment was. He also knew the charge for credit, i.e. the total amount that Novuna said it would charge for interest, and the two differing rates provided by Novuna on the loan agreement. And Mr G agreed to all these things when he took out the loan.

PR has argued that many of these figures were wrong as Novuna did not apply the interest rate correctly as it should have done using the *'daily reducing outstanding balance'*, and so there was a mistake in the loan agreement. Although I disagree that there was a mistake, if there was one, I think it more likely that the mistake lies within Novuna's description of how it worked out interest and not in the accuracy of the figures it provided. In other words, if I were to accept PR's argument that Novuna did not work out the interest properly, then I also would have to conclude that the figures given on the loan agreement for the total interest payable, the monthly payment and the APR were incorrect too. I think Mr G knew these figures and found them acceptable when he entered into the agreement. So ultimately in my view, Mr G got what he expected when he took out the loan – he knew how much he borrowed, how much he would be paying each month and for how long. And the greater likelihood of any mistakes lies in the description of how the figures were calculated rather than the calculation itself. Given that, I cannot see how there was any unfairness in the credit relationship.[5]

In summary, I do not think Mr G was a party to an unfair credit relationship with Novuna as defined by s.140A CCA. That is because either there was no mistake or, in the alternative, if there was, it was not sufficiently serious to cause an unfairness or warrant a remedy – Mr G's loan operated exactly as he expected.

Finally, entering into a regulated credit agreement is a regulated activity about which I can consider freestanding complaints. So I have also considered whether Novuna has a complaint to answer outside of the allegation that there was an unfair credit relationship or that the loan was legally unenforceable. So, I have considered everything that has been said to determine whether Novuna has done anything that caused Mr G a loss or any other reason why it would be fair and reasonable to direct Novuna to pay something to him. In doing so, I have thought about the other matters PR has raised.

PR has pointed to Novuna's website that states that as no fees are paid for loans, "*the APR*

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[4] Under s.140A CCA, such an unfairness can be caused by (amongst other things) both the credit agreement, its terms and the way in which Novuna exercised its rights under the agreement.
[5] Further, if Novuna did make a mistake about the way in which it described how it worked out interest, in my view, that would not amount to the type of mistake that meant Mr G was able to set aside the loan – in short, I think he got precisely the loan he expected when he took it out.

and interest rate will be the same." However, this extract is from a website online today, whereas the loan was taken out several years earlier. Further, I cannot see that the extract was ever designed to apply to point-of-sale loans such as Mr G's, so this is of no assistance to me.

PR has also pointed to a number of other matters, including an article written by a barrister, another article explaining what APR is, a decision from another Ombudsman rejecting a similar complaint (with which PR disagrees) and example of how other businesses calculate interest. I have read and considered everything PR has sent to me, but they do not change the conclusions I have set out above.

In short, Mr G took out a loan, knowing how much he was borrowing and how much he needed to repay and for how long. I think that the APR is right, so he was aware of the rate he needed to know to be able to compare it to similar loans (although I have seen no evidence he did so or was interested in doing so). Given this, I do not think he has been charged an incorrect amount by Novuna and I cannot see it has treated him unfairly in any other way. I will not direct Novuna to do anything further.

My final decision

I do not uphold Mr G's complaint against Mitsubishi HC Capital UK PLC, trading as Novuna.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 6 May 2025.

Mark Hutchings
Ombudsman