

The complaint

Mr F complains that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance (“Novuna”) lent to him in an irresponsible manner.

What happened

I issued a provisional decision on this complaint last month. In that decision I explained why I thought part of the complaint should be upheld and what Novuna needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mr F was given three loans by Novuna between June 2023 and April 2024. Each of the loans remains outstanding and Mr F has more recently faced some difficulties making his repayments. A summary of Mr F’s borrowing from Novuna is as follows;

| Loan Number | Borrowing Date | Loan Amount | Monthly Repayment | Loan Term |
|--------------------|-----------------------|--------------------|--------------------------|------------------|
| 1 | 28/06/2023 | £ 10,000 | £ 193.05 | 60 months |
| 2 | 11/12/2023 | £ 9,000 | £ 242.61 | 48 months |
| 3 | 21/04/2024 | £ 12,000 | £ 323.27 | 60 months |

We’ve set out our approach to unaffordable/irresponsible lending complaints on our website and I’ve kept this in mind while deciding Mr F’s complaint.

The rules and regulations at the time Novuna gave these loans to Mr F required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an “affordability assessment” or “affordability check.”

The checks had to be “borrower” focused – so Novuna had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr F. In practice this meant that Novuna had to ensure that making the repayments wouldn’t cause Mr F undue difficulty or adverse consequences. In other words, it wasn’t enough for Novuna to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr F.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Novuna did what it needed to before agreeing to lend to Mr F.

Novuna has told us about the checks it did before lending to Mr F. Before each loan it asked Mr F for details of his income, and it validated his answer using data from credit reference agencies. Novuna checked Mr F's credit file to see what he was repaying to other lenders and how he had managed credit in the past. And then Novuna compared the disposable income Mr F appeared to have available against national expenditure estimates to ensure he would be able to repay the loan.

When he applied for the first loan Mr F was entering into a significant commitment with Novuna. The first loan was due to be repaid over a period of five years. But I am satisfied that, given there were no signs of any financial difficulties on his credit file, the checks that Novuna did were proportionate. And I am also satisfied that the results of those checks suggested that Mr F would be able to repay what he borrowed in a sustainable manner. So I don't think Novuna was wrong to give the first loan to Mr F.

But less than six months after that first loan had been agreed, Mr F asked to borrow again. He asked for a similar amount of borrowing when he was only at the very start of repaying his previous loan. I think the nature of that request should have given some serious concerns to Novuna about what was happening with Mr F's finances. And I think those concerns should have been magnified when, around four months later, Mr F again asked to take a significant loan from Novuna. By that time, his borrowing from Novuna in less than 12 months had reached almost 75% of his annual income.

So I am not satisfied that the checks Novuna did before agreeing loans two and three were proportionate. But although I don't think the checks Novuna did before agreeing these loans were proportionate that in itself doesn't mean Mr F's complaint should be upheld. I'd also need to be persuaded that better checks would have led to a responsible lender declining his loan applications.

Mr F's circumstances were complex. He operated a bank account jointly with his wife, and it was that account that received his salary each month. But Mr F also held another sole account with another bank. It was that account that received the proceeds from the loans he borrowed from Novuna and was used to make his monthly repayments.

Mr F's sole account doesn't appear on the credit report that he has sent us. I would assume that is because it is registered to an alternative address. But I think

proportionate checks should have identified the two separate bank accounts that Mr F was operating. One account was shown on the credit check, and so was used to verify his income. The details of the other account, being used to receive the loan proceeds and make the repayments, were supplied to Novuna by Mr F.

So I've looked at copies of Mr F's bank statements from around the time of each loan to get a better understanding of the true state of his finances. In performing that check I am not suggesting that this is exactly what Novuna needed to do. There are many other ways of getting an independent view of a consumer's finances. But given the time that has passed I think that reviewing bank statements gives me a good understanding of what would have been uncovered by what I consider to be proportionate checks.

Mr F's joint account appeared to be in excellent order. And based on a review of that account it wouldn't have been unreasonable for Novuna to agree all three loans, notwithstanding the concerns it should have had about the repetitive nature of Mr F's borrowing requests. But I do think the disposable income shown on those bank statements might have reasonably led to some additional questions about whether the additional borrowing was necessary.

But the same cannot be said for Mr F's sole account. That account clearly showed that Mr F was suffering from what appears to be a gambling addiction. There were significant amounts (both in terms of value and volume) of transactions to online betting providers. And those transactions, and the repayments to borrowing that was showing through that account, were being funded by new borrowing that Mr F was taking. I doubt that any responsible lender, had it seen the information shown on those bank statements, would have considered it reasonable to offer further credit to Mr F.

So I am currently satisfied that, as a responsible lender, Novuna wouldn't have provided loans two and three to Mr F had its checks identified the true state of his finances. And I think that the circumstances behind his loan applications mean that it would have been proportionate for Novuna to make enquiries of that nature. So I don't currently think it was responsible for loans two and three to have been given to Mr F. Novuna needs to put things right.

For completeness I've also considered whether Novuna acted unfairly or unreasonably in some other way given what Mr F has complained about, including whether its relationship with him might have been viewed as unfair by a court under s.140A of the Consumer Credit Act 1974. But I'm satisfied the redress I am directing below results in fair compensation for Mr F in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Novuna hasn't provided us with anything further. Mr F has provided some further comments. Although here I am only summarising what he has said, I want to reassure Mr F that I have read and carefully considered his entire response.

Mr F has asked whether I would think it more appropriate that the entire outstanding balance of loans two and three be written off, rather than just the charges and interest. He says better checks would have shown Novuna the harm its lending was likely to do, and that it would be borderline impossible for the loans to be repaid. Mr F has also asked for more information about Novuna's responsibilities if the debts do need to be repaid. And how any amendments to his credit file will be managed, and whether they will result in an increase to his credit score.

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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr F and by Novuna. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Given that Novuna hasn't provided me with any new evidence or further comments I see no reason to alter my conclusions that part of the complaint should be upheld. But I think it appropriate that I provide some further thoughts on the matters Mr F has raised – that relate to how things should be put right.

It is clear that Mr F has had the benefit of the money that was lent to him, although I accept that benefit will have been greatly impacted by the gambling problems that he has experienced. But I'm not persuaded that Novuna's decision to give loans two and three to Mr F was so flawed that it would be appropriate for the capital he borrowed to be written off. Whilst I think Novuna should have made additional checks, and those would have shown the lending to be unsustainable, I am mindful that the lending decisions were made on the basis of applications Mr F made. I haven't seen anything to suggest that Mr F had previously told Novuna about his problems, and for example asked Novuna to not grant him any further loans.

When any consumer is facing financial difficulties a lender is expected to treat them sympathetically. And, in cases such as this where the loans shouldn't have been agreed in the first place, that responsibility is greater. Novuna will need to liaise with Mr F to understand his current circumstances and agree what will be an affordable and sustainable repayment plan for the borrowing he still has outstanding on loans two and three.

I said that I think it reasonable that Novuna should remove any adverse information it has previously recorded on Mr F's credit file in relation to loans two and three. But I cannot agree that it would be reasonable to extend that direction to any adverse information that might be recorded in the future – to do so would effectively present Mr F with no consequences of not repaying the money he has borrowed. And I cannot determine whether the removal of any

historic adverse information will have any impact on Mr F's credit score. It would be up to the credit reference agencies to make that decision once any changes have been completed.

So I now repeat the conclusions I reached in my provisional decision. I am satisfied that, as a responsible lender, Novuna wouldn't have provided loans two and three to Mr F had its checks identified the true state of his finances. And I think that the circumstances behind his loan applications mean that it would have been proportionate for Novuna to make enquiries of that nature. So I don't think it was responsible for loans two and three to have been given to Mr F. Novuna needs to put things right.

Putting things right

I don't think Novuna should have agreed to give loans two and three to Mr F. So Novuna should do the following;

- remove any interest and charges still outstanding on loans two and three and treat all the payments Mr F made towards these loans as payments towards the capital.
- if reworking Mr F's loan accounts as I've directed results in Mr F effectively having made payments above the original capital borrowed on either loan, then Novuna should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement†.
- If reworking Mr F's loan accounts leaves an amount of capital still to be paid on the loan, then I remind Novuna that it should take a sympathetic view when seeking to agree an affordable repayment plan with Mr F.
- Novuna should remove any adverse information previously recorded on Mr F's credit file in relation to loans two and three.

† HM Revenue & Customs requires Novuna to take off tax from this interest. Novuna must give Mr F a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold part of Mr F's complaint and direct Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 June 2025.

Paul Reilly
Ombudsman