DRN-5704985

The complaint

Mr B has complained about the interest rate on a loan he took out with Mitsubishi HC Capital UK PLC, trading as Novuna Personal Finance ("Novuna").

What happened

Mr B, alongside his wife, took out a timeshare membership from a timeshare supplier ("the Supplier") in August 2014. The membership cost £9,846 and was paid for by Mr B taking out a loan for the full amount from Novuna in his sole name.

In July 2024, Mr B used a professional representative ("PR") to make a complaint to Novuna about the loan. The complaint was about the following issues:

- Mr B's loan was for £9,846 and set to run for 120 months at an interest rate of 5.5%. The APR was given as 9.9% and the monthly instalment was set at £127.30.
- 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 5.5% gave rise to monthly payments of £106.00, whereas an interest rate of 9.9% gave rise to monthly payments of £127.20. It followed, Novuna incorrectly applied the interest rate at the APR rate, rather than the contractual interest rate of 5.5%.
- 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 5.5%).
- All of this meant the loan agreement is unenforceable without a court order.

Novuna did not respond to this complaint and so PR referred it to our Service in September 2024. [1]

In October 2024, 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.*

[1] 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 B'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.

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 B's loan, which was a different type of loan arranged several years earlier.

One of our Investigators considered this latest complaint, but thought it was one that ought to be dismissed without any consideration of the merits. That was because she thought it was effectively an expansion of an earlier complaint referred to our Service in July 2022.

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

- Mr B 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.[2]
- PR explained that it disagreed with another decision issued by a different Ombudsman, rejecting a similar complaint to Mr B'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 of 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 said that even then, it led to Mr B 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 B. In other words, Novuna was not entitled to use such a method under the terms of the contract.
- PR pointed to the loan agreement that stated 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 5.5%.
- PR said this all meant there was an error in the credit agreement, meaning it was unenforceable and was breach of CONC.

As Mr B did not agree with our Investigator, the complaint was passed to me for a decision on the merits.

Having considered everything, I chose not to dismiss the complaint, but I did not think it was one that ought to have been upheld. An extract of my decision reads as follows:

> *"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 £9,846 (the amount borrowed) and the 'Total Charge for Credit' (the amount of the interest if the loan ran to term) was £5,430, meaning the total amount payable was £15,276. It also says that there were 120 monthly payments of £127.30. There is also a section titled 'Interest Charges' that gives the interest rate at 5.5% per annum and the APR as 9.9%.*
>
> *The Consumer Credit (Agreements) Regulations 2010 ("the Regulations") set out, at Schedule 1, what was to be included in Mr B's loan agreement. That included the*

[2] 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.

total amount payable, the amounts of 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 B's credit agreement, and I do not 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 –*
>
> *(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."*

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 the figures, I think 5.5% 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 (5.5% = (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 B's loan. Novuna 'front loaded' the interest, so his loan account showed that he owed £15,276 as soon as the loan was set up and then that was to be paid in 120 equal instalments. When doing this, it assumed that all the repayments would have made on time. But if, for example, Mr B 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 the agreement with Mr B.

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: 5.5% per annum. APR 9.9%.***
>
> *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 B'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 9.9% - 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 5.5%, 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 5.5% is based on the interest being front loaded in advance and on Mr B 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 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 B 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 B. It does not mean that Mr B would be entitled to a return of what he paid.

As noted above, entering into a regulated credit agreement is a regulated activity about which I can consider freestanding complaints. So, I have considered everything that has been said to determine whether Novuna has done anything that caused Mr B a loss or any other reason why it would be fair and reasonable to direct Novuna to pay something to him. The credit agreement set out the details of the loan between Novuna and Mr B. So, when he took out this 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 B 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 B knew these figures and found them acceptable when he entered into the agreement. So ultimately in my view, Mr B 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 mistake lies in the description of how the figures calculated rather than the calculation itself. In short, I think he got precisely the loan he expected when he took it out. It follows, I cannot see how, in these circumstances, he has lost out.

I will also briefly deal with some of the other matters raised. PR has pointed to Novuna's website that states that as no fees are paid for loans, "the APR 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 B'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 B 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."

Novuna responded to say it accepted my provisional findings.

PR, on Mr B's behalf, responded with several submissions on what I had said. In summary, it argued:

- For the avoidance of doubt, PR set out the basis for Mr B's complaint. It explained that it was down to a breach of the express terms of the credit agreement, namely that Novuna used a flat rate of interest and did not calculate interest "*in advance on what is assumed will be the daily outstanding balance of the Amount of Credit.*" PR pointed out that Novuna did not provide Mr B with anything that said it used the flat rate of interest when calculating the loan repayments, but PR argued the credit agreement used the '*Daily Outstanding Balance basis*'.
- PR pointed out other lenders that used the same language in their loan agreements that did not use a flat rate of interest when calculating repayments.
- PR argued that Novuna did not need to make any assumptions when calculating interest as everything needed was on the face of the credit agreement.
- Mr B expected to be charged the interest on the face of the loan agreement, which he was not, meaning he was misled over the true cost of the borrowing. It follows, I was wrong when I said Mr B got the loan he expected as he did not expect to be overcharged.
- PR ask the question – "*If our Client has a CCA loan agreement which states the interest is calculated on a Daily Outstanding Balance basis, can the Bank, override the CCA loan agreement and apply the Flat Rate of interest method on the interest calculations, which then contradicts the CCA loan agreement the Client signed?*"
- The way that Novuna expressed the interest rate on the credit agreement was not transparent and breached FCA CONC Rules.

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.

Having done so, I have not departed from my provisional findings. So I do not uphold Mr B's complaint for the reasons set out above in the extract of my provisional decision.

I have considered what PR said in response to my provisional findings, but I disagree with the arguments it puts forward.

It may be helpful for me to set out how I approach the determination of complaints, like Mr B's. First, I consider whether a business has done something wrong (here, has Novuna breached the FCA's CONC Rules) and, if so, has it caused a consumer a loss that requires me to direct it do something to put right that loss. In this case, I do not think Novuna has done anything wrong and, even if there was a technical breach of the Rules (which I do not find happened), I cannot see Mr B has suffered any loss.

PR says that the credit agreement states that the interest is calculated on a 'Daily Outstanding Balance basis', so I think it is helpful to set out what is said on the face of the credit agreement:

> *"**Interest Rate: 5.5% per annum.** **APR 9.9%.***
>
> *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."

I have taken it to mean from PR's submissions that when it talks about the 'Daily Outstanding Balance basis', it means that interest is calculated on a daily rate (e.g. 0.015% daily rate on an annual rate of 5.5%) and then charged to the account monthly, so that each month the overall amount paid toward the interest reduces as the capital is repaid. But that is not what this passage says would happen.

Instead, Novuna said the interest is calculated 'in advance', in other words it was calculated at the start of the loan term and not on a daily basis whilst the loan was actually running. Had Novuna calculated the amount of interest that was due to be paid on what PR says was the 'Daily Outstanding Balance' basis it would not have needed to calculate any interest amounts 'in advance'. So I simply do not think Novuna has breached its written agreement with Mr B in the way alleged (or at all).

PR has alleged that Novuna has not been transparent in the way in which it has set out the information it provided Mr B, and I note that it has a duty to provide information to Mr B in a way that is clear, fair and not misleading. But I also note that giving details on interest rates and how they are applied to loans is difficult – as demonstrated by the arguments in this complaint. On balance, I think that Novuna did clearly explain the information that was key to Mr B – the amount he borrowed, the amount he needed to repay and the length of the loan. I think the figure given for the APR was right, so he could compare it to other loans if he wanted, although there is no evidence that he did so or was interested in doing so. It is possible that Novuna could have been clearer in the way it provided Mr B information, but I think it was sufficiently clear to comply with the FCA's requirements.

But even if am wrong about that and Novuna was not as clear as it ought to have been (or that it gave incorrect information on the interest rate that applied), I do not think Mr B lost out as a result. As I said in my provisional decision, Mr B knew the loan he was signing up to. He knew how much he was repaying each month and for how long, and there is no evidence that he was unhappy with those figures, nor that he was trying to compare his loan with others that were available on the open market. So even if Novuna did present information differently, I cannot see how that would have made any difference to Mr B's decision to take out the loan.

It follows, I do not think Novuna needs to do anything further in respect of Mr B's complaint.

My final decision

I reject Mr B's complaint that Mitsubishi HC Capital UK PLC, trading as Novuna Personal Finance, applied the incorrect interest rate to his loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 August 2025.

Mark Hutchings
Ombudsman