

The complaint

Mr H's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr H and Mrs H were members of a timeshare provider (the 'Supplier') having purchased a timeshare that I'll call the 'Fractional Club' – which they bought on 18 July 2018 (the 'Time of Sale'). They entered into an agreement (the 'Purchase Agreement') with the Supplier to buy 1040 fractional points at a cost of £15,430.

Fractional Club membership was asset backed – which meant it gave Mr H and Mrs H more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr H paid for their Fractional Club membership by taking finance of £15,430 from the Lender (the 'Credit Agreement').

Mr H – using a professional representative (the 'PR') – wrote to the Lender on 31 January 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr H's concerns as a complaint and issued its final response letter, rejecting it on very ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr H disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it was it was passed to me. I issued a provisional decision upholding the complaint because I wasn't satisfied that the loan was affordable to Mr H and didn't think the Lender had acted fairly and reasonably in agreeing to the loan. The findings from my provisional decision are set out below.

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I currently think this complaint should be upheld because I don't think that the lender acted fairly in agreeing the loan to Mr H in the circumstances of this complaint.

However, before I explain why I have come to that conclusion, 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.

We have set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I have considered our approach when deciding Mr H's complaint.

The Lender needed to take reasonable steps to ensure that it didn't lend to Mr H irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the loan in a sustainable way. There is no set list of what reasonable and proportionate checks should look like, rather greater thoroughness might be reasonably expected where a person on a lower level of income may be borrowing a high sum or taking out borrowing over a longer period which could potentially cost more in the longer term.

Whilst I am not satisfied that Lender's credit assessment was reasonable or proportionate to Mr H's circumstances I don't think I need to explain why in any detail or go into what would have been shown if it had carried out additional checks. I am satisfied that from the information it was provided with and the limited checks it did make the Lender ought reasonably to have concluded that the loan was not sustainable and would be harmful to Mr H. I explain why below.

The loan agreement between the Lender and Mr H shows that:

- He had a gross annual income of only £13,000 at the Time of Sale.*
- He was applying to borrow £15,430 over 180 months – 15 years – with a total charge for credit over that period of £16,649 repayable by monthly payments of £178.22 with an APR of 11.2%.*

The Lender has said it validated his income of £13,000 through credit reference agencies and that it estimated that he had a net monthly income of £1,031.32. It said that his credit record showed that he had existing credit agreements with balances totalling £10,340 and monthly payments of around £138 each month as well as a mortgage of £7,578 and monthly payments of £268 - which it only allowed half for because he was married.

The Lender said the above monthly payments together with the £178.22 payable under the Credit Agreement left Mr H with £581.10 each month for 'other expenses' including the additional maintenance fees payable for his Fractional Club membership. It has suggested that this amount is generally sufficient to meet other expenses which are typical to someone with similar circumstances to Mr H based on 'national averages'. There are a couple of issues with what the Lender has said.

Firstly, I don't know what national averages it is referring to as I have seen nothing from the Office of National Statistics (ONS) that supports the Lender's assertion that £581.10 was sufficient to cover 'other expenses'. Secondly, the maintenance fees payable for Fractional Club membership are not something that I would expect to form part of 'national average' expenditure in any event. So, I don't think this should have been included in the amount available for 'other expenses' and as such Mr H only had around £500 each month for this – which typically covers such things as council tax, water bills, energy bills, car expenses, insurance etc.

It is also arguable that the money Mr H had available for other expenses each month was less than £500 as the Lender only took account of half the mortgage payments. This was on the basis Mr H was married but the Lender doesn't appear to have had any information about his wife's earnings and outgoings and whether she was contributing to the mortgage

payments. It would only have been appropriate for the Lender to take into account Mrs H contributing to the mortgage if it had established that she had sufficient means to contribute – and even then her contribution should be proportionate to their combined income unless there is evidence to the contrary.

However, even if it was appropriate to only take account of half the mortgage I think it should have been apparent to the Lender agreeing to loan Mr H £15,430 when he had existing credit obligations of over £10,000, a mortgage of £7,578 and he was a low income earner – given the minimum working wage at the time was £7.83 an hour – was not fair and reasonable and was unlikely to be sustainable. In short, the Lender ought reasonably to have concluded that the loan payments were not sustainable over the 15 year term given Mr H had only around £500 each month available for everything other than the payments due for his various credit agreements including his mortgage.

I am reinforced in the view that the Lender ought reasonably to have concluded the loan was not sustainable by the fact that Mr H was 56 at the time he applied for the loan in 2018 and as such the term of 15 years meant he could end up having to make loan repayments several years after state retirement age. I have seen nothing to suggest that he would have been able to make the loan payments without any adverse consequences once retired.

Even if I had been satisfied that the £500 available to Mr H each month meant he had enough for ‘other expenses’ it is questionable whether this would also been enough to comfortably cover the holidays which was the purpose of the Fractional Club membership the loan was to pay for. And I am not satisfied that it was fair and reasonable for the Lender to have agreed the loan in those circumstances even if it was to continue to argue it was sustainable.

Moreover, the maintenance costs that Mr H and Mrs H were responsible for were unlikely to remain the same and no consideration was given to how Mr H would manage to continue payments under the Credit Agreement if and when the maintenance payments increased, given how limited his income was.

In all the circumstances I am not persuaded that the Lender acted fairly and reasonably when it agreed the loan because Mr H could not sustain the payments over the term of the loan let alone afford to holiday using the membership he acquired with this loan.

Insofar as the Lender seeks to argue that Mr H has managed to keep up the loan payments and that this means the loan was sustainable, I reject any such argument. In short, this doesn’t mean the loan was sustainable when the Lender agreed it based on the information available.”

I set out the redress I thought the Lender should pay to Mr H.

I gave both parties the opportunity of responding to my provisional decision and providing any further information they wanted me to consider before making my final decision. Both the PR and the Lender PR responded to confirm my provisional decision was agreed.

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.

Having done so I think this complaint should be upheld for the reasons set out in my provisional decision. And, given that both parties have agreed with my provisional decision there is no reason for me to change the findings I made which, for the avoidance of doubt,

form part of the findings in this final decision.

In short, I am upholding this complaint because the Lender should have concluded that the loan wasn't affordable to Mr H.

Putting things right

Having found that Mr H should not have been provided with the loan because it was not affordable for him, I think it would be fair and reasonable to put him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr H and Mrs H agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Here's what I think needs to be done to compensate Mr H with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr H's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the annual management charges Mr H paid as a result of Fractional Club membership.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaway that Mr H and Mrs H used or took advantage of; and
 - ii. The market value of the holidays* Mr H and Mrs H took using their fractional points.

(I'll refer to the output of steps 1, 2 and 3 as the 'Net Repayments' hereafter)

- (4) Simple interest at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint. HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mr H a certificate showing how much tax it's taken off if he asks for one.
- (5) The Lender should remove any adverse information recorded on Mr H's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr H's Fractional Club membership is still in place at the time of this decision, as long as he agrees to hold the benefit of his interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify him against all ongoing liabilities as a result of his Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs M took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

My final decision

I uphold Mr H's complaint for the reasons explained. Mitsubishi HC Capital UK Plc must calculate and pay the redress I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 January 2026.

Philip Gibbons
Ombudsman