

## The complaint

Mrs B'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 her 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

Mrs B purchased membership of a timeshare that I'll call the 'Fractional Club' from a timeshare provider (the 'Supplier') on 11 August 2019 (the 'Time of Sale'). She and Mr B entered into an agreement with the Supplier to buy 910 fractional points at a cost of £12,421 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs B and Mr B 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.

Mrs B paid for Fractional Club membership by taking finance of £16,736 from the Lender (the 'Credit Agreement') which included a sum to pay off the balance of a previous loan taken out for a trial membership.

Mrs B using a professional representative (the 'PR') – wrote to the Lender on 15 February 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 Mrs B's concerns as a complaint and issued its final response letter on 28 March 2023, rejecting the complaint on every 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.

Mrs B disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it was passed to me. I asked the Lender to provide further information about its creditworthiness assessment before it decided to loan monies to Mrs B. I also asked the PR to provide further information about her finances. Following the parties providing additional information I issued a provisional decision ('PD') upholding the complaint because I thought the loan wasn't affordable for Mrs B. The findings from my PD are 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 the Lender acted fairly in agreeing the loan to Mrs B in the circumstances of this complaint.*

*However, 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.*

*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 Mrs B's complaint.*

*The Lender needed to take reasonable steps to ensure that it didn't lend to Mrs B irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mrs B 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.*

*Mrs B's stated income was only £18,000 so she was on a low income. She was also borrowing a reasonably high amount - £16,736 with a total charge for credit of a further £18,058. This was also payable over a relatively long period of 15 years.*

*Despite this the Lender has confirmed that it relied only on the information Mrs B provided on application for the loan along with information from a credit reference agency. Its use of an income validation tool to confirm the accuracy of her stated income of £18,000 and reliance on ONS figures for calculating Mrs B's essential expenditure rather than seeking further evidence from her about her finances in my view meant its checks weren't reasonable or proportionate given her low income, the amount she was borrowing and the term of the loan.*

*CONC 5.2.4G(3) sets out the sort of information that may be relevant for a firm to rely on when carrying out a creditworthiness assessment. This includes evidence of income and expenditure. CONC 5.3.1R(4) states that if a firm takes income or expenditure into account in its assessment then it is not generally sufficient to rely solely on a statement of what these are from the customer. And using an income validation tool, credit reference agency data and ONS figures were not a reasonable substitute for actual evidence of income and expenditure from Mrs B in this case in my view.*

*I have gone on to consider what, more likely than not, the Lender would reasonably have concluded if it had sought the evidence it should have done as to Mrs B's financial position.*

*The income and expenditure account Mrs B has provided shows a total income for her and Mr B of £2,658.81 and expenditure of £2,835, indicating a small monthly shortfall. This isn't totally consistent with the information shown in the bank statements Mrs B has provided for the four months before she started paying the loan (May to August 2019). These show slightly more was received into her account each month than went out – between £100 and £200 each month. They also show that the account had an ongoing credit each month of around £2,500.*

*However, whilst the bank statements don't suggest that Mrs B's outgoings were more than the income received into the account they don't support a finding that if the Lender had carried out reasonable checks it would have concluded that the loan was affordable. To the contrary, I think the bank statements show that her income and that of Mr B – which was from a pension as I discuss below – only left them with a small amount at the end of each month and although they may have built up a small ongoing credit of £2,500 in that account this doesn't suggest to me that Mrs B's financial position was such that the loan was sustainable. I am reinforced in that view by the fact that Mr B had recently retired due to ill*

*health and Mrs B says she told the Supplier the Fractional Club membership it was putting forward wasn't affordable because of this. The bank statements show receipt of the pension Mr B was drawing, so Mrs B was the sole earner.*

*I also take into account that Mrs B was 55 a month after the Time of Sale, so the loan term continued for three years past her state retirement age and I have seen no evidence the Lender made any enquiries as to how she might be able to pay the loan until she was 70 and was able to satisfy itself that the loan was sustainable for the whole term of 15 years, as I think it should have done to comply with its regulatory obligations.*

*I am also mindful that in addition to the monthly cost of the loan, Fractional Club membership also required Mrs B to pay monthly maintenance fees which were likely to increase over time, further eating into her clearly limited finances.*

*I have noted the Lender's argument that the monthly cost of the loan was only £49 more than what Mrs B was paying for her previous loan (which was consolidated) so her credit commitments were only increasing by that amount. However, the previous loan was very different, being a lot smaller and payable over a much shorter duration. So, even if that loan was sustainable – and I make no finding on that – this doesn't provide evidence the loan the subject of this complaint was.*

*It is also very questionable in my view whether Mrs B could comfortably cover the cost of holidays when paying for the loan and membership. And, given this was the whole purpose of Fractional Club membership, I am not satisfied it was fair and reasonable for the Lender to have agreed to the loan in the circumstances even if it continues to argue the loan was sustainable.*

I concluded that the Lender failed to carry out reasonable and proportionate checks when carrying out a creditworthiness assessment on Mrs B and if it had carried out such checks at the time it made the decision to lend the information would have shown that the loan was not sustainable and it would have refused the loan application. I then set out the redress I thought should be paid to Mrs B.

I gave both parties the opportunity of responding to my PD and providing any further information they wanted me to consider. The PR responded and said Mrs B agreed with the PD. The Lender also responded but didn't accept the PD and provided further comments they wanted me to consider. In summary it made the following points:

- If it had examined the bank statements the Ombudsman has relied on this would have supported the information already obtained through the checks it did carry out.
- Having reviewed the statements it has no concerns Mrs B would have been able to meet the monthly instalments without experiencing financial difficulty.
- Whilst Mrs B may have been on what could be considered a relatively low income the statements show her account was well managed and shows a healthy balance for large parts of the month.
- It is satisfied Mrs B had sufficient disposable income to meet both the monthly loan repayments and the costs of holding and using her Fractional Club membership.
- Its assessment of disposable income of £605.85 each month after essential expenditure already took the maintenance fees into account and excludes the loan payment for the previous loan she would no longer be paying.

- This level of disposable income is more than adequate to cover typical membership related expenses and any holiday related costs and the cost of holiday usage is reasonably considered discretionary meaning Mrs B retained control of when and if such expenses were incurred.
- In the circumstances whilst confident Mrs B's income was adequate to cover the costs of using the membership this shouldn't be part of the assessment.
- The point about Mrs B being of pensionable age during the term of the loan with no additional checks being carried out to confirm affordability is acknowledged but consider it is reasonable to conclude her financial position would have remained stable with her private and state pension likely to be broadly comparable to her earnings.

The parties having had the opportunity of providing further information I am now finalising my decision.

### **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.

I have considered everything that the Lender has said in response to the PD but I am not persuaded that I should change the findings I made or the conclusion I came to.

The Lender say that Mrs B's bank statements show that her finances were well managed and show a healthy balance for large parts of each month. But Mrs B managing her finances well and having a healthy balance in her account 'at times' during the month in my view doesn't provide evidence that the loan was affordable.

The statements show that only slightly more came into the account than went out each month and I think this shows that the loan wasn't affordable. And I don't accept the Lender's argument that it would have concluded the loan was affordable if it had carried out further checks in the circumstances - or that such a conclusion would have been a reasonable one for it to have come to.

The Lender says that its assessment of Mrs B's disposable income at £605.85 took maintenance fees into account but didn't deduct the previous loan payment which she would no longer be paying and it argues that this was more than enough to cover the costs of using the membership. But as I made clear in the PD, the Lender didn't obtain details of Mrs B's actual expenditure, instead relying on ONS figures, which in my view didn't amount to reasonable and proportionate checks.

The Lender has acknowledged that the loan term continued beyond Mrs B retirement age. It didn't carry out any checks about this to establish if the loan was affordable but says that it is reasonable to conclude her income would have remained stable. I don't agree this was a reasonable assumption in the absence of any evidence this was the case.

The Lender has also argued both that Mrs B's income was enough to cover the costs of holidaying and that in any event this shouldn't be part of the assessment. I don't agree that the costs of holidaying were affordable to Mrs B, given what her bank statements show. As for the argument this shouldn't be part of the assessment, the Lender knew the purpose of the loan was to purchase Fractional Club membership. And, given this it is fair and reasonable to expect the Lender to have refused the loan following reasonable and proportionate checks which would have shown Mrs B would struggle to pay the costs – as I

think is the case.

This is very much a secondary point given my finding that the Lender should have concluded that the loan wasn't affordable and refused Mrs B's application in any event.

### **Putting things right**

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

### **Fair compensation**

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

- (1) The Lender should refund Mrs B'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 Mrs B paid as a result of Fractional Club membership.
- (3) The Lender can deduct:
  - i. The value of any promotional giveaway that Mrs B used or took advantage of; and
  - ii. The market value of the holidays\* Mrs B took using her 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 Mrs B 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 Mrs B's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mrs B's Fractional Club membership is still in place at the time of this decision, as long as she agrees to hold the benefit of her interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify her against all ongoing liabilities as a result of her 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 Mrs B took using her 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 her usage.

### **My final decision**

I uphold this complaint for the reasons explained above and Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance must calculate and pay the redress I have set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 8 May 2026.

Philip Gibbons  
**Ombudsman**