

The complaint

Mr P complains that Mitsubishi HC Capital UK plc, trading as Novuna Personal Finance, won't refund to him the money that he paid for some holiday club membership point rights. He's being represented in his complaint by a legal adviser.

What happened

Mr P and his wife entered into an acquisition agreement to buy 1,100 holiday club membership point rights from a holiday company in August 2019. The purchase price was £14,287 and Mr P also entered into a fixed sum loan agreement with a lender that is now known as Novuna Personal Finance for a loan of £18,342, which included £4,055 to repay an outstanding from another lender. Mr P agreed to make 180 monthly repayments of £211.85 to Novuna Personal Finance.

Mr P's representative made claims, on behalf of Mr P, to Novuna Personal Finance under sections 75 and 140A of the Consumer Credit Act 1974 in January 2023. The representative's letter to Novuna Personal Finance said that: the acquisition agreement and the loan were misrepresented to Mr P; the credit broker wasn't authorised to carry on a regulated activity; Mr P doesn't remember an affordability assessment being carried out which amounts to irresponsible lending; the membership point rights were sold as an investment; the sales company was in liquidation; the terms of the acquisition agreement are unfair; and the relationship between Mr P and Novuna Personal Finance is unfair.

Novuna Personal Finance responded to those claims in detail and set out the reasons that it said that it was unable to uphold them. Mr P wasn't satisfied with its response so he complained to this service.

Our investigator didn't recommend that Mr P's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale. She said that she hadn't seen enough to suggest that the relationship between Mr P and Novuna Personal Finance was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Mr P and she wasn't persuaded that the loan agreement wasn't arranged by an authorised credit broker. She didn't consider that the liquidation of the sales company gave rise to a claim under section 75 or caused Mr P's relationship with Novuna Personal Finance to be unfair.

Mr P's representative says that the loan was arranged verbally by telephone during the holiday company's presentation and that Mr P didn't receive any loan documents until three weeks after he returned to the UK and that was only because he persistently rang Novuna Personal Finance to ask for them. Mr P's representative has provided additional documentation to evidence irresponsible lending, including bank account statements, a credit report, Mr P's P60 for the tax year ending in April 2020, an income and expenditure form and a statement of truth, and it has asked that Mr P's complaint be referred to an ombudsman.

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 agree with our investigator that Mr P's complaint shouldn't be upheld for these reasons:

- Novuna Personal Finance has provided a copy of the acquisition agreement, the terms and conditions, a separate standard form of the withdrawal notice that could be given to withdraw from the agreement, a standard information form, a member's declaration and a loan consolidation instruction, all of which were signed by Mr P and his wife in August 2019;
- it has also provided a copy of a loan application by Mr P's wife that was declined, a copy of Mr P's loan application and the loan agreement that was signed by Mr P also in August 2019;
- Mr P's representative made claims to Novuna Personal Finance in January 2023 under sections 75 and 140A: section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met) and section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor;
- I'm not determining the outcome of those claims as only a court would be able to do that but I'm considering whether or not Novuna Personal Finance's response to them was fair and reasonable in the circumstances;
- Mr P's representative's January 2023 letter says that Mr P and his wife were told that: they had purchased an investment and that their timeshare would considerably appreciate in value; they would have a share of a property and its value would considerably increase so they were promised a considerable return on investment; they could sell the membership point rights back to the resort or easily sell them at a profit; and they were led to believe that they would have access to the holiday apartment at any time all year round;
- I consider it to be clear from the acquisition agreement that Mr P and his wife bought 1,100 holiday club membership point rights with a term of fifteen years expiring in December 2033 – and the standard information form says: *"The Vacation Club is a multi-resort holiday Points system which allows Members to acquire their Points each year to use and enjoy the various Resorts located worldwide held within the Vacation Club from time to time"*; and: *"Points Tables and examples of the various reservations and internal usage possibilities are set out in the Members Guide and Directory"*;
- the member's declaration was signed by Mr P and his wife and they also initialled next to each of the numbered paragraphs of the declaration – it says: *"We understand that any points we may purchase will be for a limited duration and expire on 31/12/2033 (Term) and that we have the flexibility to use such Points when we wish to reserve holidays during the Term. All reservations are made strictly on a first come basis and subject to availability"*;
- the member's declaration also says: *"We understand that [the holiday company] does not and will not run any resale or rental programme and will not repurchase Vacation Club Points other than as a trade against future property purchases ..."*; and: *"We understand that the purchase of our membership in Vacation Club is for the primary*

purpose of holidays and is not for the purposes of a real estate interest or an investment in real estate and [the holiday company] makes no representation as to the future price or value of the Vacation Club Holiday product”;

- the holiday company says that Mr P and his wife used the membership for a promotional holiday in February 2020 and they only made one other request, in December 2019, but the requested accommodation was fully booked so they were offered alternatives which they declined and they stopped paying the management fees in 2020 so their membership was suspended from use in May 2021;
- neither Mr P nor his representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to Mr P and his wife by the holiday company before their August 2019 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr P and his wife that the membership point rights were an investment, that the membership point rights were misrepresented to them by the holiday company or that they were induced into entering into the acquisition agreement by any such misrepresentations;
- Mr P's representative's January 2023 letter also says that the sales company started a liquidation procedure in December 2020 meaning that Mr P wouldn't be able to recover any amounts that were expected to be awarded to him by the courts – and our investigator said that that wasn't an allegation of misrepresentation or breach of contract and that she couldn't see why it would be relevant to an assessment of unfairness under section 140A;
- I've seen no evidence to show that the holiday company has stopped trading and I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company for which Novuna Personal Finance would be liable under section 75 in these circumstances;
- Mr P's representative's January 2023 letter also says that the credit broker wasn't authorised to carry on a regulated activity but the credit intermediary was identified on the loan agreement and I can see that that credit intermediary was authorised by the Financial Conduct Authority in August 2019 and I'm not persuaded that Mr P's representative has provided enough evidence to show that the loan was arranged for Mr P by an unauthorised credit broker;
- the letter also says that Mr P doesn't remember an affordability assessment being carried out which amounts to irresponsible lending and Mr P's representative has provided further evidence from Mr P, in response to our investigator's recommendation, about irresponsible lending, including banks account statements, a credit report, Mr P's P60 for the tax year ending in April 2020, an income and expenditure form and a statement of truth;
- Mr P's wife signed a loan application in August 2019 which said that she was an employed home-owner with a gross annual income of £32,000 but the loan application was declined;
- Mr P then signed a loan application which said that he was an employed home-owner with a gross annual income of £40,000 – his application was accepted and he also signed the loan agreement which also included that information and he declared on the loan agreement that the information that he'd given was correct;
- Novuna Personal Finance says that it searched Mr P's credit record and used it with other information provided on the application to calculate a credit score which exceeded its minimum lending criteria – it also says that it utilises a third-party

affordability product from a credit reference agency and there were no indications that Mr P would struggle to service the loan agreement;

- it says that Mr P's income was validated using data obtained from credit reference agencies and it estimated that his net monthly income was £2,561 - his credit record showed that he was paying £846.59 each month for his existing credit commitments and it attributed £372.50 of the mortgage payment to him and that, after those payments and the loan repayment of £211.85, he would be left with approximately £1,130 each month for other expenses, which based on national averages is generally sufficient to meet the other expenses which are typical to someone with similar circumstances – so there were no concerns about making the loan to him;
- Mr P's statement of truth describes his financial situation and the loan application process and says: *"There was no credit check, no need to complete an application form, no provision of a contract, terms and conditions, no discussions about interest rates or how much I had to repay"*; but Novuna Personal Finance has provided a copy of the loan application that was signed by Mr P and a copy of the loan agreement that he also signed and which clearly set out the interest rate and the other required financial information;
- the P60 that Mr P provided shows that his income for the tax year ending in April 2020 was £41,128.79 which is consistent with the information contained on the loan application and the loan agreement;
- the member's declaration says: *"We understand clearly what we have purchased and, having carefully considered this and our other financial commitments, are able to pay the amounts due on the dates agreed and, in the case of purchases made with the assistance of finance, agree that we are not aware of any future event that may prevent us from meeting the monthly repayments"*;
- the holiday company has provided an extract from its records from August 2019 which says: *"... both said they had given their decision plenty of thought and it was affordable, I explained the SB to Novuna Personal Finance consolidated loan, the clients were happy with this and said they would be looking to make overpayments. Clients easy going, took time to read the member's declaration very thoroughly before signing. Both said they were very happy at the end of our meeting"*;
- Novuna Personal Finance has provided a statement for Mr P's loan account which shows that he's made all of the loan repayments when they've been due;
- the loan was made to Mr P in August 2019 but I've seen no evidence to show that he complained to Novuna Personal Finance that it hadn't conducted an affordability assessment until his representative's January 2023 letter – if the loan was unaffordable for him I consider that it would be reasonable to expect him to have contacted Novuna Personal Finance about that issue sooner than he did;
- having carefully considered all of the information that Mr P has provided, including his credit report, his bank account statements and his income and expenditure form, I'm not persuaded that there's enough evidence to show that the loan was unaffordable for him in August 2019 when it was made to him and I consider that it would have been reasonable for Novuna Personal Finance to have concluded on the basis of the information that Mr P had provided that he could afford a loan with a monthly repayment of £211.85 at that time;
- I'm not persuaded that there's enough evidence to show that Novuna Personal Finance should have done more to assess the affordability of the loan for Mr P, that it lent to him irresponsibly or that it has acted incorrectly in connection with the loan;

- Mr P's representative's January 2023 letter says that the terms of the acquisition agreement are unfair – but it would be for a court to determine whether or not any of the terms in that agreement or the other documents that Mr P and his wife entered into with the holiday company are unfair;
- I don't consider that the presence of an unfair (or potentially unfair) term alone is likely to mean that a court would conclude that it created an unfair relationship between a debtor and a creditor as the court would consider how the term operated in practice and whether the operation of that term caused the relationship to be unfair;
- I'm not persuaded that there's enough evidence to show that the terms of the documents have been applied or operated unfairly against Mr P and his wife and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the documents created an unfair relationship between Mr P and Novuna Personal Finance;
- I'm not persuaded that there's enough evidence to show that Mr P's relationship with Novuna Personal Finance was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mr P and Novuna Personal Finance in these circumstances;
- I sympathise with Mr P for the issues that he and his wife have had with their membership point rights and the financial difficulties that he's described in his statement of truth but I consider that Novuna Personal Finance's response to the claims that had been made to it was fair and reasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Novuna Personal Finance to refund to Mr P any of the money that he's paid under the loan agreement, to cancel the loan agreement, to pay him any compensation or to take any other action in response to his complaint.

If he hasn't already done so, I suggest that Mr P contacts Novuna Personal Finance and explains his financial situation to it. It's required to respond to any financial difficulties that he's experiencing positively and sympathetically.

My final decision

My decision is that I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 April 2024.

Jarrold Hastings
Ombudsman