

The complaint

Mrs T complains that Mitsubishi HC Capital UK plc, trading as Novuna Personal Finance, won't refund to her the money that she paid for a trial membership of a holiday club. She's being represented in her complaint by a legal adviser.

What happened

Mrs T and her husband entered into an agreement with a holiday company for a trial membership of a holiday club in August 2011. The price was £3,995 and Mrs T entered into a fixed sum loan agreement with a lender that is now known as Novuna Personal Finance for a loan of that amount. She agreed to make a payment of £192.64 and then 35 monthly repayments of £142.64 to Novuna Personal Finance but the loan was fully repaid in September 2012.

Mrs T and her husband then entered into a fractional property owners club application and purchase agreement with the holiday company in April 2013 and they surrendered their trial membership at that time. The purchase price was £10,960, from which a trade-in value for their trial membership of £160 was deducted so the amount due from them was £10,800. Mrs T's husband entered into a fixed sum loan agreement with the same lender for a loan of that amount.

Mrs T's representative made claims, on behalf of Mrs T and her husband, to Novuna Personal Finance under sections 75 and 140A of the Consumer Credit Act 1974 in October 2017 about the August 2011 and April 2013 purchases. It said that Mrs T and her husband had claims for misrepresentation against the holiday company for which Novuna Personal Finance is jointly and severally liable under section 75 and the misrepresentations and practices in the sales presentations made the finance agreements unfair under section 140A and it expected a full indemnity of the loan repayments made to Novuna Personal Finance under the loan agreements.

Novuna Personal Finance responded to those claims in detail and said that it didn't feel that the evidential threshold in these type of claims had been met so it didn't uphold the claims. Mrs T and her husband weren't satisfied with its response so they complained to this service. Our investigator said that Mrs T had used a loan from Novuna Personal Finance to pay for the trial membership and her husband had used a loan from it to pay for the fractional ownership product and that Mrs T's complaint about Novuna Personal Finance's response to the claims that had been made to it about the trial membership would be considered separately from her husband's complaint about its response to the claims that had been made to it about the fractional ownership product.

Our investigator didn't recommend that Mrs T's complaint about Novuna Personal Finance's response to the claims that had been made to it about the trial membership should be upheld. He said that he hadn't seen enough to suggest that the relationship between Mrs T and Novuna Personal Finance was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He thought that the timing of Mrs T's misrepresentation claim under section 75 gave Novuna Personal Finance a complete defence to it.

Mrs T's representative says that it doesn't agree with our investigator's recommendation so her complaint has been passed to me for a 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.

Having done so, I agree with our investigator that Mrs T's complaint shouldn't be upheld for these reasons:

- Mrs T and her husband had bought a trial membership of a holiday club from the holiday company in August 2011 and Mrs T entered into a loan agreement with Novuna Personal for a loan to pay for it – I've not been provided with a copy of the trial membership agreement or any of the other documents that I consider it to be likely that Mrs T and her husband would have entered into with the holiday company at that time – other than a member's declaration which Mrs T's representative has provided;
- Mrs T and her husband then bought a fractional ownership product from the holiday company in April 2013 and they surrendered their trial membership at that time - Mrs T's husband entered into a loan agreement with the Novuna Personal Finance for a loan to pay for it;
- Mrs T's representative made claims, on behalf of Mrs T and her husband, to Novuna Personal Finance under sections 75 and 140A in October 2017 about the trial membership and the fractional ownership product and a complaint was then made to this service - but in this decision I'm only considering Mrs T's complaint about Novuna Personal Finance's response to the claims that had been made to it about the trial membership: Mrs T's husband's complaint about Novuna Personal Finance's response to the claims that had been made to it about the fractional ownership product will be considered separately;
- we don't have a free hand to consider every complaint that's referred to us and our rules, which we're required by law to follow, say – amongst other things – that we can't normally deal with a complaint if it's referred to us more than six years after the event complained of; or (if later) more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint;
- Mrs T's complaint is that Novuna Personal Finance turned down the claims that had been made to it about the trial membership and I accept that she referred her complaint to this service within six years of that happening - but I need to consider whether the Limitation Act 1980 applies to her claims;
- I'm not determining the outcome of Mrs T's sections 75 and 140A claims in this decision as only a court would be able to do that but I'm considering whether or not Novuna Personal Finance's response to those claims was fair and reasonable in the circumstances;
- 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);
- Mrs T's claim under section 75 is that the trial membership was misrepresented to her and her husband and that they wouldn't have bought it if it hadn't been misrepresented to them - if the criteria for a claim under section 75 were met,

Novuna Personal Finance would be expected to consider that claim unless the claim was brought outside of the time limits set out in the Limitation Act in which case it would be entitled to rely on the Limitation Act and to not consider the claim;

- the time limit for a misrepresentation claim (whether under section 2 or 9 of the Limitation Act) is six years from the date on which the cause of action accrued (which is when everything needed to make a claim had occurred);
- I consider that Mrs T could have made a claim to the holiday company or Novuna Personal Finance about the misrepresentations that she says induced her and her husband into buying the trial membership in August 2011 as that was the latest time that any misrepresentations about the trial membership would have been made to them and any loss would have been incurred as that was when Mrs T also entered into the loan agreement to pay for the trial membership;
- I consider that Mrs T's cause of action accrued at that time, so she would have had six years from then to bring a misrepresentation claim against either the holiday company or Novuna Personal Finance – but a claim wasn't made under section 75 until October 2017, more than six years later and outside of the time limits set out in the Limitation Act so I consider that Novuna Personal Finance has a defence to the claim and I find that it wouldn't have been unreasonable for it to have rejected the claim on that basis;
- Mrs T's representative's October 2017 letter to Novuna Personal Finance said that the misrepresentations and practices in the sales presentations made the finance agreements unfair under section 140A 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;
- that letter doesn't describe the alleged misrepresentations that were made to Mrs T and her husband by the holiday company before their purchase of the trial membership or the practices in the sales presentation for the trial membership that caused Mrs T's relationship with Novuna Personal Finance to be unfair;
- Mrs T and her husband entered into the trial membership agreement in August 2011 and Mrs T's representative says that they only used it once, in April 2013 when they agreed to surrender their trial membership and to buy a fractional ownership product;
- the loan to pay for the trial membership was made to Mrs T in August 2011 and was fully repaid in September 2012;
- neither Mrs T nor her representative has provided a detailed account of the circumstances in which any misrepresentations were made, the conversations that took place or the information that was provided to Mrs T and her husband before they purchased the trial membership;
- I've seen no evidence to show that Mrs T complained to either the holiday company or Novuna Personal Finance about any alleged misrepresentations until her representative's October 2017 letter to Novuna Personal Finance, more than six years after she and her husband had entered into the trial membership agreement and more than four years after they'd surrendered their trial membership - if the trial membership had been misrepresented to them, I consider that it would be reasonable to expect her to have contacted either the holiday company or Novuna Personal Finance about the misrepresentations sooner than she did;
- I'm not persuaded that there's enough evidence to show that the trial membership was misrepresented to Mrs T and her husband by the holiday company or that they

were induced into entering into the trial membership agreement by any such misrepresentations;

- I've seen no evidence to show that Mrs T complained to either the holiday company or Novuna Personal Finance about the practices that were used by the holiday company in the sales presentation about the trial membership until her representative's October 2017 letter – if unacceptable sales practices had been used on her and her husband by the holiday company and they didn't want to buy the trial membership, I consider that it would be reasonable to expect Mrs T to have contacted either the holiday company or Novuna Personal Finance about that issue sooner than she did;
- I'm not persuaded that there's enough evidence to show that the holiday company used unacceptable practices in the sales presentation about the trial membership;
- I'm not persuaded that there's enough evidence to show that Mrs T'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 Mrs T and Novuna Personal Finance;
- I consider that Novuna Personal Finance's response to the claims that had been made to it about the trial membership was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Novuna Personal Finance to refund to Mrs T any of the money that she paid under the loan agreement, to pay her any compensation or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 10 April 2024.

Jarrold Hastings
Ombudsman