

The complaint

Miss J complains that Mitsubishi HC Capital UK Plc trading as Novuna¹ ('Novuna') is liable to pay her compensation following a complaint made about a timeshare bought using credit provided by Novuna.

What happened

On 27 March 2017, whilst on a holiday, Miss J attended a sales presentation from a timeshare provider (the 'Supplier'). As a result of this presentation, Miss J purchased membership of an asset-backed timeshare called the Fractional Property Owners Club ('FPOC') from the Supplier (the 'Time of Sale'). She bought 1,500 Fractional Points at a cost of £12,318.

Under the terms of the FPOC, Miss J could exchange her Fractional Points for holidays, and her 1,500 points entitled her to take a one-week holiday from the Supplier's portfolio of resorts every other year.

Miss J paid for this FPOC membership with finance provided by Novuna. She entered into a 15-year Fixed Sum Loan Agreement (the 'Credit Agreement') for £12,318. The total repayable including interest (APR 11.9%) was £25,610.40.

On 18 April 2017 Miss J sent an email to the Supplier saying she wished to withdraw from the FPOC membership due to her "*financial constraints*". She went on to explain that she had waited for three weeks and was yet to receive the folder of all the purchase paperwork that the Supplier said it was going to post to her, and she needed it to really read and understand all the information. As she had waited for it this meant she had passed the 14-day rescission period.

Later that day the Supplier replied. It said, in summary:

- The finance deal had been gone over in detail and she had confirmed she was comfortable with it.
- She was provided with the official documentation, which was the most important information, and had also been given an iPad which contained everything, so she wasn't missing anything.
- Her FPOC membership had already been activated and the 14-day period during which she could withdraw from the agreement had passed. She had been aware of this 14-day period at the Time of Sale, 27 March 2017.

On 20 April 2017 Miss J called the Supplier to find out how she could withdraw from the membership. Later that day Miss J called Novuna who treated the call as a complaint. In summary she said to Novuna:

¹ At the time the finance agreement was brokered, Mitsubishi HC Capital Plc was trading as 'Hitachi'. However, for ease I shall refer to Novuna throughout.

- She had been convinced by the Supplier to sign up because it had made the FPOC membership sound amazing.
- She wanted to take the membership but wanted to assess her finances etc. before fully committing.
- She had asked the Supplier to send the documents to her home in the UK so she could assess them properly, but they didn't send them for at least three weeks.
- Once she had received the pack, she reviewed what she had signed up to and realised she couldn't afford it and wanted to withdraw, but she was no longer able to as it was outside of the 14-day period.

On 21 April 2017 Miss J sent an email to Novuna. This was to inform it that she had cancelled her FPOC membership contract with the Supplier "...*due to financial constraints beyond [her] control.*" And she asked Novuna to cancel her Credit Agreement repayments. Novuna would not do that.

As Miss J was unable to progress her complaint to her satisfaction with either Novuna or the Supplier, she referred it to our Service. In summary, and where relevant, her complaint to us was:

- She was provided with too much information by the Supplier on the day of sale and was made to sign the deal on the day as she was told it wasn't going to be available after a few days.
- She only signed the deal under pressure, having been in the process from 9am-11pm.
- There was a breach of contract – the Supplier did not book the holiday to Malaysia that was required. She ended up having to book herself in expensive accommodation.

On 10 May 2017 Novuna sent Miss J its final response to her complaint, which it did not uphold. It said, in summary:

- Miss J called Novuna on 12 April 2017 to ask it if she could change the date of the direct debit payment. No complaint or expression of dissatisfaction was made at that time.
- Miss J had signed the Credit Agreement having been given copies of all the sales and finance documentation to read.
- Miss J was initially going to purchase an annual FPOC membership, but having discussed the management charges with the Supplier, she decided on a bi-annual membership to reduce the charges.
- Miss J was offered time to think about the purchase, but she was happy to proceed.
- On 30 March 2017, whilst still on holiday, she asked the Supplier more questions about how FPOC membership worked, how to make referrals, the sale of the property tied to her FPOC membership and about worldwide travel. On 3 April 2017, after returning to the UK, she called the Supplier and asked it about booking a holiday for her brother. In neither of those conversations did she indicate that she was at all unhappy with the membership.
- Novuna carried out the appropriate creditworthiness assessment having carried out a credit search from which no adverse information was reported. The loan application was completed with Miss J's input, and she confirmed that she was employed and a

homeowner.

On 7 June 2017 Miss J wrote to our Service with some more detailed recollections of what had happened. In summary, she said:

- The sales information was too much to comprehend within a day and she was made to sign the deal on the day. She was on holiday and could not read so much bulky information.
- She signed the deal under pressure, having been in the sales process from 9am until 11pm. She felt tormented afterwards.
- The Supplier breached the contract as it hadn't booked her hotel accommodation in Malaysia and she had to do that herself, booking expensive hotels.

An Investigator at our Service considered everything that Miss J had said and sent to us. As Miss J had told Novuna that she was unable to afford the loan, so that our Investigator could consider whether the loan provided by Novuna was affordable, she asked Miss J to see evidence of her income and expenditure just before the Time of Sale. Miss J provided bank statements in her name (covering the 3 months before she was granted the loan) along with an explanation of her employment status and income.

In November 2022 our Investigator, having considered just the affordability of the loan provided by Novuna at the Time of Sale, told Miss J that she was unable to say, on the basis of the evidence she had seen, that it was unaffordable or unsustainable for her at that time. But the Investigator explained that Miss J's complaint would remain with our Service and the remaining parts of the complaint relating to how the timeshare was sold would be assessed at a later date.

In September 2023 another Investigator assessed Miss J's complaint again. The Investigator thought Miss J's complaint, although not expressed in these exact terms, was about the fairness or otherwise of her credit relationship with Novuna for the purposes of Section 140A of the Consumer Credit Act 1974 (the 'CCA') and Novuna's handling of her claim under Section 75 of the CCA. But having considered everything, the Investigator didn't think either aspect of this complaint should be upheld. The Investigator also said that as no further evidence had been submitted in relation to Miss J's complaint about Novuna's decision to lend to her, she saw no reason to depart from the answer given by the previous Investigator.

Miss J did not accept this outcome. She wrote to the Investigator several times explaining, in general terms, that she could not afford the loan and had tried to cancel the membership with the Supplier.

As no agreement on an outcome to this complaint could be reached between Miss J and the Investigator, the matter 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.

And when doing that, the Financial Conduct Authority ('FCA') Handbook of Rules and Guidance requires that I take into account the following under Rule 3.6.4 of the Dispute Resolution Rules ('DISP'): relevant law and regulations; the regulator's rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

Where I have found evidence is incomplete, inconclusive or contradictory, I have made my decision on the balance of probabilities – what I think is more likely than not to have happened – given the available evidence and wider circumstances.

When bringing her complaint, Miss J didn't set out on what regulatory or legal basis she felt Novuna needed to do something to put right what she said went wrong – I make no criticism of her in not doing so as I wouldn't expect her to necessarily know these things. Our Investigator considered the complaint and thought parts of it amounted to complaints that Novuna should have considered under the CCA, and having considered everything, I agree. So, I've reflected that in my approach to this complaint.

Miss J's complaint is in two parts. Firstly, she has complained that the Supplier made misrepresentations at the Time of Sale which induced her into making the purchase. She also said there was a breach of contract. This is in effect a claim to Novuna under Section 75 of the CCA and a complaint to our Service that Novuna did not consider her claim fairly.

Miss J has also said she was put under undue pressure to make the purchase and take the associated Credit Agreement which she wouldn't have otherwise done, and that the Credit Agreement was unaffordable. This is a complaint of unfairness, and that the actions of the Supplier and/or Novuna at the Time of Sale led to Miss J being party to a credit relationship with Novuna that was unfair to her, for the purposes of Section 140A of the CCA.

Was there a misrepresentation or breach of contract?

I have considered whether there may have been a misrepresentation made by the Supplier in their discussions around Miss J's plans to travel to Malaysia.

A misrepresentation is an untrue statement of fact, made by the Supplier, which induces a consumer into entering a contract. So, in Miss J's case, for me to say there had been a misrepresentation by the Supplier during the sales process, I would have to be satisfied, on the balance of probabilities, that Miss J was told something that was factually untrue, and that this induced her to make the FPOC purchase.

But there is little evidence to support this. Miss J has not provided any detail about who said what, when, and in what circumstances about booking this Malaysia trip. I think it likely that Miss J probably did tell the Supplier during the sales process that she needed to book accommodation in Malaysia, but even if the Supplier did say that booking this trip as part of her FPOC membership was possible, there is nothing to suggest this was actually untrue. The FPOC membership did present the opportunity to book world-wide hotel accommodation via the Supplier's Reservation Department, and the evidence suggests that Miss J was advised that she would need to do this in order to facilitate any booking. So, I am not persuaded that the Supplier made any untrue statement of fact in this regard.

But in addition to Miss J alleging that the Supplier made a misrepresentation (and as I've said, I am not persuaded that it did) Miss J has stated that the Supplier said it would book accommodation for her in Malaysia, and it did not do this. Miss J has said this is a breach of contract. But I cannot see there is any substance to this complaint point. I have not seen any evidence which persuades me that the Supplier agreed to book any specific accommodation, at a specific time, on her behalf, and failed to do so. In fact, as I've said above, the evidence suggests that Miss J was advised to contact the Reservations Department if she wished to make a booking, and it does not appear that she did this.

I can see that Miss J may have been interested in the FPOC membership as it afforded the opportunity to book accommodation worldwide, and as I've said above, I think it likely that she mentioned her planned Malaysia trip to the Supplier during the sales process. But there

is no evidence to suggest that there was a contractual agreement made between Miss J and the Supplier for it to do so.

So having considered everything, I am not persuaded, on the balance of probability, that the Supplier made an actionable misrepresentation, or there was a breach of contract. So, it follows that I do not think Novuna was unfair or unreasonable in its handling of Miss J's Section 75 claim.

Was Miss J's credit relationship with Novuna unfair to her?

I've already explained why I am not persuaded that the contract entered into by Miss J was misrepresented by the Supplier, or there has been a breach of contract. But there are other aspects of the sales process in question that, being the subject of Miss J's dissatisfaction, I need to explore in more detail. These include that she was put under undue pressure to make the purchase, and that the finance provided by Novuna was unaffordable for her.

When looking at the Supplier's sales process, I've considered:

- The Supplier's sales and marketing practices at the Time of Sale; and
- The provision of information by the Supplier at the Time of Sale.

And in considering these aspects of the sale, I've considered the impact that one or both had on Miss J and her credit relationship with Novuna.

Was Miss J pressured into making the purchase?

Miss J has set out how she was put under undue pressure by the Supplier, and only made the FPOC purchase because of this pressure. She has said the sales process lasted from 9am until 11pm. She has said she didn't really understand what she was purchasing, and thought she had to agree to the purchase there and then as the deal was only available on that day.

I'm required to take into account, when appropriate, what I consider was good industry practice at the time – which, in this complaint, is the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code'). The RDO Code sets out, amongst other things, the Sales and Marketing Principles. And those Principles state that selling members (like the Supplier) had to ensure that it used "*appropriate selling methods that treat the consumer with respect and allow the consumer choice between purchasing and reflection.*"

From what I know of the Supplier's general sales practices at the time, I don't doubt that the sales process Miss J attended was lengthy. But Miss J hasn't described what happened during the time she was there, nor has she described what was said to her, by whom and in what circumstances. So, the allegation that she only made the purchase and took the associated Credit Agreement as a result of the pressure she was put under, has very little evidence to support it.

And Miss J has not said the Supplier had prevented her from leaving at any point. It seems to me that the reason she stayed was because she was interested in making the purchase. Miss J, in her later submission to our Service, has said that she was "*tormented*" after purchasing the FPOC membership because of the pressure she was put under. But this is simply not supported by the evidence submitted. I can see she had several conversations with representatives of the Supplier after making the purchase and whilst still on the holiday, and she seems to have been interested in referring her friends to the Supplier for them to become members too. This is not suggestive of someone who was unhappy about their

purchase, or the way it had been sold to them.

Although I accept that the particular timeshare that was being presented to Miss J was fairly complex, I also cannot see that it wasn't explained clearly enough to be unfair to her. I can see that she was in the presentation and sales process for quite some time, and she had sought clarification about the management charges which she had originally thought were included in the price. And following a discussion on this point she decided to take a bi-annual membership rather than an annual one. This leads me to think the explanations around the product were sufficient for Miss J to make an informed decision as to whether it was suitable for her or not, and did not cause any unfairness.

What's more, I have seen that Miss J was also given a 14-day 'cooling off' period following the sale, during which time she could cancel the purchase and the associated Credit Agreement without penalty. I appreciate that Miss J said she didn't want to read the documentation that she had been given because she was on holiday, but this was her choice, and was not due to pressure being put on her by the Supplier.

So, I haven't seen sufficient evidence to persuade me that, on balance, the Principle I've referred to above was not adhered to for reasons relating to pressure, nor that she wasn't given sufficient information on which to base her purchasing decision. So, I do not think Miss J's credit relationship with Novuna was unfair to her for these reasons.

Was the finance provided by Novuna affordable to Miss J?

Miss J purchased the FPOC membership with a point-of-sale loan from Novuna. This was a 15-year Fixed Sum Loan Agreement for £12,318 with monthly repayments of £142.28.

I think it may be helpful to explain how a point-of-sale loan works. In order for Miss J to make the FPOC membership purchase, she needed to be able to pay £12,318 to the Supplier to buy it. She applied to Novuna (using the Supplier as the credit broker) for a point-of-sale loan for this amount – in effect she asked Novuna to pay the £12,318 to the Supplier, whilst agreeing with Novuna that she would pay that amount back to it, plus interest, over a 15-year period, by making monthly payments of £142.28.

In order to apply for the loan, a hand-written application was completed, documenting Miss J's personal and financial circumstances. I do not know if this was completed by Miss J or the Supplier, but I can see that it has been signed and dated by Miss J on 27 March 2017. The form sets out that Miss J had a declared gross annual income of £45,000 and was a director of her own company.

I see from Miss J's submissions that she says she did not speak to anyone from Novuna, she did not understand that she was taking a loan agreement for such a long period, and that she could not afford the monthly repayments. But I have also seen that Miss J signed the Credit Agreement, which set out who was providing the finance, the total amount of credit provided and the monthly repayments, the term of the loan and the interest rate. So, on balance, I think it likely that Miss J was told the terms of the Credit Agreement at the Time of Sale.

Novuna has said that at the point of the loan application, it carried out appropriate checks with the credit reference agencies, and no adverse information was reported. It had considered the loan application, which had been completed with Miss J's input, and which had confirmed that she was both a homeowner and employed, and it considered that the finance Miss J was applying for was affordable and sustainable for her.

The Supplier was the broker here, so when considering whether the Supplier applied due

care in the loan application process, even if I were to find that Novuna failed to do everything it should have when it agreed to lend to Miss J (and I make no such finding), I'd have to be satisfied that the money lent to Miss J was unaffordable before also concluding that she lost out as a result.

Miss J has maintained throughout this complaint process that she could not afford the monthly repayments to Novuna. And she has provided some bank account and credit card statements, along with evidence from HMRC and her accountant as to her income in the months prior to the Credit Agreement. But having looked at everything Miss J has provided, and whilst I appreciate her strength of feeling on this issue, I am not persuaded, on the balance of probabilities, that the loan repayments were unaffordable for Miss J.

I have looked closely at the income that the statements show, and her essential outgoings. The income that is shown on the statements that she has provided, when compared to her essential outgoings, in my view shows sufficient disposable income to cover the required monthly repayments to Novuna. And I can see that Miss J has at least one other bank account that she has been unable to provide statements for², and payments have been made to and from this account.

There have been events which have occurred after the Time of Sale, such as the pandemic, which have had considerable impact on Miss J's income since the inception of the Credit Agreement, but I do not accept that these were in any way foreseeable at the Time of Sale. And whilst I acknowledge that Miss J says she has had to borrow from friends to maintain the repayments to Novuna, I've not seen any evidence to show that this wasn't as a result of other subsequent pressures on her financial situation, unconnected to the FPOC purchase.

So, on the basis of the evidence and information I do have, I've not seen anything to suggest the loan wasn't affordable or sustainable for Miss J at the Time of Sale. It follows that I can't say Miss J lost out, or that this caused an unfairness that requires a remedy in this case.

Conclusion

In conclusion, when taking everything into account:

- I'm not persuaded that there was an actionable misrepresentation or breach of contract by the Supplier when it sold to Miss J the FPOC membership on 27 March 2017. So, this means I do not think that Novuna acted unfairly or unreasonably in not accepting Miss J's claim under Section 75 of the CCA;
- I am also not persuaded that Novuna was party to a credit relationship with Miss J that was unfair to her, under Section 140A of the CCA;

I cannot see any other reason why it would be fair or reasonable to direct Novuna to compensate Miss J.

My final decision

I do not uphold Miss J's complaint against Mitsubishi HC Capital UK Plc trading as Novuna.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 7 August 2024.

² There is no criticism of Miss J intended here – she has said she has tried to obtain the statements but has been unable to do so as the bank no longer hold them.

Chris Riggs
Ombudsman