

The complaint

Mr D complains Mitsubishi HC Capital UK Plc trading as Novuna, haven't fairly considered his claim under section 75 of The Consumer Credit Act 1974 ('section 75') in respect of windows and doors.

Mitsubishi HC Capital UK Plc trading as Novuna was previously known as Hitachi Capital UK) Plc however for the purposes of this decision, I will refer to them as 'Novuna',

What happened

In February 2020, Mr D entered into a fixed sum loan agreement for the supply and installation of eleven windows and two doors from a supplier who I will refer to as Q. The total price was £13,000. He paid a deposit of £1,300 and the rest was financed by a 132 month loan with Novuna. The monthly instalments were around £250.

The windows and doors were installed around October 2020. In March 2021, Mr D reported issues to Q and Novuna. This included some windows letting in excessive draught, it not being water tight which led to water damage, amongst other issues.

He attempted to resolve the issues with Q and after some back and forth over the following months, Q carried out some repairs in April and May 2021. This included replacing some windows and fitting replacement gasket seals. Q also agreed to pay £500 compensation for Mr D's increased heating costs (due to the severe draughts) and to recognise the trouble and upset caused. Around a couple months later in September 2021, Mr D complained the same issues persisted.

Novuna arranged for an independent inspection report to be carried out in August 2022. It concluded there were several issues with the installation. It highlighted the primary issue being the lack of compression achieved by the sashes when closed and the effectiveness of the gasket seals. It recommended a number of remedial actions and said it would cost between £1,600 and £2,000 to be carried out. Novuna agreed to cover this cost and pay an additional £200 for scaffolding.

Unhappy with their response, Mr D referred the complaint to our service. During this time he arranged for another independent inspection to be carried out in July 2023. That report also found there were a number of issues. It said the installation was of poor quality as a result of a poor technical survey as arranged by Q. It went on to say the installation failed to follow mandatory codes of practice and building regulations. It said at least seven windows needed to be replaced due to incorrect sizing. To put things right and to ensure the installation met the regulations, it concluded all the frames and products needed to be removed, replaced and re-installed.

In a later addendum report it commented the initial manufacturer was no longer trading so for completeness, a new supplier will need to be found. It estimated it would cost around £18,450 for the design, supply and install on a like for like basis.

Our investigator recommended the complaint was upheld. He said there was a breach of contract and to put things right Novuna must do the following:

- Pay £18,450 to Mr D to cover the cost of the new supply and installation of the windows and doors;
- Refund the cost Mr D paid for the inspection report he arranged (£1,194);
- Pay £750 compensation to Mr D to cover the distress and inconvenience caused – including the increased heating bills and decorating.

Given the conflicting findings of the reports, Novuna suggested another independent party carry out a desktop review and reach an independent outcome. The investigator disagreed, he believed there was enough evidence to support his outcome.

As an agreement couldn't be reached, the complaint was passed to me for 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've decided to uphold Mr D's complaint.

I'm aware I've summarised this complaint in less detail than has been provided and I've done so using my own words. No discourtesy is intended by this but in this decision I will focus on what I consider to be the key aspects to reach a fair outcome.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods (Q) or the provider of credit (Novuna) if there's been a breach of contract or a misrepresentation. I'm satisfied the requirement for a debtor-creditor-supplier agreement is present. As the relevant circumstances are met, I find Mr D was able to make a section 75 claim.

However, I must stress in order to uphold Mr D's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Novuna's response to the section 75 claim wasn't fair nor reasonable.

In this case, the relevant law that applies is The Consumer Rights Act 2015 (CRA). It implies a term that the goods Q supplied should be of satisfactory quality. This is taken to mean the standard that a reasonable person would consider satisfactory, taking account of the description, the price paid, the state, condition, fitness for purpose and durability. There is also an implied term that the service delivered must be carried out with reasonable care and skill. That is, the standard one would expect of a reasonably competent person in that trade or profession.

Based on the evidence presented to me, I can see Novuna contacted Q in the attempt to rectify matters. This is what I would expect to see happen as Q does have the right to try and put things right first. This led to repair attempts and further back and forth between all the parties concerned.

Following the repairs in May 2021 and Mr D confirming issues remained, Novuna commissioned an independent inspection. However given the repair attempts and the extent of Mr D's correspondence about the issues and how it was impacting him, I would've expected Novuna to have instructed the inspection sooner than they did. It wasn't commissioned until August 2022 which was several months after Mr D reported Q's repair attempts had failed.

I've carefully read both inspection reports and having done so it's evident there are a number of issues with the installation. That doesn't appear to be in dispute. Therefore I can't say the installation was carried out with the reasonable care and skill that was required meaning there has been a breach of contract.

However there is a difference of opinion as to the extent of that breach and what is required to put things right. This is where the current dispute lies. I note Novuna's request for a third party to do a desktop review. Like the investigator, I don't find this is necessary nor do I believe it will add any further value especially if they are not going to physically attend Mr D's property. I find there is sufficient evidence to reach a fair outcome and I don't intend to delay matters even further given how long this dispute has been going on for.

Report one recommends remedial action such as realigning the frames, fitting gaskets and interlocking wedges, it said it would cost around £2,000 to put things right. Whereas report two says at least seven windows need to be completely replaced and the installation as a whole doesn't meet regulation so needs to be re-done. It also says as the original manufacturer has ceased trading, it has recommended a complete new goods and installation.

For reasons similar to the investigator, I'm most persuaded by the second report. I say this because I find it more thorough and in-depth about the faults identified. It outlines the condition of each door and window. Each one has been inspected and there is a detailed explanation as to whether it meets the relevant buildings regulations. By no means am I saying the first report was inadequate or brief but I find the second one provides a lot more detail as to what has gone wrong and what is needed to resolve it. Therefore I find it's reasonable to apply greater weight to its overall findings and conclusions.

I've also taken into account that for the suggested remedial actions outlined in report one, similar action has already taken place by Q but it didn't fix the issues. So I'm not convinced doing the same fix will put things right. I've also given consideration to the fact that the initial manufacturer has ceased trading meaning a new one would need to be sought and they may not offer like for like products. If only a few windows and frames were replaced, this could potentially leave Mr D with different windows and frames which isn't an ideal situation.

Given the timeline of events and the findings of the second inspection report, I find to resolve the section 75 claim, Novuna should cover the cost for the new supply and installation of the windows and doors as outlined by report two (the one commissioned by Mr D). To be clear that's the complete replacement and re-installation of all the windows and doors.

As already mentioned above, an initial quotation of £18,450 has been provided. Mr D may wish to obtain additional quotes and if he decides to do so, these should be sent to Novuna in advance for approval before the work is carried out.

Mr D arranged and paid for an independent inspection that confirmed the faults with the installation. As that cost was incurred as a result of the breach of contract, this amount should be refunded to him (upon proof of payment).

After looking at all the evidence, I find Novuna could have progressed Mr D's section 75 claim sooner and delayed in arranging an inspection to assess the quality of the installation. I'm not satisfied it paid due regard to their liability as the credit provider for an installation where it was clear there were a number of issues and repeated repair attempts. This delay caused further distress and inconvenience to Mr D in what was already a difficult situation so I've taken this into account when thinking about compensation.

I've carefully thought about Mr D's comments about the level of trouble and upset this situation has caused on him and his family who live in the property. He's mentioned his heating bills have increased due to the excessive draughts from the windows and the need to decorate and tidy up each time remedial work is carried out. I also recognise how long this dispute has been going on for, the extensive work that will need to be carried out and the time and effort he has spent trying to resolve this dispute. Given these circumstances, I find the investigator's recommendation of £750 compensation is fair.

Summary

Taking everything into account, I'm not satisfied Novuna acted fairly when considering the section 75 claim. I find there was a breach of contract by Q as the windows and doors weren't of satisfactory quality nor was it fitted with reasonable skill and care. To resolve the section 75 claim, Novuna must put things right as outlined.

My final decision

For the reasons set out above, I've decided to uphold Mr D's complaint.

To put thing right, Mitsubishi HC Capital UK Plc trading as Novuna must:

- Cover the cost of the remedial work as outlined in report two– that is the replacement and installation of all windows and doors (quotes to be provided by Mr D in advance);
- Reimburse Mr D for the cost of the independent inspection he paid for (upon proof of evidence) plus pay 8% simple interest per year from the date of payment to the date of settlement*;
- Pay £750 compensation to Mr D.

*If Mitsubishi HC Capital UK Plc trading as Novuna considers tax should be deducted from the interest part of my award it should provide Mr D with a certificate showing how much it has taken off, so he can reclaim that amount if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 March 2024.

Simona Reese
Ombudsman