DRN-4856309

The complaint

Mr B complains that Mitsubishi HC Capital UK PLC did not accept a claim he made under section 75 of the Consumer Credit Act 1974 ("section 75"). I'll refer to Mitsubishi HC Capital UK PLC under its trading name of Novuna.

What happened

In or around May 2023 Mr B commissioned a retailer, which I'll call "H", to design and install fitted wardrobes at his home.

The design which Mr B selected included a set of four pull-out shoe storage racks, fitted one above the other, with a shelf and hanging space above. The plans indicate that the shoe racks would be 768mm high in total – that is, they would come up to a little below waist height. Each rack was a pull-out platform with a horizontal bar which raised the heel of the shoe.

To pay for the wardrobes and their installation, Mr B took out a £2,955 loan with Novuna, arranged by H. The installation was completed in July 2023.

Mr B was not happy with the installation, however. He said that the pull-out shoe storage racks were not fit for purpose. There was insufficient height between them, so that they could not be closed when they had shoes on them. Mr B had told H's designer how many shoes he needed to keep, and the designer had recommended four racks. There was not, however enough space for four units with a proper gap between them.

H offered to remedy matters in one of three ways, at Mr B's option. It said it could: remove one of the units and refund Mr B for the cost of it; move the shelf up so that there was more space between the shoe storage units; or remove the horizontal bar on the shelves (which it referred to as a back bar), so the shoes would sit flat and create more space.

Mr B did not accept any of those solutions. The first would mean that he would have insufficient storage space for his shoes; the second would mean that he would lose hanging space; and the third would mean that he would not get the shoe racks that he had paid for.

H then approached the Furniture and Home Improvement Ombudsman (FHIO) seeking informal advice about how to resolve Mr B's concerns. No formal referral was made, and Mr B was not involved, but H says that FHIO thought a payment of £500 would be appropriate. It made a payment to Mr B's account.

Mr B did not accept that H had done enough to resolve his complaint and referred the matter to Novuna as a section 75 claim. He said that, as H had not supplied what it had agreed to supply, and because the wardrobes were not fit for purpose, he could reject them. That would mean removing them and, because they were custom-made, making good the carpet and walls where they had been. He estimated that would cost around £1,200.

Novuna did not accept Mr B's claim. It noted that H had made proposals to rectify the problem and had paid Mr B £500 when he had rejected those proposals.

Mr B referred the matter to this service, where one of our investigators considered what had happened. She took the view that H had complied with the contract and that Mr B did not therefore have a valid claim against Novuna under section 75. Mr B did not agree. He said that the designer should have realised that he would not be able to use the shoe racks if they were fitted in line with the design. If Mr B had been told that, he says he would not have gone ahead with the purchase.

Mr B did not accept the investigator's assessment and asked that an ombudsman review the case.

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.

One effect of section 75 is that, where goods or services, or both, are funded by a loan arranged by the retailer and the customer has a claim for breach of contract against the retailer, the customer has a like claim against the lender. There are further conditions, but I am satisfied they are met in this case. I have therefore considered Mr B's dealings with H.

Mr B's contract with H was for the design, supply and fitting of the wardrobes. Under the Consumer Rights Act 2015 the services (that is, the design and supply) were to be carried out to a reasonable standard. And the goods were to be of a satisfactory standard, including being fit for purpose.

Mr B says that the design was not carried out to a satisfactory standard, because the designer should have realised that there would not be enough space between the pull-out racks to accommodate his shoes. He has not suggested that the goods or the installation were not satisfactory – apart from the design issue.

I can understand Mr B's argument here. It may be that the designer should have identified that four pull-out units would not fit properly in the space available (at least, not without modification) and that he should have considered a different configuration. And it's possible too that, if that had happened, Mr B would have decided against the purchase.

Where there is a breach of contract, the usual remedy is to put the parties in the position they would have been in if the breach had not occurred. That general position is however modified by the Consumer Rights Act, which gives various options to consumers. They include rejection, repair or replacement, and a reduction in price.

It is not for me to say whether Mr B does in fact have a claim for breach of contract against H. Nor is it for me to decide whether he has a claim against Novuna under section 75. What I must do is decide what I consider in all the circumstances to be a fair resolution of Mr B's complaint about Novuna's decision to decline his claim. And in doing that, I must take into account any relevant law, including relevant parts of the Consumer Credit Act and the Consumer Rights Act. The relevant circumstances include H's payment to Mr B of £500 – although I recognise of course that he did not accept that payment in settlement of his claim. In my view, that payment should be sufficient for Mr B to arrange a solution that will enable him to use the shoe racks.

In the circumstances, I think it was reasonable of Novuna to decline Mr B's claim under section 75.

My final decision

For these reasons, my final decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 December 2024.
Mike Ingram
Ombudsman