DRN-4388894

The complaint

Mrs G complains about the way Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance has dealt with a claim she made to it in relation to replacement doors and windows supplied and fitted by a third party "C".

Novuna provided finance for the work and Mrs G brought this claim under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

C entered into an agreement to supply and install replacement windows and doors at Mrs G's property. The total cost for the work was £9,388. Mrs G made an advance payment of £950 as a deposit. Novuna provided a fixed sum loan agreement for the balance, which C arranged for Mrs G.

According to Mrs G, the installation didn't go well. She had concerns over the condition and appearance of the doors and windows, and with the approach taken by the fitters. She documented her concerns in lengthy correspondence with C. Mrs G wanted C to rectify the problems, but their attempts led to more aggravation and frustration.

Mrs G contacted Novuna to tell it about the issues with the installation. She said she wanted to make a breach of contract claim under section 75. Novuna liaised with C to undertake further remedial work. However, this didn't go well either, with C failing to complete the remedial work as scheduled. Mrs G gave Novuna a list of the problems and fixes she felt remained outstanding. Mrs G told Novuna that by this stage she'd lost confidence in C.

Novuna arranged for C to visit Mrs G's property again to undertake further remedial work. Following this C considered it had rectified the problems. But Novuna and Mrs G couldn't reach agreement over whether the work was completed satisfactorily. With the assistance of "S", a third party, Mrs G sought to pursue her breach of contract claim. Through Novuna, C proposed using a third party mediation service. Mrs G didn't want to participate in this approach. She felt Novuna hadn't dealt with her claim properly and instead referred her complaint to us.

Novuna offered Mrs G £150 to recognise the inconvenience she'd been caused by its delays in dealing with her claim. It told us that, while there were some remaining matters to be attended to, C had told it these could be fixed very quickly and didn't justify refunding the costs of the door and side panels or additional discount Mrs G had asked for.

Mrs G remained unhappy and proposed obtaining an independent report from RISA, an accredited independent inspection company. Novuna was amenable to this proposal and instructed RISA accordingly. The RISA report indicated shortcomings with the installation and a specific failure to meet Building Regulations, all of which required remedial work.

After receiving RISA's report, Novuna said C disagreed with some of the core findings in the report, but had made a further proposal to reduce the contract price by £478.80 and pay Mrs G £250 as a gesture of goodwill. It asked us to put the proposal to Mrs G. She rejected

the offer, providing quotes for the recommended work that suggested the cost would be significantly greater.

Our investigator didn't think Novuna had done enough to address the breach of contract claim. Noting the RISA recommendations, he proposed a price reduction of 25%, broadly equating to £2,350. He was satisfied the £150 Novuna had previously proposed was appropriate to recognise the distress and inconvenience Mrs G was caused by its handling of the claim.

Mrs G was happy that the investigator had found she'd not been treated fairly. But she didn't think the proposed resolution went far enough, given the likely costs she'd be incurring in getting the rectification work done. She felt that an appropriate remedy would be for a price reduction of £2,833.50 (the original cost of the problem door and window) together with £1,000 to cover the approximate cost of the other remedial work listed by RISA. She also felt there should be some recognition that she wouldn't have the benefit of the 20-year guarantee that came with the contract she entered into with C.

Novuna didn't accept our investigator's recommendation either. It didn't express a clear position as to what it considered its liability to Mrs G was, or whether it had any liability at all. It provided further submissions it had received from C, comprising what appear to include documents issued by the door manufacturer and others relating to measurement standards and approved gap tolerances.

my provisional findings

I recently wrote to both parties, setting out my proposed findings and how I thought the complaint should be resolved. In summary, I was minded to conclude the following:

> *"The arrangements between Mrs G, Novuna, and C meet the requirements of section 75 in terms of both financial limits and structure. Mrs G's claim is founded in breach of contract, based on obligations incorporated into her contract with C under relevant provisions of the Consumer Rights Act 2015 ("CRA"). Those obligations relate to the quality of the goods and to the services C provided to Mrs G.*
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> *Based on the main points Mrs G has made, I can see how she might well argue that C failed in its obligation to perform the installation service with reasonable care and skill as set out in section 49 of the CRA. If so, then she has a like claim against Novuna. She's provided evidence – in the form of photos and correspondence with C – in support of that claim.*
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> *The CRA contains explanatory notes in relation to section 49, which assist in considering whether a service has been performed with reasonable care and skill. The notes say "It is generally accepted that relevant to whether a person has met the standard of reasonable care and skill are industry standards or codes of practice."*
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> *So it's worth noting that in addition to the evidence Mrs G supplied to Novuna, it was also in possession of the RISA report. The inspector that visited Mrs G's property and compiled the report set out his experience and qualifications, his methodology, as well as the documents and standards he considered. All of these appear in my view to be relevant to the inspection and report Novuna instructed him to undertake.*
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> *There seems little question, then, that the RISA report is of value in determining the question of whether C carried out its services with reasonable care and skill. The conclusions of the report make it clear that C did not do so. I'm not persuaded of the relevance of the submissions Novuna provided in response to our investigator's*

assessment. They are generic in nature and do not offer any opinion on the way in which C carried out its services towards Mrs G, which is the matter at hand.

On balance, I consider it would have been appropriate for Novuna to place rather more reliance than it has on the content and recommendations of the RISA report. While I can see why Novuna was attempting to engage with C to get the outstanding work done, there would have been a point at which Novuna ought to have set out its own position in respect of its potential liability, which under section 75 is both joint and several. Novuna passed on resolution proposals it received from C, but I don't think that was enough to say Novuna did a reasonable job in handling its response to Mrs G's claim.

Having considered all of the available evidence, I'm satisfied that there's enough to indicate that Novuna is likely liable to Mrs G in terms of her breach of contract claim. Noting the various attempts to undertake rectification work and the price reductions offered, I don't think that was ever really in doubt. So the remaining question is what Novuna should do to recognise that liability.

There are various remedies open to Mrs G under the CRA and in common law. Given the previous attempts at rectification, I think she'd be entitled to seek a price reduction under the CRA, or another common law remedy, such as damages. I'm not persuaded that a price reduction is necessarily the most appropriate remedy here; the substandard work still needs to be fixed. That isn't achieved simply by performing the original work for a lower price.

Mrs G has set out her own methodology, which is a combination of a price reduction and reimbursement of out of pocket costs she's likely to face in getting a third party to come and attend to the remaining work. That might not be quite as straightforward as it appears. As Mrs G noted in her claim, the cost of the door and window was heavily discounted and it might mean she'd be out of pocket if she were unable to replace the items at a similar price.

An alternative and to my mind the most suitable remedy would be one that produces an end result in which Mrs G gets what she originally contracted to receive, for no more than the price she agreed to pay. That is, the doors and windows she ordered are supplied without defects and installed to a suitable standard, backed by guarantee.

Of course, I don't expect Novuna to perform that service for Mrs G – I don't think it would have the relevant expertise. Rather, Novuna should cover the cost of all of the work recommended in section 7 of the RISA report. It should ensure that the work is carried out by an appropriate FENSA fitting company that is acceptable to Mrs G. And that work should be undertaken at a time and date that's convenient to Mrs G, within a reasonably short period following her acceptance of my decision. Given the time of year, and subject to any supply concerns, I would suggest within six weeks though the parties can agree a different timescale between them if it's appropriate to do so.

Mrs G has pointed out her concern over the guarantee given under the contract with C, which certainly would be unlikely to apply to the above work when carried out by a third party company. It's likely that the third party company would provide its own guarantee, of course. But such a guarantee might fall short of the level of protection afforded by the guarantee provided by C. If so, Novuna should undertake to cover the cost of obtaining a suitable additional guarantee, unless it is not possible for it to do so.

I now turn to the matter of the distress and inconvenience Mrs G has experienced. It can be difficult to successfully claim for this in a breach of contract action. The contract was not intended to provide peace of mind, or one purely for pleasure or relaxation. It's

possible Mrs G might be successful if she pursued this aspect at court, but it's by no means guaranteed. I don't think it would be appropriate for me to say Novuna has a clear liability to her under the breach of contract claim in this respect.

However, our rules do permit me to make awards to recognise material distress or material inconvenience Mrs G has experienced due to the way Novuna handled her claim. I note Novuna has already acknowledged some difficulty its delays caused Mrs G, having offered to pay her £150 compensation previously. I think the way Novuna has dealt with the claim falls rather short of what I'd expect to see, which has further contributed towards Mrs G's distress and inconvenience. I'm minded to require Novuna to pay her £300 (inclusive of the £150 if it's already been paid), which I think is a fairer reflection of her concern.

I note the loan was on a 'buy now, pay later' basis with an interest-free period. Novuna has deferred the end of the interest-free period while the matter has been under our consideration. That was a fair step for it to take, and I appreciate the help it affords Mrs G. I think it would be appropriate for Novuna to continue this deferral until 1 December 2023. That is intended to allow a suitable period of time for Mrs G to decide on and make any necessary arrangements to repay the loan balance following resolution of her complaint."

I invited the parties to let me have any further information or evidence, if they wished, before I finally determined the complaint.

responses to my provisional findings

Novuna said it had nothing to add to my proposed resolution. But Mrs G didn't accept it, making the following points:

- The relationship between her and Novuna, as well as C, has completely broken down
- Novuna have fully supported C throughout this process and both parties still don't accept that there's anything wrong with the work carried out on her property, despite evidence to the contrary
- Novuna initially refused to extend the deferral period beyond 9 September 2023 and only agreed to an extension after she complained to the Chief Executive. She's had to fight with them every step of the way
- the provisional decision still meant she had concerns over what would happen if:
    - she and Novuna don't agree on the fitting company
    - the work is not completed by the 1 December 2023. If the deferral period wasn't further extended she could be liable to pay the balance or have the threat of interest being charged on her account before the work is complete.
    - a comparable guarantee couldn't be found unless whole units were changed. Would Novuna be obliged to pay for this? How would that work in practice?

Mrs G said she would prefer to have a clean break from Novuna and start afresh with a new supplier of her choice and on her own terms. And she said she wanted a price reduction to enable her to do this, which should reflect the findings in my provisional 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 not been provided with anything to suggest that I should reach a different set of findings on the key aspects of the complaint. Novuna hasn't commented on my findings, and while Mrs G's response touches on the way Novuna (and C) dealt with her concerns and the frustrations she felt, she hasn't sought to question the basis on which Novuna's liability to her arises. I therefore fully adopt my provisional findings on these matters in this final decision.

I do appreciate Mrs G's concerns over the proposed redress. This appears to be her primary reason for seeking an alternative resolution, so I'll focus here on why I remain of the view that the remedy I proposed is the reasonable way to deal with the dispute.

Mrs G's preferred remedy of a price reduction is one that she is able to seek under the CRA. The CRA isn't specific as to the way in which a price reduction should be calculated. It says she has *"the right to require the trader to reduce the price to the consumer by an appropriate amount."* The explanatory notes to the CRA say that *"a 'reduction in price of an appropriate amount' will normally mean that the price is reduced by the difference in value between the service the consumer paid for and the value of the service as provided."*

Even if the work C carried out that was sub-standard had no value, I've already noted that the cost had previously been discounted. That might present a situation where the 'appropriate amount' of a price reduction doesn't put Mrs G in the position whereby she can have the problem fixed. That is why I proposed – and still prefer – the remedy I set out in my provisional decision.

It's possible Mrs G could make an argument in court that she should be entitled to a combination of a price reduction and a common law remedy in damages. If Mrs G is insistent that this is the remedy she wants, she isn't obliged to accept the outcome I've proposed. I can only suggest she takes independent legal advice before deciding her next steps.

I understand Mrs G would like some of the finer detail to be established before she feels able to accept or reject the outcome. My role here is to set out what I consider to be a fair and reasonable way to resolve a dispute over the way Novuna dealt with her claim. Under our rules I'm required to do so with a minimum of formality. The resolutions we propose are rarely intended to cover all potential variables in a dispute; indeed, it is not always possible to do so. Mrs G will have to decide for herself whether she wishes to accept the settlement, bearing in mind the limited extent of any guarantees over future workmanship.

I see no obvious reason why Novuna would be unable to agree on Mrs G's choice of an alternative fitter. It might be prudent if she were to obtain quotes from two or three fitters, to demonstrate the costs are reasonable. She can also discuss with the fitters the cost of any extended guarantee they might be willing to provide and include this in the quotes she submits to Novuna. If the work takes longer than 1 December 2023, then Mrs G is in no worse a position than she expected to be in when she originally contracted – she would either incur interest or make arrangements to repay the balance in full before the due date.

My final decision

My final decision is that in full and final settlement of this complaint, Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance should now take the following steps:

1. undertake to cover the cost of all of the work recommended in section 7 of the RISA report, including – where Mrs G is able to demonstrate the additional cost – the cost of obtaining an equivalent guarantee. Novuna should ensure that the work is carried out by an appropriate FENSA fitting company that is acceptable to Mrs G

This work should be undertaken at a time and date that's convenient to Mrs G, within a reasonably short period following her acceptance of my decision. Given the time of year, and subject to any supply concerns, I would suggest within six weeks though the parties can agree a different timescale between them if it's appropriate to do so – for example, depending on the availability of a fitter, or if there is a delay in obtaining parts;

2. continue to defer the end of the interest-free period on Mrs G's loan until 1 December 2023, and contact her in good time prior to that date to set out how she might go about settling the loan, should she wish to do so; and

3. pay Mrs G £300 – inclusive of the £150 if it has already paid this – in recognition of her distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 6 November 2023.

Niall Taylor
Ombudsman