

The complaint

Mr H complains about how Mitsubishi HC Capital UK Plc, trading as Novuna, dealt with his claim under section 75 of the Consumer Credit Act 1974 in relation to his purchase of a conservatory.

What happened

In May 2023 Mr H entered into a regulated fixed sum loan agreement with Novuna to finance his purchase of a conservatory from a third party who I will call "C". He complains that C didn't finish installing the conservatory. Novuna says it is not liable for this under section 75, because it did not finance the installation, only the supply of materials. Our investigator agreed with Novuna, and so she did not uphold this complaint.

Mr H did not accept that decision. He said Novuna should not have paid C until he was satisfied with their work. He also said that C had failed to deliver any bricks. The investigator agreed that that issue would be covered by section 75, but she thought that if no bricks had been delivered then Mr H would have mentioned this at the time, and he hadn't.

Mr H asked for an ombudsman to review this case. He said that although the builders had not been paid for with finance provided by Novuna, but had been paid directly, C had organised them, so Novuna should still be held responsible.

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 do not uphold it. I will explain why.

Section 75 is a law which, in certain circumstances, makes a lender jointly liable with the supplier of goods for any breach of contract by the supplier in relation to goods or services which were paid for with the loan. But it doesn't make the lender liable for everything the supplier does. It only applies to the contract which was financed by the loan.

In this case, it is not in dispute that the builders who actually installed the conservatory were not paid by Novuna, but were paid directly. So that means Novuna is not responsible for what they did, or didn't do. It doesn't make any difference that the builders were arranged by C. The loan agreement doesn't make Novuna responsible for everything that C did – only for the supply of materials.

That still leaves a couple of issues which Novuna would be responsible for. If C was supposed to supply bricks, and failed to, then that would be a breach of the contract financed by Novuna. C initially supplied the wrong door (and then replaced it). And Novuna paying C before Mr H was satisfied with their work is something that Novuna itself did (and would be liable for independently of section 75).

Mr H signed a satisfaction note on 21 June 2023, which I've seen. That was sufficient authority for Novuna to pass the funds on to C.

The original door was replaced with the correct one, so I think that is enough to resolve that problem.

I have seen an email which Mr H sent to Novuna on 22 September, in which he complained that the bricks were not real bricks but were just brick-effect tiles, and that this was a breach of contract.

The photos of the conservatory clearly show walls made with brick-effect tiles. I will come back later to whether that is a breach of contract. Before I do that, I note that in a later email to our investigator, Mr H said that the brick-effect tiles that were used were not new ones supplied by C, but his own ones which he already had.

I think these two allegations contradict each other. And it is quite clear in the earlier email that C had provided the tiles. Also, Mr H did not mention in his original complaint to our service that no materials had been provided at all, just the wrong kind. On the balance of probabilities, I am not persuaded that C brought neither bricks nor tiles, and used materials provided by Mr H instead.

As for whether C breached its contract by using tiles that looked like bricks instead of actual bricks, I agree with our investigator that if Mr H had really thought that the wrong material were being used in June, he wouldn't have waited until September to mention it. So I am not persuaded that the wrong materials were used.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 August 2024.

Richard Wood
Ombudsman