

## **The complaint**

Mr E complains that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance, won't refund him for a watch he bought.

## **What happened**

In July 2023 Mr E used finance (a Fixed Sum Loan Agreement) provided by Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ('Novuna' for short) to purchase a watch costing £3590 from a supplier. In October 2023 he raised concerns about the watch with the supplier saying that it was gaining time and that the clasp was scuffing the links. The Supplier sent it to the manufacturer who reviewed the watch and responded that there was nothing wrong with the watch. Mr E complained to Novuna.

Novuna considered his dispute with the supplier and considered it under a claim under section 75 of the Consumer Credit Act 1974 ("S75" and "CCA" respectively). It concluded that it didn't have to do anything further for Mr E. Feeling that Novuna's position to be unfair Mr E brought his complaint to this service.

Our investigator looked into the matter. Overall, he felt that Novuna had fairly treated Mr E. Mr E didn't agree. So the complaint has been passed to me to decide.

## **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.

I should make very clear that this decision is not about the supplier who sold the watch because it isn't a financial services provider and doesn't fall within my remit regarding Section 75. Whatever the issues there maybe with the supplier here, and just because Mr E says he has lost out, it doesn't necessarily follow that Novuna has treated Mr E unfairly or that it should refund him. And this decision is solely about how Novuna treated Mr E. I hope this key point is clear.

### *The CCA*

The CCA introduced a regime of connected lender liability under S75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier" here). S75 says:

*"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."*

So the test is here, did Novuna consider Mr E's S75 claim to it fairly, or in other words are the pre-requisites of the CCA in place (financial limits and Debtor Creditor Supplier

arrangement) and is there a breach of contract or material misrepresentation made out here against the Merchant that Novuna should fairly be held responsible for. I'm satisfied the financial limits test and Debtor Creditor supplier arrangements are made out here. I now consider breach and misrepresentation as I see these as the key aspects of Mr E's complaint.

What Mr E is in essence arguing is that the watch was unsatisfactory quality. The Consumer Rights Act 2015 ('CRA' for short) is the relevant law here and it sets out what unsatisfactory quality means. This says every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory and that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of; any description of the goods, the price or other consideration for the goods and all the other relevant circumstances. And the quality of goods should be considered through the appropriate lenses such as 'fitness for all the purposes for which goods of that kind are usually supplied,' 'appearance and finish,' 'freedom from minor defects,' 'safety,' and 'durability.'

Mr E says he first raised concerns in October 2023 when he noticed the issues I've described. Clearly had these issues been apparent at the point of sale he'd have had concerns and raised them at that time. So it seems clear that there was nothing apparently wrong with the watch when Mr E received it.

Here we have the manufacturer's letter dated December 2023 regarding its inspection of the watch which it conducted when Mr E returned it to the supplier. The manufacturer has clearly stated there was no fault with the watch. I can also see that in its response to this service Novuna has said in relation to the manufacturer's inspection that *"The clasp and markings mentioned by the customer, wasn't a fault but instead caused by the clasp meeting the watch bracelet during removal of the watch from their wrist."*

I've considered the photographs Mr E has supplied which does show some scuffing on the links of the watch in the region of the clasp. It should be noted these photos are high resolution close-ups of the watch and I note that I can see what I'd describe as minor scuff marks on the links of the watch's wristband. I've also considered the photographs of the watch supplied by the manufacturers via Novuna to this service. Here such scuff marks are not clear but I do note that on other parts of the links of the wristband there appears other similar types of scuff marks. Which apparently Mr E hasn't complained about. As Mr E hasn't complained about these I can only conclude that they've come about through Mr E's usage.

As I've described part of satisfactory quality is whether the issue is due to a lack of durability. Similarly an important consideration are the usage of the watch and whether the issues are there through fair wear and tear or indeed accidental damage. As I've described in bringing a S75 claim breach of contract needs to be made out for s75 claims to be successful. In essence both parties have a duty here, claimants such as Mr E need to show breach of contract has happened and firms need to consider such claims fairly. Here Novuna has relied on the comments by the manufacturer. I've considered Mr E's comments and photographs and I'm not persuaded he's done enough here to demonstrate that Novuna has treated him unfairly in its consideration of the matter.

So I'm not necessarily persuaded that this watch met the threshold test of being unsatisfactory quality at the point of purchase due to the minimal nature of the issues Mr E complains about, and the dearth of evidence to show it was of unsatisfactory quality at the point of purchase. Just because there is some scuffing present now doesn't equate to being defective at point of sale.

Mr E says he tried to exercise his right to the short term right to reject when the shop inspected the watch. However it is also clear that he allowed the watch to be sent to the manufacturers for inspection and it is latterly that he's said he wanted to return it. And bearing in mind that there is no breach of contract made out here Mr E didn't have any short term right to reject under the CRA.

Mr E has asked to see any reports from the manufacturer and argued on this point. However I don't think Mr E's evidence is persuasive in itself of unsatisfactory quality at the point of sale. And there is a need for him to show there is a breach. So whether or not the manufacturer's comments are all encompassing and deeply analytical or very brief doesn't make a material difference to my mind to the outcome of this dispute. I note that Mr E says "*I find it hard to understand how any conclusion can be formed without detailed reports and results.*" However it needs to be remembered that it is Mr E bringing the claim and so there is an onus on him to make out the breach rather than on Novuna to defend all possible arguments that could be made or indeed construct a case against itself. And similarly Novuna isn't an expert in watches and is entitled to rely on the expertise of the manufacturer and its position on the condition of the watch. So I'm not persuaded that it has acted unfairly here.

I do appreciate that this isn't the decision Mr E wants to read. And that it leaves him disappointed. But that doesn't make it fair for Novuna to refund him when there's no persuasive evidence that the watch was of unsatisfactory quality at the point Mr E purchased it.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 November 2024.

Rod Glyn-Thomas  
**Ombudsman**