

The complaint

Mr S made a claim to Mitsubishi HC Capital UK Plc, trading as Novuna Personal Finance (who I'll call Novuna) under Section 75 of the Consumer Credit Act 1974 (Section 75). He thinks their response to his claim was unreasonable.

What happened

Mr S took receipt of a spa in April 2022. He financed the deal through a fixed sum loan with Novuna.

After the goods were installed Mr S noticed some filters were missing. He asked the supplier if he could use the spa without them and was told he could. The spa failed in September 2022 and in early December 2022 the supplier inspected the spa and noted that there was a fault with a pump and an inline valve was shut.

In December 2022 Mr S contacted Novuna to make a Section 75 claim but he didn't respond to Novuna's request for further evidence. In March 2023 he raised a claim again. Novuna explained that the supplier was allowed one attempt to repair the goods, but Mr S wanted to return the spa, so he referred his complaint to this Service in October 2023.

Thereafter, Novuna arranged for the supplier to fix the spa in January 2024, and they made an offer to Mr S to settle his complaint. They noted that he had stopped making payments towards his account in May 2023 and they said they would remove any charges relating to those missed payments and wouldn't report adverse information about them to his credit file. They also said they would reschedule payments to restart in March 2024 and pay Mr S £150 in compensation for the distress and inconvenience experienced. Our investigator thought that was a fair offer.

Mr S disagreed and his complaint has, therefore, been referred to me, an ombudsman, to make a 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.

I think Novuna have been reasonable here. While I'm asking them to take the actions they've agreed to, I'm not asking them to take any further action.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong, and the payment was made with a fixed sum loan, as was the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has the same right to make a claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

The Consumer Rights Act (2015) is the relevant legislation. It says that the goods should have been of satisfactory quality when supplied. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

I don't think there's a dispute anymore about whether the spa was of satisfactory quality. Novuna accepted liability for the claim and repaired the spa. I've thought about whether the redress they have offered is reasonable in the circumstances.

The relevant legislation allows a business one opportunity to repair goods that are of unsatisfactory quality when supplied. I don't think Novuna had that opportunity before they completed the repair, so I would agree that repair was the correct redress. I understand that filters weren't supplied, were the wrong ones when supplied, and that some had been left unwrapped, but installed. That may have contributed to the pump failing especially as Mr S was told he could continue to use the spa. It appears a valve that should have been open had also been shut and it seems likely that that could also have contributed to problems. But I don't think those matters changed Novuna's right to repair the goods.

Mr S says there were unreasonable delays and that those delays mean he should have been entitled to reject the goods. I'm not persuaded that delays were unreasonable. While I was sorry to hear that Mr S was, understandably, unable to pursue his section 75 claim when there were deaths in the family, and that a power of attorney issue prevented him from allowing access to the property where the spa was installed. I don't think it would be fair to hold Novuna responsible for those issues and delays, thereafter, appear to have been mostly because Mr S didn't agree with the fair offers being made.

It was Mr S's decision to stop making payments towards his agreement and Novuna didn't have to waive missed payment fees or decide not to report adverse information about those missed payments. They didn't have to reschedule payments either. They agreed to pay Mr S £150 in compensation. I'm only reviewing whether Novuna's decision on Mr S's complaint is fair and I'm, therefore, not considering any distress and inconvenience caused by the supplier. As I can't see much in the way of distress and inconvenience that Mr S has been caused by Novuna I don't think their offer of compensation is unreasonable in the circumstances.

My final decision

For the reasons I've given above, I uphold this complaint in part and unless they've already done it, I tell Mitsubishi HC Capital UK Plc to:

- Repair the spa.
- Ensure requests for rescheduled payments resumed no earlier than March 2024.

- Waive any missed payment fees or charges that may have been due from the point Mr S stopped making payments until payments were due to resume in March 2024.
- Not report adverse information to the credit reference agencies about any missed payments in that period.
- Pay Mr S £150 in compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 September 2024.

Phillip McMahon
Ombudsman