

The complaint

Mrs G is unhappy with how Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance ('Novuna') handled a claim under Section 75 of the Consumer Credit Act 1974 ('S75').

What happened

Around June 2023, Mrs G acquired some hearing aids from a company I'll refer to as 'P'. Mrs G took a fixed sum loan agreement with Novuna to cover the cost and the total cash price of goods and services was listed on the agreement as £3,338.16.

Unfortunately, Mrs G says the hearing aids developed faults. She said she took them back to P and they were initially fixed. But, she says one of the hearing aids became faulty again shortly after and couldn't be used. She also said the hearing aids were too difficult to clean and assemble, so she returned the hearing aids again to P and asked for a refund, which she believed she was entitled to.

Mrs G says P then told her she didn't have the right to a refund. Mrs G was unhappy with this, as she said the hearing aids had a 90 day money back guarantee and she'd returned them within this time.

Mrs G raised a claim under S75 with Novuna. It wrote to her and explained the claim was declined in November 2023. It said, in summary, that Mrs G attended a follow up appointment with P a few weeks after getting the hearing aids, where no concerns were raised. It said P was only made aware of concerns with the hearing aids on 18 August 2023, which was outside of the 60 day money back guarantee period. And Novuna said P had explained the hearing aids didn't have a fault with them.

Novuna did explain however that P was willing to assist by exchanging the hearing aids for a different type if Mrs G was unhappy with them.

Mrs G was unhappy with this and complained about the outcome of the S75 claim.

Novuna issued a final response in December 2023. This reiterated the same reasons for declining the claim that were explained in the previous letter. And it said the complaint was not upheld.

Mrs G remained unhappy with this and referred the complaint to our service.

Our investigator issued a view and didn't uphold the complaint. She said, in summary, that she thought the money back guarantee was for 60 days, not 90. And she said she hadn't seen enough to persuade her that the hearing aids were faulty. So, she said Novuna acted fairly when it declined the S75 claim.

Mrs G responded. She said, in summary, that the agreement from P was unsigned and so she should not be held responsible for any outstanding payment. She said the hearing aids were returned in July 2023, where they were "*banged on the table and taken apart*" which

got them working again. But she said they only worked for a few days after this. She said the fact P had offered an exchange showed the hearing aids were faulty. And Mrs G also told us about how stressful this situation was and that it was impacting her health.

Our investigator explained this didn't change her opinion. As Mrs G remained unhappy, 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.

Having done so, I do not think this complaint should be upheld. I'll explain why.

Mrs G complains about a S75 claim being declined. So, S75 is relevant to this complaint. This explains, under certain circumstances, that the borrower under a credit agreement has an equal right to claim against the credit provider, Novuna here, if there's either a breach of contract or misrepresentation by the supplier of goods or services.

What I need to consider in this case is whether Novuna acted fairly when it declined the claim under S75.

Firstly, I need to consider if Mrs G had a valid claim under S75.

In order for there to be a valid claim, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. I've seen a copy of the credit agreement from Novuna that is in Mrs G's name, with P listed as the supplier. And I've seen a copy of the receipt for the hearing aids, also in Mrs G's name. It follows I'm satisfied a valid DCS agreement was in place here.

I've then considered the financial limits that apply. In order to have a valid claim, Mrs G needed to have purchased a single item with a cash price of over £100 but no more than £30,000. Whether I consider the contract as a whole, or if I take the specific cost of each individual hearing aid listed on the receipt, either way I'm satisfied the purchase falls within these limits.

Considering this, I'm satisfied Mrs G had a valid claim under S75. What I now need to think about is whether a breach of contract or misrepresentation took place.

There is some dispute here about the 'money back guarantee' that formed part of the contract. Mrs G says she returned the hearing aids and asked for a refund within the 90 day window which applied. Novuna said P explained there is a 90 day money back guarantee in another country, but for the UK this is a 60 day guarantee.

Looking on the internet, I can see a website that sets out a 90 day money back guarantee from P, so I can see where some confusion has arisen here. But this is not P's UK site. On P's UK website, it states:

*"If you do not feel the benefit of your hearing aids within **60 days**, you can bring them back to us and we will give you a full refund."* (emphasis added by myself).

Looking at the document Mrs G provided in response to the investigator's view, this says:

*"I understand that my hearing aids come with a **60 day** money back guarantee"* (emphasis added by myself).

Thinking about all of this, I'm satisfied Mrs G's hearing aids came with a 60 day money back guarantee, not a 90 day guarantee. I understand Mrs G asked for a refund outside of this 60 day window, so it follows I don't think a breach of contract occurred when P declined this request.

The Consumer Rights Act 2015 ('CRA') implied a term into the contract that the hearing aids needed to be of 'satisfactory quality'. Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors.

I'm satisfied a court would likely consider relevant factors in this case, amongst others, to be the cost of the hearing aids, the fact they were brand new and their description. So, I think a reasonable person would expect them to be in mint condition, in full working order and would expect them to be used fault free for some time.

If the hearing aids weren't of satisfactory quality, I would consider this a breach of contract.

Mrs G said the hearing aids were returned twice due to issues with them. Novuna explained that P didn't find any fault with the hearing aids. It's worth pointing out there is something of a lack of evidence in this case. But, I've seen a response from P to Novuna. This states:

"('Mrs G') came in for a follow up appointment which is standard practice when someone takes out a new pair of hearing aids with us. We check if the hearing aids need adjusting, we give the hearing aids a clean and change the filters just to make sure everything is running as it should be.

There have been no faults found with (Mrs G's) hearing aids."

This means there are directly conflicting versions of events here. Having very carefully thought about all of the information, including what Mrs G said about P offering an exchange, her actions and all of her other testimony, I haven't seen enough to persuade me the hearing aids had a fault. It follows I'm not persuaded they were of unsatisfactory quality and so I find there was not a breach of contract on this point.

As I've explained above, I'm not persuaded there was a breach of contract in this case. I've also considered whether the goods were misrepresented to Mrs G, but I've seen no evidence of this. So, it follows that I don't think Novuna did anything wrong when it declined Mrs G's claim under S75.

Mrs G said that the agreement wasn't signed and so she didn't think she should be responsible for the repayments outstanding. But, the document she's sent without a signature on is the "*CUSTOMER RECEIPT*" – not the credit agreement.

I've seen a copy of the credit agreement and this was electronically signed by Mrs G in June 2023. So, I don't think what Mrs G pointed out here affects her obligations to Novuna.

I'm aware that Mrs G hasn't been making payments towards the agreement and the account is in arrears. It might be prudent for her to contact Novuna directly to discuss this. I'd politely remind Novuna to treat the situation with forbearance and due consideration.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 20 February 2025.

John Bower
Ombudsman