

The complaint

Mr S complains a set of sofas and chairs he part purchased through a fix sum loan agreement with Mitsubishi HC Capital (UK) PLC trading as Novuna Personal Finance (“Novuna”) weren’t of satisfactory quality. He feels Novuna should compensate him for this under s.75 of the Consumer Credit Act 1974 (“CCA”) and complains about the way Novuna has handled his s.75 CCA claim.

What happened

Mr S purchased four sofas and two chairs in May 2021 from a supplier I’ll call “X” for a total cost of £21,800. The purchase was funded with advance payments totalling £7,500 and a remaining £14,300 was funded through a fixed sum loan agreement with Novuna. The repayments for this agreement were deferred for the first 12 months of the agreement and if the loan was repaid in full within this time, no interest would be charged. Should the loan run to the full term, a monthly repayment of £498.65 would be payable from month 13 for a total of 48 months. The total charge for the credit would have been £9,635.20.

I have summarised the events which took place following the purchase below. There were some initial delays with shipping and the items were delivered to Mr S in September 2021. I understand Mr S initially complained to X as the recline feature on one of the sofas didn’t work so it was stuck in a quarter recline position. In addition, one of the sofas should have been battery powered but a battery was not provided. Mr S also reported a “*cranking noise*” from the chairs. He asked for this to be investigated for a product default. The issue with the recline and battery supply appears to have been resolved. However, in January 2022 Mr S reports further problems with the goods to X. At this time Mr S has had possession of the sofas for around four months. In an email dated 21 January 2022 he complained that sitting on the sofas for an hour was causing a large amount of discomfort for him and his family. He put this down to the cushioning of seat and back becoming softer. In addition, he said the chairs were making a screeching sound when reclining.

A technician concluded that there were no manufacturing defects with the interiors of the sofas. However, to resolve the issue for Mr S, they suggested all seat interiors be replaced and bolstered, all webs to be tightened, lumber interiors to be replaced and bolstered. In addition to “*tighten up*” the chairs as Ms S had reported squeaking and rocking. Mr S also contacted Novuna around this time and in August 2022 he raised a s.75 CCA claim.

Novuna has said the work described above took place in October 2022. Following this Mr S had concerns about how quickly the issues may occur again and asked for thicker foam to be used. He also raised concerns that armrests and headrests hadn’t been refilled. Novuna has said the armrests were then replaced, but X advised that it couldn’t replace the headrests and it did not agree that the headrests were faulty.

To try to resolve the issue Novuna arranged for an inspection to take place (referred to throughout as “Report 1”) in December 2022. This report found no manufacturing faults with the sofas or chairs.

Mr S subsequently commissioned his own report with another company ("Report 2") in January 2023. This report details a number of faults and concluded that the chairs and sofas were faulty. The technician concluded that this was down to manufacturing errors, not within "*manufacturers tolerance*".

Novuna subsequently reopened his claim and commissioned another report ("Report 3") in May 2023. This report concluded that there were no faults with the furniture. Novuna subsequently closed the claim and issued a response detailing that it didn't think there was a fault with the furniture. (And as such Mr S' s.75 CCA claim was unsuccessful.) Mr S raised a complaint about how his s.75 CCA claim was handled which was also unsuccessful and so he referred his complaint to our service. I understand Mr S has another complaint regarding a direct debit being taken. However, this complaint is only about the handling of his s.75 CCA claim.

One of our investigators considered the complaint and upheld it. They concluded that the furniture wasn't fit for its intended purpose and as such the claim should have been accepted. They recommended the furniture be collected, all monies paid towards the furniture be repaid to Mr S and the agreement be cancelled. Novuna disagreed with the investigator's assessment.

Below is a summary of the points provided in response:

- When purchasing the goods Mr S was made aware that the seat will naturally soften over time. They provided a signed care advice letter for Mr S' order number to support this.
- The interiors of the furniture have not failed and are not faulty, confirmed by X's technician and an independent expert. This is largely an objective consideration and two experts have confirmed this.
- There are a large amount of people living in this house and the sofas are getting a huge amount of use so the sofas will naturally soften over time.
- The work which was done in October 2022 was done as a gesture of goodwill and all the inspections arranged by X found no issues present.
- Whilst all three of the reports commented on the softness of the leather, it's reasonable to place some responsibility on Mr S to ensure he selected the correct products for his needs.
- X has questioned the impartiality of Report 2 given the company "*are actively seeking business arising from s.75 claims which they would seek to profit/benefit from.*"
- Mr S has said he took extensive steps to check the furniture was right for him by sitting on the showroom furniture and having family members also test the showroom furniture. X argues that its reasonable that if Mr S had problems with the quality of the product he would have raised it at this time.
- It argues that as Report 3 was completed by an alternative dispute resolution entity (and concluded there were no faults) if it had gone to arbitration with that entity, it's likely Mr S' complaint would have been unsuccessful.

The care advice letter was put to Mr S. He responded to say he hadn't seen this form previously and the signature on it doesn't match his own (as evidenced by his signature on the order form.) He also provided a copy of his signature from his driver's licence. In addition, Mr S provided a number of adverse online reviews about X.

The investigator remained persuaded that the complaint should be upheld. Regarding the care advice letter, the investigator concluded that the signatures didn't match so she can't be satisfied Mr S did sign this document prior to purchasing the furniture. Novuna disagreed and asked for an ombudsman to review the complaint.

I issued a provisional decision setting out my thoughts on this complaint which I also upheld. In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've read and considered all the information I've been provided with about this complaint, but I'll concentrate my comments on what I think is most relevant. If I don't comment on a specific point or piece of evidence it's not because I've not considered it, but because I don't think I need to comment on it in order to reach a fair and reasonable decision. Our rules allow me to do this and this reflects the free informal nature of this service as an alternative to the courts.

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.

Ms S purchased four sofas and two chairs which were funded in part by a fixed sum loan agreement. Having considered the statutory requirements to make a claim of this nature, I'm satisfied that s.75 CCA applies to this purchase.

The Consumer Rights Act 2015 ("CRA") implies certain terms into a contract. In this case it requires the sofas to be of satisfactory quality when supplied to Mr S. What is satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, durability and other relevant circumstances. Should the furniture not be of satisfactory quality, this would amount to a breach of contract.

I think it's fair to say in this case that the facts are finely balanced and there are three reports on the satisfactory quality, or otherwise, of the furniture. Where evidence is contradictory, I must make my decision on the balance of probabilities. I've outlined the timeline of events above, so I'll now go on to consider the three reports in turn to determine, on balance, if the furniture was of satisfactory quality.

Looking firstly at Report 1, the technician has noted that Mr S is not happy with the firmness of the sofas and swivel chairs, however they conclude that there is no further "*repair option*" as "*replacing the interiors again would only result in the same outcome.*" It concludes that there were no manufacturing faults found and includes a number of photos. I've considered the comments in this report, but I think it's fair to say that Report 1 is brief when compared to the other two reports. There are limited details for example as to what steps the technician took to establish there were no manufacturing faults and on the whole I don't find it particularly persuasive. I also note that the technician was mainly there to consider the headrests looking at the "*client issue*" section of the report.

Mr S commissioned Report 2 which found there were manufacturing faults with the furniture. To summarise it said:

- Chairs and stool – excess amounts of loose leather, load creaking noise which they concluded was down to a plastic base where plastics were rubbing against each other.
- Sofas – excess material which is loose, foam throughout the sofa has lost its shape and is of poor quality. They noted a number of issues on individual sofas including that cushions have collapsed, a seam appears to be "*twisted*", back cushions aren't aligned on one of the sofas, tension between the two seats on one of the sofas with

one cushion being noticeably higher than the other.

It's clear from this report that each piece of furniture was inspected and detailed individually, and it also included photos to support the findings reached. It details a number of faults which, as detailed above was outside "*manufacturers tolerance*".

I have noted X's comments questioning the impartiality of this report. However, having reviewed the website of the company who compiled it, I can see it stresses the independent and impartial nature of its work. I have noted it refers to s.75 CCA and chargebacks on the website, but this simply refers the user to a third-party website where they can gain further information. Therefore, I'm not persuaded that I have seen sufficient information to doubt the impartial nature of this report and I do find it detailed and very persuasive.

Turning to Report 3, this concludes that there were no faults with the furniture at this time. It details the furniture and steps taken to inspect it and finds that the sofas in particular are "*very sofa and accommodating*." In summary it stated:

- due to the design, size and interiors of the cushioning of the sofas they will naturally soften over time, but they "*find it hard to necessarily find fault with this softening as I anticipate this occurring from use*."
- They didn't find a fault with the swivel chairs when they used them it what they considered to be "*normal use*."
- They did not consider the furniture to be faulty in its current condition but commented that they would not be surprised if at some point in the future the furniture returned to the condition it was in when Mr S raised his complaint.

I think it's key to this dispute that Mr S raised the problems with the furniture after only four months of using it, suggesting underlying issues with it. Whilst X took steps to mitigate this by replacing the seat and lumbar interiors, Report 3 concludes that it's likely the same problem will occur in the future. It isn't unreasonable that the furniture will naturally deteriorate over an extended period of use, however for Mr S to experience these problems within four months is not reasonable and does not suggest it is sufficiently durable. Particularly when I note Mr S paid £21,800 for the furniture. Report 2 has put this down to the quality of the foam and the excess leather used on all the furniture and this seems like a reasonable conclusion to draw given how quickly the issues occurred. There is also little detail in Report 3 to rebut the detailed conclusions reached in Report 2 and on balance I find Report 2 more persuasive. I have also explained above why I don't find Report 1 particularly persuasive. So, having considered all the information I have been provided with, I think that the furniture was not of satisfactory quality when supplied to Mr S.

The company which compiled Report 3 also undertakes adjudications to disputes between supplier's and customers in these circumstances. X has argued that if this process had been completed, rather than bringing the complaint to our service, it wouldn't have been upheld. I can't comment on the outcome another alternative dispute resolution organisation may or may not have reached. Mr S didn't raise a dispute with this organisation, he raised it with our service and I need to reach an independent and impartial decision on the facts presented.

It has been raised that Mr S has a large family and that overuse may have caused some of the problems he has experienced. However, whilst Mr S may have a large family, he also purchased enough seating for 10 people and paid £21,800 in total for the seating. A sofa or chair is an everyday item that in my opinion should be able to withstand regular use, especially in the early stages of purchase. So I don't accept that having a large family was the cause of the problems Mr S experienced, particularly after four months.

I have also reviewed the care advice letter X has provided. I note that it does say the cushions will soften with use and that the leather will stretch and crease. The relevant sections are ticked suggesting this has been discussed, it is dated the same day that Mr S purchased the furniture and has his order number on it. However, I think it's clear, as Mr S has said, that this signature does not match his signature on the order form or his driver's

licence. Mr S has also said he hasn't previously seen this letter. Ultimately given the signatures don't match, I have some doubt about whether this was provided to Mr S during the sale. However, in any event and as I've explained above, it's reasonable for this issues to occur after an extended period of time, but I don't think it's reasonable after only four months.

X has argued that if Mr S had problems with the quality of the furniture this should have been raised when he sampled the furniture at the showroom. Trialling the furniture in the showroom, even if Mr S made multiple visits, is not the same as using the furniture daily in your home. And the issue I need to consider is whether the furniture which was supplied to Mr S was of satisfactory quality. For the reasons explained above I don't think it was. I therefore don't think Novuna handled Mr S' s.75 CCA claim fairly when it rejected it.

To put things right in my provisional decision I said:

I've carefully considered how Novuna should put things right for Mr S in this case. I'm conscious that whilst this dispute has been ongoing, Mr S has had access to the furniture for around three years. So I think it's fair to make some deductions for the time he's used the furniture. However, I also think that any deduction should reflect that the goods weren't of satisfactory quality.

As a starting point I'd expect furniture of this cost to last for at least 10 years. Mr S has had access to the furniture for just over three years (which would result in a deduction of 30% and Mr S receiving 70% of the total furniture costs). However, I think the percentage deduction should be reduced by a further 10% as the furniture wasn't of satisfactory quality. So I think Mr S should be refunded 80% of the costs paid for the furniture. I'd welcome both parties' thoughts on this before I reach a final decision.

So I thought that Novuna should cancel the agreement with nothing further to pay, collect all the furniture and refund Mr S 80% of the costs paid for the furniture together with the cost of the report he commissioned.

I asked both parties to provide anything further they wished for me to consider before I reached a final decision.

In response Mr S asked for the full cost of the furniture to be refunded. He felt this was fair as the matter has been ongoing for three years and having this furniture in his home has caused significant distress and inconvenience to him and his family.

Novuna disagreed with the provisional decision. It argued that the report it commissioned (Report 3) was a "*Gold Inspection which is court compliant and provided the most up to date, comprehensive and concise on-site opinion*". It also highlighted the experience of the inspector and that the report said the nature and design of these sofas means they will not retain their form and will soften over time. It asked why in these circumstances, the complaint was upheld.

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 have considered the points raised in response to my provisional decision, but they don't persuade me to depart from the findings reached in my provisional decision (which forms part of this decision.) However, would like to comment on the points raised in response.

I appreciate Mr S is disappointed that I only awarded 80% of the costs paid towards the furniture and I don't underestimate what he's told me about the inconvenience and upset this situation has caused. However, I also need to take into consideration that he has had use of

the furniture for around three years and so some deduction to reflect this seems fair. In addition, I have also factored in that the furniture wasn't of satisfactory quality and made an increase to the amount awarded to reflect this. I think this represents a fair resolution to the complaint and I'm not persuaded that increasing this to a full refund is fair in the circumstances.

Turning to the points raised in response by Novuna, my provisional decision sets out in detail why I found Report 2 more persuasive than Report 3. So I don't intend to repeat this here and would refer Novuna back to the relevant parts of my provisional decision. I accept, as Novuna has said, that Report 3 has been compiled by an experienced and trusted source, however I have seen nothing to doubt that Report 2 was also compiled by an experienced inspector and is from a reliable source. Both reports concluded that the furniture would not/has not retained its original form but I found Report 2's conclusions that this was caused by the furniture not being of satisfactory quality more persuasive – particularly when considering that Mr S began experiencing problems within around four months of the furniture being delivered.

Putting things right

In order to put things right for Mr S, Novuna should:

- Collect all the furniture (4 sofas and 2 chairs),
- end the agreement with nothing further to pay,
- refund Mr S 80% of all monies paid towards the furniture (including the deposit)
- and the cost of his report (Report 2) of £360 .

My final decision

For the reasons explained above and in my provisional decision, I uphold this complaint and require Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance to put things right in the way I've detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 October 2024.

Claire Lisle
Ombudsman