DRN-5038646

The complaint

Miss A complains about how Mitsubishi HC Capital UK Plc, trading as Novuna Personal Finance ("Novuna"), dealt with her claim for compensation under section 75 of the Consumer Credit Act 1974 in relation to the installation of some doors and windows.

What happened

In early 2018, Miss A entered into a regulated fixed sum loan agreement with Hitachi Capital (UK) PLC (trading as Hitachi Personal Finance), for which Novuna is now responsible. The loan was to fund her and Miss H's purchase of some new doors and windows for their home. Miss H was not a party to the loan agreement, and so she is not eligible to complain in her own right, but she represents Miss A in this complaint, and I have taken her own evidence into account.

The installation was completed in April 2018. In 2019, Miss A and Miss H noticed cracks had appeared in the walls on either side of the upstairs bay window, and the floor had moved. They raised this with the retailer, who sent a surveyor to inspect the property. It turned out that the upstairs and downstairs bay windows were sagging due to ill-fitting mullion poles. The retailer offered to repair this defect, but it would not guarantee all of the remedial building work, because the original warranty had only been for doors and windows. Being dissatisfied with the retailer's offer, and finding that the retailer was often uncommunicative, Miss A and Miss H lost confidence in them, and Miss H instructed solicitors. In due course, the retailer returned to the property and carried out extensive remedial works in 2021.

Meanwhile, in October 2020, Miss A had complained to Novuna. She asked to be refunded for her consequential losses. These included £1,272 in solicitors' fees, £162:50 for five nights in a hotel during the works, and £248 for a survey by an independent surveyor who Miss H had instructed in April 2019.

Novuna gave Miss A its final response in February 2023 (by which time she had already brought this complaint to our service). Novuna told her that the remedial works had been successful, and that no further works were required. But as a gesture of good will, Novuna offered to pay her £300. It's not clear to me if this has been paid or not. (Novuna has previously paid her £50 to pay for the cost of cleaning a carpet which had been covered with brick dust.)

Later, Novuna offered to pay Miss A a further £600 to settle her claim. This consisted of £300 in compensation for her inconvenience and another £300 as a contribution towards the solicitors' fees. But Novuna did not agree to pay all of those fees. That was because the retailer had already offered to carry out the remedial works before the solicitors became involved; the remedial works which were subsequently done were not increased as a result of the solicitors' involvement; and the solicitors should have told Miss A and Miss H that section 75 provided them with an alternative remedy against Novuna. (Novuna also pointed out that the loan agreement had summarised the effect of section 75.) Novuna also objected to refunding the cost of the survey, because that had not identified any additional remedial work which the retailer had not already undertaken to do.

Miss A did not accept Novuna's offer, and she continued to pursue her complaint with our service. But our investigator thought that Novuna's latest offer was fair.

Miss H said this offer did not reflect either the stress she and Miss A had been caused, or the amount of time they had spent dealing with this matter. They both requested an ombudsman's decision. They added that the hotel accommodation had not been for them but for Miss A's daughter, who had been living with them and whose bedroom floor had needed to be lifted. They had felt forced to instruct solicitors only because the retailer had been largely uncommunicative, and only after multiple phone calls and emails had not been answered. They had had to instruct their own, independent surveyor. They had had to take some days off work, often at short notice. The remedial work had been extensive. They asked for £1,500.

I wrote a provisional decision which read as follows.

What I've provisionally 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 noted that the solicitors' two invoices are in Miss H's sole name, and so technically their advice was not an expense incurred by Miss A (who is the only eligible complainant in this case). However, that does not prevent me from taking into account that this was in reality a shared expense by the two of them, so I can still tell Novuna to reimburse Miss A's share of her reasonable expenses. The same applies to the invoice for the survey in 2019.

The second of these invoices specifically mentions that the solicitor had had to advise them about the lack of response from the retailer. So that corroborates their evidence that the retailer had indeed been non-responsive, notwithstanding the fact that the retailer did eventually carry out the remedial work. I think that vindicates Miss A's decision to instruct lawyers out of desperation. So I think it is fair that Novuna contributes to that cost. (In coming to that conclusion, I have considered the argument that Novuna's loan agreement calls the reader's attention to section 75, but I would not expect Miss A to remember reading that when the inadequacy of the installation came to light a year later.)

However, I agree with Novuna's argument that not all of those legal costs were really necessary, although I recognise that Miss A may not have realised that at the time. The first invoice mentions that the solicitor drafted a letter before action and sent it to the retailer (as well as some other correspondence). However, I think that bringing a claim against Novuna under section 75 would have been a less challenging alternative way to proceed, and would have been more suitable – not only with the benefit of hindsight; this should (and indeed might) have been the advice given at the time. I will not go as far as others have done and suggest that the solicitors' firm was negligent – indeed, for all I know they might have advised Miss A and Miss H all about section 75. I will not speculate about that.[1] It is enough for me to say here that one conference should have been enough to acquaint Miss A with the advantages of pursuing that route, and that it would not be fair of me to hold Novuna liable for legal costs above and beyond what that would have cost. So I think that £300 is a reasonable contribution towards Miss A's legal costs.[2]

[1] I do not endorse the advice to bring a complaint to the SRA.
[2] This is based on https://www.gov.uk/guidance/solicitors-guideline-hourly-rates#london (London 3 rate).

The hotel invoice is in the name of Miss A's daughter (and one other person). Miss A hasn't said that she paid for it, and so it's likely that her daughter did. I'm afraid I can't award Miss A compensation for her daughter's expense.

I would normally have agreed with Novuna's argument that since the independent survey did not identify any extra work that needed to be done beyond what the retailer had already agreed to do, then it would not be fair to require Novuna to pay for it. But I am minded to make an exception in this case, because it seems reasonable to me that Miss A had lost confidence in the retailer by then, due to the retailer's general lack of communication (to which I have already referred). Getting an independent survey seems to have been a prudent precaution to take in the circumstances. It's an expense which would not have been incurred but for the retailer's conduct, and so I think it is fair in this complaint that I require Novuna to pay half of that cost, or £124.

That is all I propose to award for consequential loss. I now turn to compensation for distress and inconvenience.[3]

As I've said, I can only award compensation for Miss A's trouble, not for Miss H's. I have taken into account the fact that this matter went on for a long time – longer than it needed to – before it was finally resolved. But in particular, I have noted that the large cracks in the walls around the bay window must have been very alarming to see – these were not hairline cracks, but were up to 4mm wide. I have to say that the photos are shocking.

Taking all of this into account, I think that Novuna's offer does not go quite far enough. I currently think that a total of £1,000 is called for in this case, and so I am currently minded to increase the compensation accordingly. (If Miss A wants to share this with Miss H, then that is entirely up to her, but it will be paid to Miss A.)

Responses to my provisional decision

Both parties accepted my provisional decision. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My final decision is that I uphold this complaint. I order Mitsubishi HC Capital UK Plc, trading as Novuna Personal Finance, to pay Miss A:

- £1,000 for her distress and inconvenience (or £700 if it has already paid her the £300 referred to in its final response letter); and
- £424 to cover consequential losses (in addition to anything that has been paid already).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 4 November 2024.

Richard Wood
Ombudsman

[3] I have referred to our published guidance on our website at https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience