

The complaint

Mr P complains about a lack of assistance from Mitsubishi HC Capital UK Plc trading as Novuna in resolving problems with the supply and fitting of replacement doors, windows and a conservatory by a third party “S”. Novuna provided finance towards the transaction with S.

Mr P is assisted in bringing this complaint by his wife Mrs P. Mr P took out the finance agreement in his sole name and is the eligible complainant for the purposes of bringing a complaint to us. No offence is intended to Mrs P by clarifying this point. However, recognising that the majority of correspondence has been through Mrs P and that the work was being carried out to their joint property, and for ease of reading, I’ll refer to both of them within the body of this decision.

I’m conscious that Mr and Mrs P have provided a good deal of documentation and correspondence covering the background to the complaint and their dealings with the parties involved. While I’d like to reassure Mr and Mrs P that I’ve read these submissions along with the rest of the evidence on file, I trust they will understand that for reasons of brevity I will set out a summary of events and my overall conclusions, rather than dealing with each aspect individually.

What happened

Several years ago Mr and Mrs P had the above work carried out at their home by S, a supplier and installer of glazing products. Unfortunately, since then they’ve experienced significant problems with the quality of the products and the installation, reporting – among other things – missing and damaged parts, water leaks, noise and draughts.

They’ve tried to resolve the issues through various means including with S directly, under the work guarantee, through S’s industry dispute resolution scheme “G”. In the course of those dealings they’ve pressed Novuna on a few occasions for assistance in getting the problems sorted out. However, last year S ceased trading and G told Mr and Mrs P it couldn’t help further where there was a prospective claim under the connected lender liability provisions in section 75 of the Consumer Credit Act 1974 (“section 75”).

As Novuna had provided credit for the transaction, it proceeded to deal with the matter as a section 75 claim. Subject to certain limitations, section 75 has the effect that a credit provider can be liable for a misrepresentation or breach of contract claim that the borrower might have against the supplier of goods or services.

Novuna hasn’t disputed the failings on the part of S, or that they amount to a breach of contract. After instigating its review of the claim it arranged for remedial work to be carried out. It acknowledged some avoidable delay in doing so, and says it paid £160 compensation for this. Novuna considers it has met its section 75 obligations, having obtained reports to this effect from “L”, who carried out the remedial work, and from “Q”, a Trading Standards-approved body.

Our investigator felt that Novuna’s response to the claim had been fair, and that it didn’t need to do anything more to resolve matters. But Mr and Mrs P didn’t accept his

conclusions. They say that issues remain with the standard of the installation and that there are outstanding matters that require 'making good', such as the rendering around the replacement fittings. They've also mentioned additional matters, such as the colour difference of the conservatory materials in comparison with the window frames. Mr and Mrs maintain that the claim is unresolved. They continue to seek further work to be carried out, and a significant reduction in the contract price to reflect the problems they've experienced.

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 can understand that Mr and Mrs P have had a really awful experience since engaging S to undertake work on their property. They were entitled to expect that work would be carried out to a satisfactory standard, and the reports they obtained demonstrate without doubt that S failed to achieve this.

Mr and Mrs P have described in detail the difficulties they've had in getting things rectified, the many attempts at remedial work and the numerous parties that have attended their home to try to put things right. It makes for some sorry reading, and I can sympathise with the degree of frustration, annoyance and upset this caused them. That was compounded by the later failure of S and the resultant withdrawal of G, who had been assisting with the rectification.

But my role here doesn't give me general powers to investigate all the parties that might have let down Mr and Mrs P, or to make awards in relation to their actions. I can deal only with Novuna and how it addressed any obligations it might have had towards Mr and Mrs P in its capacity as their financial services provider.

I'm aware that from relatively early on, Mr and Mrs P approached Novuna for help in getting S and others to act. But I don't consider that I could rightly construe their contact at that stage – or their dissatisfaction that things weren't progressing – as amounting to a breach of contract claim they were making against Novuna. If I did, it's likely I'd also have to conclude that I had no power to deal with matters. I say this because Novuna considered and responded to their concerns at the material time, and Mr and Mrs P didn't exercise their right to refer matters to us within the timescale they were given.

Based on what I've seen, I find it more appropriate to find that this earlier contact was to see what influence, if any, Novuna might be able to bring to bear on S to re-engage with Mr and Mrs P. I fully understand why Mr and Mrs P did this, although I must also recognise that by merely by virtue of its position as their financial services provider, Novuna didn't have any general duty or obligation to assist or support its customers with problems they might be experiencing with third parties.

I appreciate that Mr and Mrs P might see it differently – their correspondence indicates their general view that as customers, all parties should be attempting to assist them. Be that as it may, I don't consider that Novuna carries responsibility for the actions or poor service by S in the period before Mr and Mrs P could be said to have been making a section 75 claim – other than the breach of contract grounds forming that claim. And for the avoidance of any doubt, my finding is that the point at which Novuna ought to have treated matters as a section 75 claim against it, for which it held a potential liability to Mr P, was in late 2023 – specifically, after G told Mr and Mrs P it couldn't continue to deal with them because S had ceased trading.

In the background of this decision I paraphrased the wording of section 75, though to make things clear I've reproduced the exact wording here:

"75 Liability of creditor for breaches by supplier

(1) 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."

Here, Mr P is the debtor, Novuna is the creditor and S is the supplier. I'm satisfied Mr P's credit agreement meets the section 12 definition, and that this was used to finance the transaction between Mr P and S, which was within the financial limits also specified in section 75.

Mr and Mrs P have provided detailed correspondence and photographs of the problems with the windows and doors S installed. There is also a lengthy report on the condition and recommended remedial work to be done. I don't think there's any doubt that there was a valid claim in breach of contract, and I can see that Novuna didn't seek to dispute that either.

The position is less clear in terms of damages or issues that might have flowed from that breach. While Mr and Mrs P have mentioned water ingress, the severity of that ingress isn't clear. I can't say whether leaks have led to internal damage, or whether there are any other relevant factors that might have affected this. And while I accept the stress Mrs P has been under and her description of the impact on her personal health, it doesn't necessarily follow that this amounts to a personal injury claim she could pursue against Novuna. As Mrs P isn't herself the debtor under the credit agreement, I can see there might be some significant difficulties in succeeding in such a course of action.

That's not to detract from the fundamental point, which is that there was a breach of contract that needed to be rectified. Where that's the case, I'd expect to see that Novuna took prompt action to arrange for the recommended remedial work to be carried out, ideally with the minimum of disruption or inconvenience to Mr and Mrs P. I recognise that some degree of inconvenience is inevitable when having this type of work carried out on your home. So what did Novuna do?

I don't think it would be right to say Novuna responded promptly; by its own evidence there was some delay in instructing a suitable person to undertake the remedial work, for which it has paid £160 compensation. Other than that, Novuna appears to have done what I would look for it to do in this situation. Not being an installer of replacement doors and windows itself, Novuna sought to engage a company qualified to carry out the work.

When Mr and Mrs P objected to the use of that company, Novuna arranged for a different party, L, to do the job. It liaised between Mr and Mrs P and L when there were disagreements over the work required. And when Mr and Mrs P said they were still dissatisfied with the remedial work, Novuna engaged the services of Q to provide an independent and objective assessment of what had been done.

I don't share Mr and Mrs P's opinion of the independence or neutrality of either Q or L. As I've noted, L is a business with relevant expertise. Q is a Trading Standards-approved entity deemed competent in assisting with disputes in the field of house maintenance and improvements. I see no reason why Novuna should not have asked Q to arrange the inspection, or why Novuna – or I – should not be entitled to place reliance on the summary findings.

I appreciate that Mr and Mrs P feel strongly about this matter. Their responses to our investigator make this clear. I've looked at what they've said and provided, but I don't consider they've put forward enough of a case to overcome the expert opinion set out in Q's assessment. In the absence of an alternative report from an equivalent independent source contradicting Q's conclusions, my finding is that I prefer the evidence submitted by the recognised professionals in the field. Whether Mr and Mrs P continue to view this as collusion within the industry is a matter for them. I don't share that concern.

I'm not inclined, given the background and context of this complaint, to conclude that Novuna has a responsibility to take further action on the latest issue they've raised about the colour of the conservatory. This wasn't something they raised in the period since S carried out its work, and it appears to be something that they didn't themselves identify until L drew it to their attention. That suggests to me that the colour difference might be sufficiently slight that it provides what most people would consider to be a reasonable match.

It remains open to Mr and Mrs P to obtain their own report to support their overall claim, and my consideration of this complaint doesn't prevent them from pursuing that claim by alternative means, such as legal proceedings, should they wish to do so. It is simply that on the evidence made available to me, I'm not persuaded to require Novuna to do more than it already has in order to resolve this complaint.

My final decision

My final decision is that I don't uphold this complaint.

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

Niall Taylor
Ombudsman