

## **The complaint**

Mr W complains about the way Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance ('Novuna') handled a claim he made to it.

## **What happened**

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

I note Mr W has referred to the two addresses relevant to this complaint as his 'country' and his 'town' houses. For the purposes of this decision I will refer to these respectively as 'Home A' and 'Home B'.

Mr W ordered an electric bike from an online retailer ('the supplier'). He financed this with a fixed sum loan from Novuna.

Mr W says he gave the supplier the address for Home A. But the finance agreement was arranged using the address for Home B (as this is the address he uses for financial matters).

Mr W says he was expecting the bike to arrive to Home A but the supplier unilaterally changed the delivery address from Home A to Home B and would not change this. It resulted in Mr W cancelling the order.

Mr W says that this situation ruined his bank holiday, resulted in an adverse mark on his credit file, and meant he had the inconvenience of having to source a bike from elsewhere.

Mr W approached Novuna to make a claim for breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Novuna noted the agreement had now been cancelled but did not offer further compensation for the supplier's actions.

In response to Mr W's complaint about the claim Novuna refused to pay compensation under Section 75. However, it said it had sent Mr W £150 for its poor customer service in not raising a complaint when Mr W told it that he wasn't happy with the claim outcome and wanted to take things further.

Our investigator looked at the complaint about Novuna's claim handling but did not think Novuna had acted unfairly.

Mr W says he wants £250 compensation to resolve his Section 75 claim. He has referred to case law which he says supports such an award.

The matter has now been referred to me to make a final decision.

I issued a provisional decision which said:

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

*While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.*

*I am sorry to hear about the issue with Mr W's purchase and his dispute with the supplier. Here I am looking at Novuna's role as a financial services provider in responding to the claim Mr W made to it. In deciding what is fair I consider Novuna's liability under Section 75 to be particularly relevant.*

## **Section 75**

*Section 75 in certain circumstances allows Mr W to hold Novuna liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement with a supplier of goods or services which is funded by the loan.*

*There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or the way payment was made. After considering these factors I think the requirements are in place for Mr W to have a valid Section 75 claim against Novuna in respect of the bike. For completeness I note the accessories Mr W ordered at the time are not within the financial limits for a valid Section 75 claim – but that is not consequential here in any event.*

*So I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation by the supplier which would reasonably have been available to Novuna at the time it considered the claim. And if so, what, if anything, Novuna should fairly do now to put things right.*

*Because the basis for Novuna's liability is Section 75 and a 'like claim' against the supplier – I consider what a court might do in respect of any claim Mr W makes against the supplier to be a relevant consideration when determining what is a fair and reasonable outcome here.*

*No breach of contract by the supplier*

*My starting point here is considering the terms of the contract between Mr W and the supplier. In order to do this I have used the internet to get the archived terms and conditions relevant at the time Mr W entered into said contract with the supplier (April 2024). However, I note the relevant terms are the same as those found on the website of the supplier at the time of writing under 'Terms and Conditions' and clearly state the following under the heading 'Buying with Finance':*

***Please note*** *that orders paid for on finance can only be shipped to the address given in your finance application. It will not be possible for us to ship goods to a different delivery address.*

*For his finance application Mr W gave Novuna the address for Home B – this is not in dispute. I know Mr W says he gave the supplier the address for Home A. But the terms are clear that the supplier ships to the address specified to the finance company (Home B). And in line with its terms and conditions this is the address which the supplier attempted to deliver to. So I cannot accept the supplier changed the address unilaterally as Mr W says. I also note the order and shipping confirmation from the supplier clearly denotes it was intending to deliver to Home B.*

*The supplier does mention on its website FAQs that when purchasing via finance there is a way to arrange for an alternative delivery address – but this needs to be specified as part of the finance application to Novuna.*

*Because of what the specific terms of the contract say I do not conclude that the supplier has breached its contract with Mr W here. Nor do I consider any implied terms (say those under the Consumer Rights Act 2015) make a difference here. It follows that I don't consider*

*there is liability for Novuna under Section 75 for a breach of contract, and it did not act unfairly in declining the claim.*

*I note Mr W has mentioned the adverse impact on his credit file due to what has occurred. Because of my findings in respect of breach of contract – I do not think Novuna is fairly liable for that. But I also note there isn't persuasive evidence from what I can tell that Mr W's credit file was adversely affected from this situation in any event (it also appears the loan is no longer being reported).*

*No liability for compensation for non-financial loss in any event (in the particular circumstances here)*

*Even if I were to agree there is a breach of contract by the supplier (which I do not) I note it effectively refunded and cancelled the order. So any Section 75 claim Mr W made against Novuna was essentially for non-financial loss.*

*Mr W says the bike not arriving at Home A spoilt his bank holiday weekend plans and meant he had to source another bike. He characterised the impact as annoyance, inconvenience and wasted time. However, I am not persuaded that a court would likely award additional compensation in these circumstances in any event. I will explain why.*

*I accept Mr W's point that damages for the non-financial loss he is claiming are available in an action for breach of contract. However, I consider that only in certain limited circumstances will a court award (modest) compensation for impact akin to disappointment and distress. For example, where a substantial purpose of the contract is to provide enjoyment or pleasure (such as a wedding or a holiday). However, I am not persuaded that is analogous to the situation here, involving a failed delivery in respect of a simple contract for goods – even those which can be used for recreation.*

*I note Mr W has provided case law he says supports his claim. And while I have read and considered this information – I don't find any of this persuasively shows that a court is likely to allow an award for Mr W's claim for annoyance, inconvenience and wasted time in the particular circumstances here.*

*In coming to this conclusion I also note more recent case law of Graham & Anor v Thomas Cook Group [2012] EWCA Civ 1355 (23 July 2012) involving a flight disruption affirms that:*

*'Damages for disappointment and distress are allowed in contract law only in rare instances. Breach of a contract to provide a holiday is one such case, but we are not here concerned with a contract of that kind; this is a simple contract of carriage'*

*In summary, I don't consider there to be persuasive evidence a court would allow Mr W to claim for the non-financial loss he wants in respect of the simple contract for goods he had with the supplier. It follows that I don't consider Novuna were acting unfairly in refusing to accept liability for this (even if a breach of contract by the supplier were clearly made out).*

*Furthermore, while I am sorry to hear about what happened (and without wishing to appear dismissive of Mr W's genuine frustration) I don't see what he presented to Novuna as part of his claim to it (in terms of what he was reasonably unable to mitigate) as more than short term and relatively minor annoyance/inconvenience. So even if a court were to entertain the same claim for the non-financial loss here (and I am not persuaded it would) there is a question as to whether the impact is sufficient for it to make an award in any event. I say this noting the courts' traditional reluctance to make awards for disappointment and distress.*

*For completeness, I note Mr W has also referred to 'loss of amenity' and specific case law involving this. I am not persuaded that Mr W's situation is analogous to the long term or permanent detriment that accompanies the sort of claim he has referred to. However, I should clarify that this service is unable to make awards for 'loss of amenity' in any event.*

*In summary, (while I acknowledge that Mr W has underlined our service's jurisdiction is based on what is fair and reasonable, and not necessarily what a court would do) in looking at the specific nature of Novuna's liability here via Section 75 – I do not consider it acted unfairly or unreasonably in not paying Mr W compensation for the actions of the supplier.*

### **Customer service**

*Mr W has inferred the £150 compensation Novuna says it paid him is not something this service should be looking into – as it relates to complaint handling.*

*I don't consider looking into this point makes a difference to the outcome here. But I am not persuaded I can't look at it either. Essentially, Mr W told Novuna's claims team in an email he was unhappy with the outcome of his Section 75 claim and wanted to escalate matters. It looks like it failed to respond to this email or escalate things despite Mr W chasing it. And while this customer service failing arguably overlaps with the start of a complaints process I don't think it means I can't look at it as part of a broader complaint about the way his Section 75 claim was dealt with.*

*With this in mind I have looked at what occurred. I recognise there is a customer service failing in not responding to or escalating Mr W's concerns which he made to the claims team in May 2024 when he heard about the outcome of his Section 75 claim. This was no doubt frustrating for him. However, I note Mr W contacted our service in early June 2024 when he didn't hear back from Novuna – which eventually resulted in Novuna starting its complaints process and providing a response by 20 August 2024. In the end (and considering Novuna has 8 weeks to look into the complaint anyway) I think the additional delay its initial customer service failing caused was not highly significant. I also note Novuna apologised to Mr W for its failing – which is a factor when considering how it should put things right.*

*However, I recognise that distress and annoyance has been caused to Mr W by Novuna's failing. And I think a small award of compensation would be fair to reflect that. The £150 Novuna says it paid is more than I would have awarded in the circumstances. So I am not minded to tell it to pay extra here.*

*For completeness, and noting what Mr W complained about to Novuna (focused on the outcome of his claim) I don't consider there are other aspects of its claim handling that warrant an award of compensation here.*

*I appreciate Mr W is unlikely to agree with my findings. However, I remind him that he is free to reject them and pursue his claim against the supplier through alternative means (such as court) if this is something he considers the best course of action.*

### **My provisional decision**

*I don't uphold this complaint.*

Mr W disagrees. His key points of contention are summarised as follows:

1. He considers my finding that the supplier is not in breach of contract to be incorrect. He points to the supplier's order confirmation which he says is clear that the delivery address is Home A. He says that '*provisions tucked away in the terms and conditions can't alter that*'. And that if there was a problem the correct approach would have been for the supplier to call or email to say that it had noticed he had ordered for delivery for Home A but used a different address for the finance.
2. He disagrees that a court would not award damages for non-monetary loss in this situation. He says the judge's comment I have quoted is obiter and the case concerns a different type of contract. He has cited case law which he says supports an award. He says the approach that distress and inconvenience can't be claimed in a Section 75 case '*is simply wrong*'.

3. In referring to loss of amenity he meant the *'the loss of the use and enjoyment of the bicycle for the summer of 2024 until another could be procured'*.

### **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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

Mr W has articulated his case well. I can quite understand his position and have carefully considered his points. However, after doing so I am still not persuaded that (with Section 75 in mind) it is fair and reasonable for me to tell Novuna to pay him additional compensation here. I will deal with his additional points in respect of the summarised comments numbered 1-4 above. However, I will only focus on the matters I consider to be key.

1. To clarify, I do not dispute the delivery address Mr W originally specified to the supplier (and as shown in his order confirmation on 21 April 2024) was for Home A. Nor do I dispute the supplier later changed this to Home B. Novuna confirmed that is what took place in its response letter to his complaint, so it is not in dispute. However, the key thing for me is whether this was as Mr W says, a breach of contract. I have explained why I don't think it is already so I won't repeat my reasoning in full.

I know Mr W has said the supplier's terms about buying on finance are 'tucked away' but I don't think they are. They are reasonably clear and easy to find on its website. And while I note Mr W's point that it would have been good customer service to specifically draw attention to the fact that he had given the supplier the address for Home A and the finance company Home B I am not persuaded a failure to do this can fairly be considered a breach of contract as the terms explain what happens with delivery when payment is via finance arranged with Novuna. And, as I have pointed to in my provisional findings – the order and shipping confirmation the supplier sent to Mr W (for clarity I mean the one it sent on 26 April 2024 titled 'It's on its way!') does clearly show the intended delivery address for the bike and accessories is Home B. Thus reflecting the change that took place in accordance with its terms and conditions.

2. To be clear my finding is not that a claim for distress and inconvenience in a Section 75 claim is not possible. I consider it is. However, as I have pointed to in my provisional decision, such an award will apply rarely and only in specific circumstances. And I don't consider it is likely in the specific circumstances of Mr W's case. While I note and broadly accept Mr W's point about the judge's comments I quoted in my provisional findings, I still consider these at least a persuasive reflection of the general approach taken by the courts. And I have not seen anything to persuade me otherwise.

I note Mr W has underlined specific case law but these involve holidays and other contracts for services. And include those where the impact of any breach was particularly significant. I don't consider any of the case law directly analogous to his situation involving a simple contract for goods and a short term, relatively low level of impact (and for clarity, without wishing to downplay Mr W's genuine frustration I don't consider it reasonable to conclude the level of unmitigable impact was any more than short term here).

3. I note Mr W's clarification regarding what he means by loss of amenity. However, as I have already explained – I am not persuaded a court would fairly have made an award of additional compensation here in any event.

I understand Mr W's strength of feeling on this matter. But all things considered I don't think it would be fair and reasonable to tell Novuna to pay him additional compensation here.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 December 2024.

Mark Lancod  
**Ombudsman**