

The complaint

Mrs S complains that a driveway which she had installed was not of a satisfactory quality. Because it was financed with a loan from Mitsubishi HC Capital UK PLC, she says that it is responsible, with the supplier, for putting things right. Mitsubishi trades in this case under its Novuna brand.

What happened

In February 2022 Mr and Mrs S had a resin driveway installed by a company which I'll call "U". The purchase contract shows that they paid £27,000 in total. Of that, £24,000 was in the form of a loan from Novuna to Mrs S.

Mrs S says that, within a few weeks, the driveway was sinking where vehicles were parked on it. Indentations were left when the vehicles were moved. U visited the site but did not accept that there was any issue with the driveway.

In June 2022 Mrs S submitted a claim to Novuna. Novuna asked a firm of surveyors, Q, to inspect the driveway and prepare a report. Novuna did not provide Mrs S with a copy of Q's report, saying it was inconclusive. It did however pay Mrs S £425, acknowledging that it had been slow to deal with the claim.

A copy of Q's report is now available, however; its findings were, in summary:

- The driveway had been laid correctly and the resin surface was of satisfactory quality.
- Overall, the driveway was in good condition.
- There was evidence of sinkage, and the driveway was showing 15mm depressions where vehicle wheels sit.
- The cause of the depressions could not be fully verified without excavation of the driveway, but possibilities included: a lack of tarmac material to carry point loading; the tarmac base not being rolled correctly to compact the material for maximum strength; or the sub-base was not rolled correctly.

The report recommended that the ruts be monitored on a monthly basis to see if the surface was degrading further. It said that the situation was unlikely to improve, but it might not get any worse. To rectify the problem, the driveway would need to be excavated and a concrete base laid, follow by a resin finish. The cost would be a little under £26,000.

In September 2023 a further inspection was carried by a consultancy which I'll call "G". The consultancy is run by an individual with expertise in concrete who acts as an expert witness in court and arbitration proceedings. G was provided with the earlier report prepared by Q. G's report concluded, in summary:

- There were minor indentations in the surface of the driveway, of the type that would be expected.
- The likely cause was the tarmac over the sub-base and was probably related to the "*low early life penetration resistance of the macadam*".

- The 15mm depressions recorded by Q were recorded over a length of more than 1 metre. Over 1 metre the indentation observed by G was between 4mm and 6mm.
- There was evidence of damage from a motorcycle stand; the surface should be protected from such point loading.

In May 2024 one of our investigators issued a preliminary assessment. Based largely on the report prepared by G, he did not recommend that Mrs S's complaint be upheld. He noted however that, if Mrs S wanted to obtain her own report, it was open to her to do so.

Mrs S therefore obtained two further reports, from businesses which I'll call "C" and "D". Both carried out site visits.

C concluded that the tarmac layer was only 15-20mm thick, whereas it should have been 50-60mm thick. This meant the driveway was not structurally sound and the indentations were the initial signs of sinking.

D carried out some limited excavation on the side of the driveway and concluded, again in summary:

- The sub-base depth was insufficient for use on clay, as was the material used.
- The equipment used for the installation was inadequate, meaning that the compaction was insufficient.
- There was evidence of resin failure in several areas, suggesting a low quality material was used.
- The concrete mix used for the edging was weak.
- D also said that indentations reached a maximum depth of 21mm.

Both reports were forwarded to Novuna, who sought comments on it from G. G's comments were largely dismissive of both C's and D's conclusions.

The investigator reviewed the case in the light of the further reports and more recent evidence about the condition of the driveway. Having done so, he issued a second assessment. In it, he concluded that the evidence indicated that there were issues with the sub-base and that the driveway had not settled in the way the initial reports had suggested it might. He recommended that Novuna arrange and pay for a replacement driveway and refund the costs of the reports prepared by C and D.

Novuna did not accept the investigator's recommendation and asked that an ombudsman review the case. I did that and issued a provisional decision in which I said:

One effect of section 75 is that, subject to certain conditions, an individual who takes out a loan to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the lender. The conditions include that the loan is made under arrangements between the lender and the supplier. There is no dispute that all the necessary conditions are met in this case. I have therefore considered whether Mr and Mrs S have received what they paid for under their agreement with U.

In reaching this provisional decision, I have had to rely to a large extent on the comments of industry professionals and experts, as well as photographic evidence. I note Novuna's comments that only G's evidence is truly independent and should be relied on. In court proceedings, expert witnesses would usually try to present an agreed report as far as possible, narrowing down the issues on which their expertise is needed; there would not usually be a range of apparently conflicting opinions, as there is here. This service is not,

however, bound by the same rules of evidence as a court would be, so I have considered carefully the comments and evidence of all those who have been involved. That is not to say, however, that I have given equal weight to all opinions.

Under the Consumer Rights Act 2015 U's contract with Mr and Mrs S was to be read as including a term that the driveway would be of satisfactory quality and that the work would be carried out with reasonable care and skill. Satisfactory quality includes fitness for purpose, appearance and quality, and durability. I note that the contract guaranteed that the driveway would be of satisfactory quality for five years from the date of delivery.

I do not believe I can fairly say that the driveway is not fit for purpose. Whatever issues Mrs S has identified with it, it can be used for the purpose it was intended, and has been used for that purpose for the last three years. The issues which form the basis of Mrs S's complaint concern appearance, quality and durability.

All the reports, as well as photographs provided by Mrs S, show that there were and are indentations in the driveway, although their extent is a matter of dispute. That is perhaps surprising, since it should be possible to measure them against agreed parameters.

I should comment at this stage on the terms and conditions of the agreement with U. Clause 14.3 states that U will make the new surface as level as possible but that a tolerance of 20mm per square metre is allowed. That has generally been taken by those involved to mean that movement of anything beyond that will give rise to a claim for breach of contract, and that anything less will not. But I don't believe that is the correct approach here. The figure of 20mm is a tolerance connected with the installation, not the ongoing life of the driveway. It is not irrelevant in my view, but neither is it an exact cut-off point. I have taken a more holistic approach.

All the reports identified some indentations in the driveway. The initial report, prepared by Q, speculated that they might settle (that is, not get any worse), but that they were unlikely to improve. G's initial report, however, found that the indentations were less than they had been around a year earlier. I think that must be down to a different method of measuring their depth, and G did note that it was not clear exactly how Q's measurements had been taken.

Whilst Q's report suggested a remedy, it also concluded that, when the inspection was carried out, the driveway overall was in good condition. Q suggested that the indentations might get worse, but that does not appear to have happened – at least at the time of G's inspection in September 2023. The condition of the driveway after 18 months does not appear to have changed materially from the condition after 6 months.

The reports prepared by C and D are, in my view, of limited assistance. They refer to the depth of the sub-base and tarmac, although in both cases measurements appear to have been taken from a very limited area. D's comments about the concrete mix relate to the edging of the driveway, but it is not explained how that could cause any indentations where cars were parked. I note too that there is some disagreement among those who have inspected the driveway about the correct way to prepare the base.

Perhaps more significantly, I am not persuaded that any of the photographs I have been provided with show a driveway that is not in the condition I would expect. Its condition in late 2024 is not, in my view, visibly different from what it was in the summer of 2022. I have not of course had the benefit of seeing it other than in photographs, but I do not believe – based on the evidence I have seen – that it is not of satisfactory quality.

It may be that clearer evidence is available and, if so, I will consider it before I issue a final decision. I note that, having found that the driveway was not of satisfactory quality, the investigator recommended that Novuna meet the costs of replacement. If I were to reach a similar conclusion in a final decision, however, it is likely that I would make a deduction to reflect the use that Mrs S has had of the driveway over three years – taking into account its expected lifetime and original cost. The parties may wish to comment on that when they reply.

It is not for me to decide whether Mrs S has a claim against U, or whether she might therefore have a “like claim” under section 75 of the Consumer Credit Act. Rather, I must decide what I consider to be a fair and reasonable resolution to Mrs S’s complaint. In the circumstances of this case, however, I think that Novuna’s response to the claim was reasonable.

Novuna did not have anything to add. Mrs S did not, however, accept my provisional findings. She submitted further photographs and video recordings which she said showed more clearly defects in the driveway, as well as evidence of further deterioration.

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 am grateful to Mr and Mrs S for providing further and clearer evidence of the condition of the driveway and of what they consider to be its defects. I am not persuaded however that the additional evidence does show clearly that the driveway is not of satisfactory quality. I accept that they do show some minor cracking and indentations, but I do not believe that they are sufficient to show that the installation was not carried out to an appropriate standard or that the materials used were defective.

In saying that, I note that U’s terms and conditions include, at clause 5:

5. QUALITY

5.1 Hairline fractures may occur in very infrequent cases. This does not affect the overall performance of the surface and cannot be regarded as a defect. Any severe cracking forming within the surface will be mass filled by the Company.

5.2 The nature of the materials and processes used make it unavoidable that appropriate variations in texture and colour of the surface material may occur. Whilst every possible care will be exercised, the Company cannot guarantee colour and texture matching closer to tolerances than those inherent in the materials and processes used. Once the surface is laid over a period of time it will loose [sic] its shine and give you a natural matt stone finish.

5.3 The Supplier guarantees that on installation, and for a period of 5 years from the date of delivery, the Goods shall:

- (a) conform in all material respects with their description;*
- (b) be free from material defects in design and workmanship;*
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);*
- (d) be fit for any purpose held out by the Supplier.*

The relevant statute is no longer the Sale of Goods Act, but the Consumer Rights Act 2015; be that as it may, Mr and Mrs S's contract with U must still be read as including a term that the driveway will be of satisfactory quality.

U's written material also includes a statement that, under normal conditions, a resin bound surface should last in excess of 20 years.

I accept that the driveway has developed some cracks, and that it is not perfectly level in places. And I note that the expert evidence is divided over whether that means it has not been installed correctly. It's possible too that it may develop material defects within the 5-year guarantee period or that it may not last as long as 20 years. I do not believe however that the evidence I have seen indicates that it is materially defective.

As I indicated in my provisional decision, my role is to determine what I consider to be a fair resolution of Mrs S's complaint about Novuna's handling of her section 75 claim. It is not to determine whether she has a claim against U. On the basis of the evidence available when the claim was made, however, I do not believe Novuna acted unfairly by declining that claim. And my findings here should not prevent Mr and Mrs S making further claims, should the condition of the driveway deteriorate.

My final decision

For these reasons, my final decision is that I do not uphold Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 19 June 2025.

Mike Ingram
Ombudsman