

The complaint

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

Mr S has been represented in bringing this complaint by Mrs S, so where I refer to his arguments and submissions, I include those made on his behalf.

What happened

In February 2022 Mr and Mrs S engaged a firm, which I'll call "L", to supply and lay an imprinted concrete driveway at their home. They paid a deposit of £1,800 and Mr S took out a 10-year loan of £7,100 from Novuna to pay the balance. He was to pay £91.80 a month.

In December 2022 Mr and Mrs S say they noticed that the driveway was discolouring in some places and that the surface appeared to be damaged. They arranged for L to look at the damage so it could be rectified.

L said that it did not believe there was anything wrong with either the materials it had supplied or the work it had done. It concluded that the damage had been caused by blunt force (such as the placing of a skip) or by the application of rock salt, or a combination of the two.

Mr S contacted Novuna, saying he thought he had a claim under section 75 of the Consumer Credit Act 1974 ("section 75").

Between June and October 2023 three reports were produced, commenting on the condition of the driveway and the likely causes of any issues with it.

- In June, N made a site visit and concluded that the driveway had been damaged by incorrect fitting and could not be repaired. It recommended it be replaced.
- In July, R concluded that there was damage and that it was probably caused by frost, not by the customer. It was not repairable.
- In October, G carried out a desktop report and concluded that a repair should be considered.

Novuna considered the reports and, relying to a large extent on G's conclusions, offered to meet the costs of repairs, which had been estimated at £500 to £700. It also paid Mr S £300 as a gesture of goodwill. He did not accept that offer and so our investigator considered all the evidence and issued a preliminary assessment. Noting that two of the reports had concluded that a repair was not possible and that the third had said only that it should be considered, the investigator recommended in December 2023 that Novuna cancel Mr S's loan agreement and refund all the payments made under it and the deposit, together with interest. That would place Mr S in a position where he could arrange for a replacement driveway.

Novuna did not accept the investigator's recommendation. It said that, of the three reports: the first had been written by a business which was a supplier in the same field and which therefore had an interest in concluding the driveway needed to be replaced; the second had been written by a business which did not operate in the same field and which therefore had limited expertise; only the third had been written by an individual who routinely acted as a court expert and who was genuinely independent. Novuna said that the investigator should disregard the first two reports.

The investigator did not change her view, but Mr S nevertheless agreed to the proposal that repairs be attempted.

There was some delay before repairs could be carried out, in part because of wet and cold weather, but they were completed in early May 2024.

Mr S remained unhappy with the driveway. He said that the repair had not resolved the discolouring and damage which had previously been present. The surface coating had sealed in the damage, which was still visible. He provided photographs which he says support his case.

G reviewed the evidence after the repair and commented, in summary:

- The photos did not show evidence of the concrete lifting.
- The surface had been successfully repaired.
- The finish and appearance were as expected.

Mr S asked that the investigator review the position. She did that and issued an updated recommendation. She concluded that the repairs had not resolved the problem and that Novuna ought therefore to refund all payments to Mr S, with interest – that is, broadly the same remedy she had proposed in December 2023.

Again, Novuna did not accept the investigator's recommendation. It referred to G's observations on the repair and the condition of the driveway.

Because it had not been possible to resolve Mr S's complaint, the case was passed to me for further review. I considered the complaint 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 S has received what he paid for under his agreement with L.

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 this service should disregard "expert" evidence from all but G, because that is what a court would do. 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 expert opinions. This service is not, however, bound by the same rules of evidence as a court would be, so I have considered carefully the comments 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 L'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.

L said that it had met these requirements, but all three reports on the driveway concluded that it had not been correctly laid and that this had resulted in damage. Two said that the driveway needed to be replaced, the third said that repairs should be considered. In the event, it was agreed that a repair should be carried out.

If repairs were successful, Mr and Mrs S would be put in the position they should have been in had the contract been fulfilled. That is, they would have a driveway which was of satisfactory quality. If repairs were not successful, they would still have a claim against L, and Mr S would have a "like claim" against Novuna.

The issue I must consider therefore is whether, following the repair, the driveway is of satisfactory quality and, if it is not, how that should be rectified.

Mr and Mrs S have provided photographs which they say shows that the repair was not successful. Because the repair did not remedy the defects, they say, the driveway should be replaced. The investigator was broadly in agreement with them, and the remedy she recommended would put them in a position where they could, in effect, start again.

I have reviewed the photographs, together with those which were taken before the repairs were carried out. The earlier set show[s] very clearly that there were large areas of the driveway where the surface was discoloured and where there was evidence of delamination. I think it is very clear, even to someone with no expertise in the area, that the driveway was not of satisfactory quality.

The photos taken after the repairs were completed, however, show a rather different picture. The large areas of discolouration are no longer visible, and the whole driveway has a much more uniform appearance. Even where there is some variation in colouring, it appears to me to be minor and in line with what I believe most people would expect in a stone or concrete surface, especially one which is outside.

I note that G took the view – again, based on the photographic evidence, rather than a site visit – that the driveway had been repaired successfully and that the finish and appearance was as would be expected.

As I have indicated, I will consider any further evidence or arguments which the parties might wish to provide. My current view however is that there is insufficient evidence that the driveway is not of satisfactory quality and that it would not therefore be fair to make an award in Mr S's favour.

Mr S did not accept my provisional conclusions. He said that the repairs to the driveway had not been successful and that the surface was continuing to show signs of delamination. Its condition was getting worse. Mr S provided further photographs which he said showed this.

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.

Having done so, however, I have not changed my view from that set out in my provisional decision. I think it was very clear when Mr S first raised his claim with Novuna that the driveway had not been completed to a satisfactory standard. The photographs from that time showed large areas of discolouration which were clearly visible. And the experts who inspected the work were broadly in agreement that it was not satisfactory – even if they had different views about how any issues should be resolved.

The photographs taken after the repair are rather different, however. As I noted in my provisional decision, there is a much more uniform appearance, and any variations appear to me to be minor. I realise of course that I have not had the benefit of seeing the driveway in real life, but I have considered very carefully the evidence that is available. The photographs which have been provided after I issued my provisional decision do not however give me reason to change my view of the complaint.

I stress that it is not for me to say whether Mr and Mrs S do in fact have a claim against L. Nor is it for me to decide whether Mr S has a claim against Novuna. What I must do is decide what I consider to be a fair resolution of his complaint about Novuna's decision about his claim. In the circumstances, however, I think that Novun's response to Mr S's claim was reasonable.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 May 2025.

Mike Ingram
Ombudsman