

The complaint

Mr F has complained about the way Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance ("MHCC") dealt with a claim he'd made under section 75 ("s.75") of the Consumer Credit Act 1974 ("CCA").

What happened

The circumstances of the complaint are well known to the parties, so I'm not going to go over everything again in detail. But to summarise, Mr F took out a fixed sum loan agreement with MHCC to pay for the supply and installation of a bathroom from a supplier I'll call "S" in January 2024, for installation a few months later. The bathroom cost around £11,000 and Mr F paid a deposit of £1,100. He was due to repay the agreement over three years with monthly payments of around £275.

Mr F contacted MHCC in May 2024 because he was unhappy with the installation. He said he was forced to make certain compromises he didn't want. S said it was trying to resolve things for Mr F. It said there were issues found after design which meant some of the items had to be changed. Mr F said it wasn't installed as per the original design, and he didn't want to pay for it. MHCC and S together offered £1,550 compensation, but Mr F decided to refer his complaint to the Financial Ombudsman.

S sent a senior manager to inspect the bathroom in October 2024. In summary, they said:

- There's a lipped tile under the window, a poor cut tile around the extractor fan and to the side of the door. The tile trims around the window seem oversized and the layout hasn't been well considered, leaving a 40mm cut tile around the perimeter.
- When the shower is used excess water sprays outside the area. They thought this was a poor design and proposed the enclosure was changed to a full enclosure style but given the position there'd be restricted access to the toilet and bath.
- There was an issue with the shower valve chosen. It wasn't suitable due to the wall being breeze block at the bottom, but this was unforeseen and couldn't have been identified during the design or home survey. There was a deadlock at this point with no proposed resolution accepted. S said Mr F agreed on a new shower that was suitable but Mr F changed his mind. I understand the shower was fitted on 31 May 2024.
- The basin design had to change from a wall hung to a floor standing. Other than the height, the dimensions were the same.
- Even though Mr F said the towel radiator was the wrong colour, it was in line with the contract.
- The waste pipe was left exposed for a long time due to the dispute over the shower issue and having the installer removed from site until that was resolved.
- There was no evidence of the grouting failing.

To conclude – S offered £3,783.68 which was in relation to various items in the installation. It offered £1,250 compensation. And MHCC had also offered £300.

Mr F said he didn't want to sign off the work. He wanted the bathroom taken out. I issued a

provisional decision that said:

I also want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr F and MHCC that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr F paid for the bathroom using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

I take into account the relevant law. So, in this case, section 75 of the Consumer Credit Act 1974 makes MHCC responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. And that services should be performed within a reasonable amount of time. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

It's important to note that I'm not considering a complaint against S. I'm considering a complaint against MHCC, and I'm looking at how it responded based on the evidence presented. So I have to consider MHCC's obligations as a provider of financial services – in this case its liability for breach of contract or misrepresentation under section 75.

It's also important to note that compensation for distress and inconvenience caused by S is limited with this type of complaint. I appreciate Mr F is very upset about what's happened and he's been put to inconvenience. He said the bathroom took longer to install than it should have done. He's had the inconvenience of having to store parts at his home. And he said the waste pipe wasn't capped for around two months, leading to a horrible smell his family had to endure. I can't imagine how he must feel. But I have to consider what MHCC can be held liable for – which is the like claim Mr F would have in court against S for breach of contract or misrepresentation. Courts do consider what's known as general damages. But damages in breach of contract cases aren't generally recoverable for distress or inconvenience. Awards in building cases where there's been a breach of contract which caused the claimant physical distress or discomfort can be made, but they tend to be modest. I think there likely was some physical distress and inconvenience. S has made an offer for this, which I'll come on to later.

On the one hand, I'm not a bathroom designer expert. So I don't know if S's designer ought to have picked up that the type of property wouldn't accommodate all the goods. It said the issue was not foreseeable. I'm also conscious S has tried to support by offering alternatives for Mr F in order to fulfil the contract. And ultimately the bathroom was installed in Mr F's property.

But on the other hand, it's clear Mr F was unhappy with the alternatives offered. It wasn't his fault that the walls weren't typical. He relied on S when designing the bathroom. It looks like there was some internal disagreement with S whether or not the layout left enough room for the shower. I've not seen (other than the fact the goods were installed) that Mr F was happy with the alternatives. It's not in dispute the tiles weren't installed to a decent standard. And that the overall bathroom design wasn't well thought out. It's also not in dispute some of the goods in the original contract weren't installed.

Overall, I think there's been a breach of contract that MHCC can be held liable for.

On the face of it, if Mr F is going to keep the bathroom, I think the compensation he has been offered seems broadly fair. I think it includes a reasonable price deduction and a fair amount of compensation for the physical distress and inconvenience he may have been able to claim through a breach of contract claim. While there might be some aesthetic or functionality problems, the bathroom works and Mr F could choose to keep it and broadly receive around a 35% price reduction. I think this is fairly reflective of the breach of contract and perhaps represents a fairer price for the goods and services Mr F received i.e., not to the standard he'd paid for. Or he might choose to use the compensation to rectify some or all of the things he's unhappy with. MHCC also offered £300 for the way the claim was handled. Overall, if Mr F decides to keep the bathroom, I think this is fair and I don't have the grounds to direct MHCC to do more. MHCC didn't have evidence losses were or would be more than what is on the table. But given the complaint is set up against MHCC, I think it should take ownership of the offer.

However, I'm also conscious that Mr F has indicated he isn't happy with the bathroom at all. He's been very upset by what's happened, and it seems clear that he's sought to stop the installation at various stages and he wasn't happy with the alternatives he's been offered. I'd imagine he was put in a difficult position because he needed a bathroom for his family's use but he wasn't happy it wasn't as per the original design. In order for the contract to come to some sort of conformity, Mr F may think he needs to have it re-tiled completely. There's also a possibility that it would need to be redesigned because the design as is doesn't accommodate the shower cubicle as well as it should do. He also wasn't supplied the vanity unit he originally wanted. So arguably, Mr F may think he might need to largely start again. Mr F has also indicated he would be willing to go to court to sort things out because he feels so strongly about the matter. Which is shown because he's never signed to accept the bathroom, from what I've seen. The court process could be time consuming and costly.

Mr F has the option to go to court if he'd prefer, or if he thinks he'd be able to achieve a more generous outcome. Our service is a quick and informal free alternative to court, and I'm able to decide the complaint by setting out what I think is fair and reasonable. In the circumstances, I'm going to also propose Mr F is given another option to resolve the complaint. I'm thinking that MHCC should also offer to arrange to have the bathroom removed at a time convenient to Mr F. The agreement would be ended and Mr F receive a full refund of what he's paid towards the fixed sum loan. He should also be paid the compensation offered by S and MHCC in reflection of what happened. He can then choose to start again elsewhere. It would allow the parties to walk away, and I think it broadly seems like a fair alternative way to draw a line under the complaint.

All things considered, I think Mr F should be given the option to either accept £5,333.68 as a cash settlement. Or he should be given the option of receiving £1,550 and MHCC end the agreement; refund anything paid under it; remove any adverse information about it from Mr F's credit file; and arrange to have the bathroom removed at a time convenient for Mr F within three months of Mr F accepting a final decision on that basis – if that's what he chose to do.

Mr F should let us know what he'd like to do in response to this provisional decision.

Mr F responded to say he was grateful I understood his distress. But he was still of the belief that the contract wasn't fulfilled. He said he doesn't have the shower he signed up for and the design was flawed. He said the service wasn't carried out with reasonable skill and care. He said he didn't want to pay any amount for the bathroom.

MHCC said while it agreed with the outcome it had some comments it wanted considered with regards to the option of cancellation and removal of the bathroom. It said Mr F had usage since May 2024 and so this should be taken into account. It said if a refund was agreed it should only be required to refund what was paid on the contract. And it also raised concerns that if Mr F didn't want S to remove the bathroom it wouldn't want to be charged a separate removal cost.

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'd like to thank the parties for their responses. I've not received anything substantively new to consider so I see no reason to depart from the conclusions I reached in my provisional decision. But for the avoidance of doubt, I'll clarify a few things for the parties.

I've already set out why I think the refund and compensation is fair if Mr F decides to keep the bathroom. I'm not going to repeat that again. I agree that if Mr F chooses removal of the bathroom MHCC would only be required to repay what was set out in the credit agreement (and paid towards it), as it's that contract it funded for the goods and services. There's currently not enough evidence the separate specialist works Mr F paid for could be considered a consequential loss as a result of S not carrying out the design work with reasonable skill and care. So there's not currently the grounds to direct MHCC to reimburse him any of those costs. If Mr F chooses to have the bathroom removed and to purchase an alternative, he may not need to pay those costs again, so they wouldn't be considered a loss.

With regards to the use Mr F has had of the bathroom, this is more difficult to quantify and include. Mr F would no doubt say the use has been impaired for the last 12 months or so. I also need to consider that if Mr F decides to purchase another bathroom it might be a bit more expensive than it was a year ago. There's not an exact scientific formula I can use in this situation, but given the problems faced, and the time taken to resolve things, I'm not going to direct the refunds are reduced for the use Mr F has had.

With regards to the removal cost, MHCC didn't say that it needed the option to arrange to remove the bathroom itself. If Mr F chooses the removal option but doesn't want MHCC to arrange removal or for S to do it, MHCC won't need to pay further removal costs. I suspect in that scenario the goods won't be reusable, but Mr F should make them available at least for collection if MHCC require. Otherwise, he should also still be given the option for MHCC to arrange to have the bathroom removed at a time convenient for him within three months of accepting this final decision if that what he wants to do.

Putting things right

Mr F should be given the option to either accept £5,333.68 as a cash settlement. Or he should be given the option of receiving £1,550 and MHCC end the agreement; refund anything paid under it; remove any adverse information about it from Mr F's credit file; and, if required, arrange to have the bathroom removed at a time convenient for Mr F within three

months of Mr F accepting this final decision – if that's what he chooses to do. For the avoidance of doubt, MHCC will only need to undertake the directions in the second option if it arranges removal of the bathroom itself or if Mr F provides sufficient evidence he's purchased an alternative within three months of accepting this final decision.

My final decision

My final decision is that I uphold this complaint and direct Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 21 July 2025.

Simon Wingfield
Ombudsman