

The complaint

Mr C complains that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ('Novuna') – has unfairly declined his claim under section 75 of the Consumer Credit Act 1974 ('section 75'). Mr C has been, at various times, represented in his claim by his wife, Mrs C – for ease, any reference to Mr C will also include information and submissions provided by Mrs C.

What happened

Mr C purchased a kitchen from a retailer I'll refer to as 'R' under a fixed sum loan agreement (the 'agreement') with Novuna dated 5 August 2023. The total cash price for the kitchen was £11,500 with a deposit of £575 leaving a remainder of £10,925 financed through the agreement. The agreement was for the supply of goods only as Mr C had arranged his own (separate) contractor (the 'fitter') for the fitting of the kitchen.

On 31 August 2023, Novuna contacted Mr C to see if he was satisfied with the goods ordered but he expressed dissatisfaction saying various items hadn't been delivered, and many items were incorrect. He said he didn't want the (loan) funds to be released to R before he was satisfied with the kitchen. The agent indicated this would be possible when, in fact, the payment had already been released to R by Novuna on 17 August 2023. And it was only when Mr C contacted Novuna again in early September 2023, that he found this out.

When Mr C complained to Novuna, it began investigating a claim under its section 75 process. Mr C's claim included that: cupboard doors weren't soft closing and some weren't what he ordered; several electrical items were faulty and/or not fit for purpose; an island worktop was warped; metal rods and fitting clips were missing; the fridge freezer, tap and upstands weren't included; plumbing materials were broken and/or wrong; the unit sent to house the fridge freezer, was too short; and the tiles were incomplete. Mr C added that numerous problems resulted from the faulty goods including that: there'd been no running water for several weeks; the kitchen became unusable; and he incurred additional costs.

Correspondence ensued between the parties, but Mr C remained unhappy particularly about Novuna paying R when it said it wouldn't do so. He said that he was seeking to exercise his short-term right to reject the kitchen. In response to Mr C's complaint, Novuna said he wasn't entitled to exercise a short-term right to reject as he hadn't indicated he wanted to do so within the relevant timescale. It added that offers to repair/replace had already been given in relation to any faults which had been identified during the course of the claim, and where suitable evidence had been provided. It also said a full refund had been offered by R in respect of the worktop, but it didn't accept it was liable for the faults, rather, it was a goodwill gesture. Novuna did, however, offer £75 for the mistake made during the call on 31 August 2023 and a further £100 for other customer service issues.

In order to try to mediate matters, our investigator approached Novuna requesting it instruct an independent expert to assess what, if any, faults existed or remained outstanding. Novuna agreed to arrange for this, and three items were found to be faulty which were the island worktop, two cupboard soft close door hinges, and a bottom runner from a larder door – the report said these were all manufacturing faults. Novuna said it had offered to replace/repair the

latter two items with suitable evidence which hadn't been provided by Mr C when it was considering his claim. Mr C maintained he had the (short-term) right to reject the kitchen.

In brief, our investigator didn't think Novuna had to take any further steps to put things right. Mr C asked for an ombudsman's decision on this matter. I issued a provisional decision saying I was upholding the complaint in part. Mr C responded saying he disagreed stating he still considered he had the short term right to reject. Novuna didn't provide a response. So, the matter has been passed back to me to reconsider.

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've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I want to acknowledge I've summarised the events of the complaint. This just reflects the informal nature of our service. I've noted Mr C's further comments, but I can't see he's added anything substantially new. In my provisional decision, which now forms part of my final decision, I explained why I didn't think Novuna acted incorrectly in respect of this request. So, my decision remains the same for the same reasons which are as follows:

Section 75 claim

What I need to consider here is whether Novuna – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr C's request for getting money back. With that in mind, I've gone on to think about the specific card protections which are available to Mr C in seeking a refund for the issues he is unhappy about. In situations like this, Novuna can consider assessing a claim under section 75. And having taken into account the conditions that need to be met in order to make a claim under this section, I'm satisfied it is relevant law for me to consider here. I've also taken into account other relevant law such as the implied terms set out in the Consumer Rights Act 2015 ('CRA'). I know Mr C has referred to a 'chargeback scheme' but that isn't relevant here, as he didn't use a debit or credit card to purchase the goods.

In terms of the design that Mr C says wasn't carried out with (for example) reasonable care and skill, I should note this was a free design service carried out by R and therefore, wasn't financed by the agreement with Novuna. So, even if there'd been a breach of contract I can't fairly or reasonably say Novuna can be held jointly liable for it. That said, I've considered whether its contents could be held to be a misrepresentation (a false statement of fact) which induced Mr C into the contract with R and/or agreement with Novuna. But looking at the design flaws that Mr C points to such as the fridge freezer/upstands not being included, omissions (i.e. leaving out things) aren't generally considered to be 'statements of fact'. Further, as the items weren't part of his order, I can't see that he suffered any loss here. In terms of the 'gap' between the units Mr C says was a flaw which needed repair by his fitter, from what he says this was shown on the design document itself. So, I can't reasonably say this was a 'false' statement of fact because the design was a true reflection of things.

In terms of the way Novuna handled Mr C's request to reject the kitchen under the CRA's short-term right to reject ('short-term right'), the first thing to note is that by virtue of section 22, if there's a fault with goods apparent in the first 30 days of ownership (and delivery), the consumer may be entitled to reject the contract and receive a refund. As the goods were delivered in early August 2023 and the funds were paid via the loan on 17 August 2023, I think Mr C had up until 16 September 2023 to exercise this right. He would've needed to during this time, indicate to R (or Novuna) he was rejecting the goods and done so in such a way that it

was clearly understood as a rejection. Further, the onus is on the consumer who is seeking to exercise the short-term right to prove there's a fault.

From the communications I've seen, up to 16 September 2023, I don't consider there's any persuasive evidence of Mr C rejecting the kitchen. Much of what he points to is the communication between R and Mrs C but I've not seen anything in the texts provided that show it was made clear Mr C was rejecting the kitchen – it did convey the unhappiness Mr C felt about things – but I don't think this was a clear indication of bringing the contract to an end. In any event, given the contract was between Mr C and R, I think it is at least arguable that as the 'consumer', he had to let R or Novuna of his intentions directly. This is a right which has significant consequence, and I don't think, on balance, that there was a clear intention made by Mr C to exercise it until he wrote to Novuna in an email dated 13 October 2023, but by this time, the short-term right had expired.

I'll now consider Mr C's claim against Novuna for breach of contract with particular regard to the implied terms in the CRA and their respective remedies. Generally, if something doesn't conform to the contract, consumers have an initial right to repair or replacement and if this doesn't fix the problem, they may be entitled to a price reduction or to reject the item.

- The worktops were 'warped'

From the description of the fault, which was reported by Mr C to R on 25 September 2023, this appears to be about the surface of the (two) worktops being, or becoming, uneven. After R investigated this, Novuna noted: "Worktops had been installed by his fitter without meeting the manufacturers guidelines, so [R] wouldn't replace the worktop. The manufacturer's guide for his 20mm worktop said the largest unsupported overhang could be 150mm, however [Mr C] worktop overhang was larger." But I don't think a larger 'overhang' would explain why an item costing over £400, which is meant to be durable, and the particular make comes with a ten year warranty from what I can establish, would develop this type of fault. For example, I can't see any persuasive evidence from the manufacturer to show that the overhang would lead to this problem, particularly so early on. So, I don't think R and by extension, Novuna, provided persuasive evidence that it wasn't liable for the fault which was apparent shortly after fitting. And, on balance, I don't think Novuna acted fairly or reasonably here.

Considering what the appropriate remedy is, I appreciate Mr C may say that he would've rejected the worktops if R/Novuna had accepted liability but under the CRA the initial remedies for goods (for example) not of satisfactory quality, are repair or replacement (section 19(3)(b)). He would've a final right to reject, or a price reduction, if the repair/replacement didn't work. And looking at the circumstances of this case, I can see there was some indication there was an attempt to ask R for a replacement as it was noted above that it had refused to do so as it thought the issue was related to the fitting.

I think if R had agreed to a replacement at the time, this would've been possible but now it may be that the particular worktop is no longer available. In any event, even the particular worktop (make/brand) was still available a brand new one may not now match Mr C's other work surfaces. So, I think the fairest outcome here is for Novuna to refund Mr C the cost of the worktops with a discount to take account of the benefit of their use for the past 18 months. I consider it would also be fair, on the basis of an expected lifetime of around ten years (and possibly longer), to make a reduction of 15% for the use Mr C has had since the worktops were fitted in or around the end of August 2023. From what I can see, Mr C ordered two worktops costing £408.70 each (a total cost of £817.40). So, I'm intending to ask Novuna to pay him £694.79 in compensation. I've not made a deduction for Mr C not returning the goods (which is what normally would happen if R had replaced the goods). But given R didn't agree to the replacement initially and we are now somewhere down the line, I'm satisfied this is a fair and reasonable way to resolve matters. I also note Novuna said R had offered Mr C

a full refund for the worktops. However, this was a goodwill gesture and liability weren't accepted, which is different to the outcome I'm reaching here.

- *Faults with electrical items including the oven, microwave, hob and extractor hood*

In terms of an oven, microwave and hob once inspected by the relevant manufacturer these were found to be faulty. The first thing to note is that I haven't seen any persuasive evidence of any damage to the kitchen itself from any faulty electrical items, such as heat damage, as Mr C has claimed happened – the expert report from June 2024 doesn't refer to any such damage and it did enclose several photographs of the kitchen. I should also note that Mr C wasn't happy with Novuna's requirement to contact the manufacturer to assess any faults. I don't think this was unreasonable or unfair particularly in light of the fact it was at no cost to Mr C.

As noted, the manufacturer's engineer did find faults with the oven and microwave and replacements were offered. Mr C has confirmed the relevant manufacturer of the hob also found faults with this item. As far as I'm aware, replacements/repairs have been offered on all these electrical items. I understand Mr C initially refused delivery of replacement items, and he told Novuna he wanted different brands to be supplied but this was declined. Novuna said it would offer him a refund in the alternative if he wanted to source a different brand for himself. I think this was fair.

I note Mr C says the replacement microwave also failed but I've seen no persuasive evidence that this formed part of this particular claim. If matters have arisen since Mr C made his claim to Novuna he can, of course, raise this with the relevant parties. In terms of the extractor hood, I understand the issue was that on two separate occasions the incorrect plug was attached but this seems to have been resolved by Mr C's electrician, and I can see Novuna did offer to refund any costs in this regard, which I think is reasonable.

- *Problems with cupboard doors*

I note Mr C reported problems with cupboard doors including with their soft closing mechanism. Novuna asked Mr C for evidence of the faults such as video evidence and it offered to replace (for example) the hinges once suitable evidence had been provided. I think Novuna clearly explained why this information would be necessary. I don't think it was unfair or unreasonable to ask for this evidence particularly as it came with no financial cost to Mr C. And whilst the independent report did identify two replacement hinges and a bottom runner was faulty, I must bear in mind the evidence that was presented by Mr C to Novuna at the time. All in all, I don't think I can fairly or reasonably conclude Novuna acted unfairly here. Mr C can, of course, continue to seek any remedies he's owed directly from R or Novuna.

- *Other issues – plumbing/electrical works*

I know there was an initial problem with a larder door which appears to have been replaced. Mr C said this, and other matters meant he had to pay his fitter (and other tradespeople) more money. However, I can hear on a call dated 20 November 2023, that the Novuna agent asked Mr C to provide evidence of any additional costs, but he continued to assert he wouldn't do so as he believed he could exercise a short-term right to reject the goods. I don't think Novuna was acting unfairly for requiring evidence of consequential losses before agreeing to pay them.

Mr C says he was without water for a number of weeks and his kitchen was unusable due to the faults with goods supplied by R. Mr C said some of the issues were due to the plumbing materials supplied by R being broken. But R confirmed the only issue it'd been made aware of in this regard, was with some sink overflows. From what I understand R sourced and supplied

replacements and these were fitted by Mr C's plumber. Mr C said there was a problem with the tiling, needing remedial work to the flooring. But I can't see this was part of the order for goods with R. In any event, as noted above, Novuna did ask Mr C for evidence of any additional costs that he incurred in respect of his fitter or any other tradespeople, but as far as I'm aware Mr C didn't claim for these types of costs.

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Customer service issues

I can hear during the call with a Novuna agent on 31 August 2023, that Mr C expressed dissatisfaction with the kitchen he'd ordered from R. I can hear the agent did indicate that the funds wouldn't be paid until Mr C was happy with the order, but as Novuna has since confirmed, the loan payment had, in fact, been paid to R on 17 August 2023. The majority of the items had been delivered to Mr C on 17 August 2023 and under the agreement he signed on 5 August 2023, it said: "You authorise us to pay the Amount of Credit to the Supplier as soon as the goods/services have been supplied...". All in all, whilst I appreciate this matter caused Mr C upset, from what I can see, it was a one-off mistake and Novuna has offered to pay him £75 in compensation, which I think is fair. I've also listened to the calls for which Novuna offered Mr C £100. Whilst I accept the call with Mr C could've been handled better by the agent, overall, I think £100 is fair and reasonable compensation for this error.

So, for all these reasons given neither party has added anything substantially new, I remain of the view that as far as the section 75 claim and customer service issues are concerned, Novuna should pay fair compensation as set out below.

My final decision

My final decision is that I'm requiring Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance to pay Mr C £175 for the distress and inconvenience caused. Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance should also pay Mr C £694.79. Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance will be entitled to first check with R to ensure no payment has been made in relation to the relevant fault (warped worktops) and deduct any payment already received by Mr C in this regard.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 August 2025.

Yolande Mcleod
Ombudsman