

## **The complaint**

Mr Y complains about a decision taken by Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ("Novuna") to decline a claim he made against it under section 75 of the Consumer Credit Act 1974 ("section 75").

## **What happened**

In September 2022 Mr Y entered into a fixed sum loan agreement with Novuna for four items of furniture including two sofas. The furniture was supplied by a retailer that I will call "D" at a cost of £6,000.

In December 2022 Mr Y took delivery of his ordered furniture.

Under the terms of the agreement, everything else being equal, Mr Y undertook to pay a deposit of £1,800 followed by 36 monthly payments of £116.66 making a total repayable of £5,999.76 at an APR of 0%.

After taking delivery of his furniture Mr Y complained to D that the two sofas weren't what he had ordered, they being the wrong size with sofa 1 being 154" wide rather than 159" wide and sofa 2 being 89" wide rather than 120" wide.

In May 2023, and unhappy with D's response to his complaint, Mr Y raised a section 75 claim against Novuna.

In July 2023 the two sofas were inspected by a company that I will call "H". H confirmed that sofa 1 was 154" wide and sofa 2 was 92" wide.

In July 2023 Novuna emailed Mr Y to say that it wasn't upholding his section 75 claim because it was satisfied that he had been provided with the two sofas he had ordered.

In July Mr Y complained to Novuna about its decision to decline his section 75 claim.

In August 2023 Novuna issued Mr Y with a final response letter ("FRL"). Under cover of this FRL Novuna confirmed to Mr Y that it was satisfied that it had done nothing wrong in declining his section 75 claim.

In September 2023, and unhappy with Novuna's FRL, Mr Y referred his complaint to our service.

Mr Y's complaint was considered by one investigator who came to the view that it shouldn't be upheld.

Mr Y didn't agree and so his complaint has been passed to me for review and decision.

## **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 read the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point or particular piece of evidence, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome. Our rules allow me to do this, reflecting the fact that we are an informal free service set up as an alternative to the courts.

I would also add that where the information I've got is incomplete, unclear or contradictory, as some of it is here, I've to base my decision on the balance of probabilities.

Finally, and for the avoidance of doubt, I would like to make it clear that I'm only considering in this decision the complaint Mr Y has against Novuna and not any complaint he might have against any other business.

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, as is the case here, it might be possible to make a section 75 claim. Section 75 says that in certain circumstances, the borrower (Mr Y) under a credit agreement has a like right to claim against the credit provider (Novuna) as against the retailer (D) if there's either a breach of contract or misrepresentation by the retailer (D).

I'm not determining the outcome of a claim that a party might have under section 75. But I take section 75 into account when I think about what's a fair way to resolve the complaint. I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation. From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

So, I will now consider whether there is sufficient evidence of a breach of contract or misrepresentation.

#### *breach of contract*

The order form ("contract") makes reference to sofa 1 (made up of four units/codes) and sofa 2 (made up of one unit/code). The contract also states that *"All sizes stated and any hand drawn diagram above are approximate. For detailed information refer to **Point of Sale Schematics at time of purchase**"*

Having reviewed the contract and the schematics I'm satisfied that what Mr Y ordered was:

- a sofa made up of four units measuring 155" wide when put together (sofa 1)
- a sofa made up of one unit measuring 93" wide (sofa 2)

And what Mr Y was supplied with was:

- a sofa made up of four units measuring 154" wide when put together (sofa 1)
- a sofa made up of one unit measuring 92" wide (sofa 2)

Given that there may be some small errors in H's measurements, both sofas were made to order and accepted manufacturing variances I'm satisfied that Mr Y was supplied with what he ordered and there has been no breach of contract by D in this respect.

I'm aware that the contract, adjacent to Mr Y's signature, has measurements recorded of 159" in respect of sofa 1 and 120" in respect of sofa 2. But like the investigator shared with the parties it's unclear when these handwritten measurements were recorded or by whom.

Now I've not ignored what Mr Y says about these recorded measurements. But I'm not persuaded they constitute an agreed contractual term especially when the contract is considered as a whole and in the round.

### misrepresentation

In this context misrepresentation means a false statement of fact made by D that induced Mr Y to enter into the contract.

I accept that I can't say for certain that D didn't misrepresent the contract by providing measurements to Mr Y of 159" and 120" for the two sofas. But by their very nature such alleged verbal conditions are hard to substantiate, and I therefore have to assess this aspect on the basis of the balance of probabilities. To do that I look at the wider circumstances of the complaint.

Given that the order form quotes codes for all four parts of sofa 1 and for sofa 2 and what the schematics says these four units and sofa measure I'm not persuaded, on the balance of probabilities, there was any misrepresentation by D in this respect.

### other issues

Mr Y appears to have raised with D three other issues about his order. Now it's not clear that Mr Y has ever raised these issues with Novuna. But for the sake of completeness I would add that like the investigator, and for the same reasons, I'm not persuaded that any of these issues are sufficient for me to conclude there was either a breach of contract or a misrepresentation by D.

Having considered everything, I don't think Mr Y has provided enough evidence to show either a breach of contract or misrepresentation here. So in the circumstances I don't think it was unfair for Novuna to decline his 75 claim.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 12 January 2024.

Peter Cook  
**Ombudsman**