

## **The complaint**

Mr P complains about the way in which Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ("Novuna") handled his claim under Section 75 of the Consumer Credit Act 1974.

## **What happened**

In December 2022 Mr P purchased new windows from a merchant and entered into a fixed sum loan with Novuna. The purchase price of the windows was £5194.00. There was a three month interest free period, followed by payments of £68.22 over 120 months.

Mr P settled the loan in March 2023 before interest was applied.

In December 2022 Mr P contacted Novuna and complained that he'd been mis-sold the windows because the salesperson had told him that the windows would be supplied with acoustic air vents to provide greater noise reduction.

Novuna raised a section 75 claim and contacted the merchant for information.

The merchant provided statements from both of the sales people who had visited Mr P. The statements confirmed that there had been no discussions about acoustic vents or noise reduction. The merchant advised that it didn't supply acoustic vents and therefore couldn't offer this option. The sales documentation confirmed that trickle vents would be fitted in line with regulations. There was no mention of acoustic vents on the sales documents.

Novuna spoke to Mr P and said it hadn't found any evidence that acoustic vents were discussed or that acoustic vents should have been supplied. It explained that the merchant had suggested that the supplier they work with may be able to provide soundproof vents but that this would be at extra cost to Mr P.

Based on the information it had obtained, Novuna declined the Section 75 claim.

Mr P wasn't happy with the outcome and brought his complaint to this service. He said he was advised during the sales process that the vents would have an acoustic quality and would cancel out external noise.

Our investigator didn't uphold the complaint. He said that the window schedule and the window survey both confirmed that trickle vents would be used in the installation and that there was no mention of acoustic vents. The investigator said that based on the information available to him, he couldn't say that there had been a breach of contract or a misrepresentation.

Mr P didn't agree. He said he had concerns about how Novuna had conducted its investigations. He said the merchant had used tactics to make a sale knowing that it would be their word against the consumer. Mr P said he had asked the merchant whether there was something better that could be installed with soundproofing and was informed that there was nothing. Mr P said this conflicted with the information provided by the merchant to

Novuna about their supplier being able to provide acoustic vents.

### **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.

In certain circumstances section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation.

In order to uphold Mr P's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Novuna's response to the claim under section 75 wasn't fair or reasonable.

Mr P hasn't said that there's been a breach of contract, so I've focussed on whether there's been a misrepresentation.

A misrepresentation is an untrue statement of fact which induces a consumer to enter into a contract.

In this case, Mr P says that the merchant's salesperson told him that the vents on the windows had an acoustic quality, and they would reduce the outside noise when closed. Mr P says that after installation, there was no noise reduction when the vents were closed. Mr P says that if he'd known that a lot more outside noise would be leaked into the house, he would not have entered into the agreement.

I've thought about whether the salesperson made an untrue statement of fact which induced Mr P to enter into the agreement. There's no contemporaneous record of the discussions between Mr P and the salesperson, and because I wasn't present, I can't be certain of exactly what was said. The salespeople who visited Mr P for the survey and the fitting provided a statement when Novuna investigated the claim and stated that Mr P was shown a product sample of a window with trickle vents which corresponds to what has been fitted. The salespeople stated that there were no discussions about noise reduction.

I understand that Mr P feels that this is a case of the merchant's word against his. I can't disregard the statements of the salespeople and I have to give this piece of evidence due weight. However, because of Mr P's concerns, I've also looked at the contemporaneous documentation to see whether there's anything in there that would suggest that he was told that the vents were acoustic.

I've looked at the window schedule and the window survey. Both of these documents confirm that trickle vents will be used in the installation. There's nothing to suggest that the vents would be acoustic. I've also looked at the satisfaction note, which has been signed by Mr P to indicate that he was happy with the installation. There's nothing on there to suggest that Mr P raised any issues about the windows after they had been installed.

Based on what I've seen, there isn't enough evidence for me to safely conclude that there's been a misrepresentation here. Having looked at everything, I don't think Novuna's decision to reject the section 75 claim was unfair or unreasonable.

I understand that Mr P has got some concerns about the response from the merchant during the investigation of the section 75 claim. The merchant told Novuna that it didn't supply acoustic vents, but that the supplier that it worked with may be able to provide soundproof vents at additional cost. Mr P has said that this conflicts with what he was told by the merchant when he asked whether there was something available with better soundproofing

at additional cost as he was willing to pay, and that he was advised that there was nothing that could be offered. I appreciate that there is conflicting information here, but it doesn't mean that there has been a misrepresentation. It seems likely that the merchant, in response to the section 75 claim, was trying to resolve things by suggesting that it could ask the supplier about soundproof vents. This may be something that Mr P wishes to pursue directly with the merchant to see if something suitable is available via the merchant's supplier.

I appreciate that Mr P had a conversation with the sales manager regarding his concerns and was advised that there had been several complaints. I can't comment on other cases and can only look at the circumstances of this complaint.

I understand that this isn't the outcome that Mr P was hoping for but for the reasons I've given, I'm unable to uphold the complaint.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 February 2024.

Emma Davy  
**Ombudsman**