

## **The complaint**

Mr D is unhappy because Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance declined his claim under section 75 of the Consumer Credit Act 1974.

## **What happened**

In December 2021 Mr D purchased a hot tub from a supplier and entered into a fixed sum loan agreement with Novuna.

Mr D was unhappy following the installation of the hot tub. He contacted the supplier in January 2022 and raised a complaint about noise from the jets, front panel clips, lights not working correctly, foam cover broken, kinked pipes and a faulty air jet.

Mr D was unable to resolve matters with the supplier. In December 2022 he contacted Novuna and asked to reject the hot tub.

Novuna investigated Mr D's complaint. It contacted the supplier and obtained information.

In January 2023 Mr D had the hot tub inspected and obtained an inspection report. The report raised a number of issues but didn't confirm whether these issues were due to a manufacturing defect.

Novuna sent the report to the supplier. The supplier arranged to inspect the hot tub in February 2023. The suppliers engineer found some issues with the hot tub but said these weren't manufacturing defects.

To resolve the complaint, the supplier offered to provide Mr D with a replacement hot tub.

Mr D didn't accept this resolution. He said he'd lost faith in the supplier.

Novuna issued a final response in June 2023. It said it wasn't upholding Mr D's complaint because it hadn't received any evidence which confirmed that the hot tub had a manufacturing defect.

Mr D remained unhappy and brought his complaint to this service.

Our investigator didn't uphold the complaint. She said she wasn't persuaded, based on the evidence she'd seen, that the hot tub was of unsatisfactory quality. She said that although there were some issues with the hot tub which hadn't been resolved, she thought these issues were repairable, and that the suppliers offer to fully replace the hot tub was a reasonable resolution. The investigator said she didn't think that Novuna had acted unfairly or unreasonably when it declined the claim under section 75.

Mr D didn't agree so I've been asked to review the complaint.

## **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 D'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 D hasn't said that there's been a misrepresentation so I've focussed on whether there's been a breach of contract.

The Consumer Rights Act 2015 is relevant here. This says that goods must be of satisfactory quality when supplied. The quality of goods includes their general state and condition, as well as things like appearance and finish, freedom from minor defects, safety and durability.

The Consumer Rights Act 2015 says that if goods are not of satisfactory quality, a consumer has the right to a repair or replacement.

I've thought about whether the hot tub supplied to Mr D was of satisfactory quality, and whether Novuna treated Mr D unfairly or unreasonably when it declined the section 75 claim.

In this case, Mr D says that the hot tub wasn't of satisfactory quality when it was supplied. He complained to the supplier and said there were a number of issues with the hot tub which included:

Front panel to be replaced because the supplier attached the clips in a wonky position

Insulation on front to be replaced as torn by supplier to allow cabling to be fed through

Wrist jets rattling

Lights not working in correct colour order

Foam on cover lifter broken

Kinked air pipes

Air jet blowing intermittently

I can see that the supplier was in regular contact with Mr D about these issues. Visits were made to Mr D's property and some repairs were carried out. The supplier provided Novuna with a timeline of all the visits it had made to Mr D and the repairs it had carried out.

Mr D had the hot tub inspected in January 2023. I've looked at the inspection report. This says that the hot tub has the following issues:

Damage to cover with stitching coming away from strap

Damaged cover lifter

Noisy diverter valve

Some jets in wrong place lights not working in correct colour order

Waterfall not working properly

Novuna looked at this report and said that although the report identified issues with the hot tub, it didn't say that these issues were manufacturing defects. Novuna sent the report to the supplier and asked it to comment, because several attempts at repairs had taken place.

The supplier inspected the hot tub in February 2023. It found that one of the wrist jets was rattling but said this wasn't the same wrist jet that had been replaced previously. The engineer said the diverter valve was working as expected and the issues with the cover lifter, strap and torn insulation had either been replaced already or was replaceable.

Novuna asked the supplier to confirm whether the jets had been replaced because of a manufacturing fault. The supplier said the jets had been replaced due to wear and tear, and that there were no manufacturing faults with the hot tub.

I've reviewed all of the available evidence about the issues with the hot tub. Based on what I've seen, I'm satisfied that there were faults with the hot tub. I say this because the issues identified by the report obtained by Mr D - such as the damaged cover, ripped insulation, rattling wrist jets and lights not working in correct order - are minor defects, which I don't think a reasonable person would expect to experience on a brand new hot tub. So I think it's fair to say that the hot tub wasn't of satisfactory quality when supplied.

In the circumstances, I'm satisfied that there's been a breach of contract. So I've gone on to consider what steps the supplier took to remedy the breach. Some repairs have been completed by the supplier and some are outstanding. I haven't seen any evidence that the repairs which have been completed have been unsuccessful, so this isn't a case where Mr D has the right to reject because of a failed repair. The supplier has offered a replacement hot tub to resolve the complaint, but Mr D has declined this. Under the Consumer Rights Act 2015 the supplier is allowed to offer a repair or a replacement to remedy a breach of contract. So I'm unable to say that the supplier hasn't done what it is obliged to do under the relevant legislation.

Taking everything into account, I don't think Novuna has declined the section 75 claim unfairly or unreasonably. So I won't be asking them to do anything further.

I understand that Mr D is unhappy that Novuna has reported missed payments on his credit file. Mr D hasn't maintained his loan repayments because of the ongoing dispute about the hot tub. I can see that Novuna advised Mr D that he should maintain his repayments when he first raised his complaint. Novuna has an obligation as a lender to report accurate information to the credit reference agencies. I'm unable to ask Novuna to remove the missed payment markers, because these accurately reflect the state of Mr D's account.

### **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 D to accept or reject my decision before 4 January 2024.

Emma Davy  
**Ombudsman**