

The complaint

Mrs K complains that Mitsubishi HC Capital UK Plc trading as Novuna Consumer Finance ("Novuna") has treated her unfairly in relation to a purchase she made using finance it provided to her.

What happened

Mrs K bought goods and services from a third party supplier that I will refer to as "H". Specifically Mrs K contracted with H to both supply and install fitted furniture in her home. The installation works were meant to last three days. Mrs K made the purchase using finance provided by Novuna under a fixed sum loan.

Mrs K complains that H who also acted as a credit broker in relation to the finance, misrepresented the goods. Specifically, the goods that were delivered and fitted were not the same goods Mrs K had been shown by H's salesman. Mrs K mentions information on H's website which she indicates supports her stance. Moreover, the fitting was not carried out to a professional standard. Further, some of the goods were not fit for purpose.

Mrs K complained immediately and had the work stopped (after one day of work had been completed). Moreover, Mrs K asked Novuna not to pay H whilst the dispute was ongoing. However, despite this Novuna released the funds to H. Mrs K thinks Novuna acted incorrectly by releasing the funds under the loan to H even though she was in dispute with H at the time.

Mrs K complained to Novuna. Mrs K did not believe things could be put right as a result she asked that the loan be cancelled, and the goods removed.

Novuna responded that it was not its role to review the actions of H as a retailer. But it did accept that since it had provided the credit to finance the purchase it has to look at the complaint from that perspective.

However, once it looked at what had happened, Novuna did not accept that Mrs K has demonstrated that the goods were misrepresented. Neither did Novuna agree that Mrs K had the right to reject the goods even before the installation had been completed.

Moreover, Novuna indicated that although Mrs K had made her purchase under a buy now pay later arrangement with H, and was in dispute with H, this did not mean it had been wrong to pay H. Rather, under the terms of the loan agreement it (Novuna) was obliged to activate the finance agreement once H told it the goods had been supplied. H treated the contract as if the goods had been supplied because it had gone as far as it could given that Mrs K would not allow it access to her home to finish the job. Novuna accepted this approach.

However, Novuna did note that it had not recorded the information it should have done when Mrs K first contacted it. Despite admitting to an error Novuna did not offer compensation in acknowledgement of its mistake. Rather, it offered a goodwill gesture (a goodwill gesture is something a business offers when it considers it has not done anything wrong but wants to offer a gesture nonetheless to the person who is complaining). By way of a goodwill gesture Novuna took £125 off Mrs K's account balance. However, it did also say it was upholding her complaint on the basis it should have responded to her sooner.

Dissatisfied with Novuna's response Mrs K complained to our service.

Once Mrs K's complaint was with our service Novuna provided further information from the Furniture and Home Improvement Ombudsman ("FHIO") who had looked at a claim Mrs K had made against H in relation to her purchase from it. The conclusion that the FHIO reached was.

"The business [meaning H] has offered to return and complete the works in line with their contractual obligations. I therefore endorse this offer plus compensation of £264.00 for the delay and inconvenience."

One of our investigators looked into Mrs K's complaint. Our investigator did not recommend that Novuna had to take any further action.

Novuna accepted our investigator's recommendation, Mrs K did not. I've summarised below why Mrs K rejected our investigator's recommendation. She told us:

- H acted as a credit broker in relation to the loan provided by Novuna and H has misrepresented the goods in order to obtain a commission from Novuna.
- Mrs K believes H has admitted that the installation works are not of satisfactory quality therefore there has been a breach of contract, on this basis Mrs K should be allowed to reject the entirety of the contracts with both H and Novuna.
- Even though Mrs K wants to reject the goods, as a plan B, Mrs K is willing to compromise by taking the doors that H is offering but she does not wish to pay extra for the mirrors which is what H wants her to do.
- Novuna should not have activated the loan when Mrs K was in dispute with H. Moreover, H has agreed with Mrs K's stance on this.

Mrs K asked that an ombudsman review her 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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

New issues I can't deal with in this complaint

Mrs K suggests that H chose to mislead her because it wanted a commission from Novuna in relation to the finance agreement. But while she believes this is true it is an entirely new issue, and she has provided no evidence to support this. Moreover, this complaint point, has not been considered by Novuna in its final response to Mrs K or investigated within this complaint. It follows that I am unable to look at this matter in this decision.

This complaint is against Novuna only

Mrs K's contract of sale is with H only. Mrs K indicates she might, by way of compromise, be willing to vary the terms of the contract with H. But it is a well-established principle of contract law that a contract cannot (as a general rule) confer rights or impose obligations arising under it on any person except the parties to it. Novuna is not a party to the contract of sale so it cannot accept this variation, and neither can I make it. Moreover, I have no

power to make H accept any variation to the contract of sale that Mrs K might be willing to make as a compromise.

Why I'm satisfied on balance that there was no misrepresentation or breach of contract

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

Mrs K paid for her purchase by way of a loan supplied by Novuna. H is the supplier in relation to the goods supplied under the loan. That means that Mrs K has the benefit of both Section 75 and Section 56 of the Consumer Credit Act 1974.

The general effect of Section 75 is that if Mrs K has a claim for misrepresentation or breach of contract against the supplier she can also bring a like claim against Novuna provided certain conditions are met.

Amongst other things, Section 56 creates a form of deemed statutory agency, in that what the section refers to as "*antecedent negotiations*" between a supplier and a consumer are deemed to be conducted by the supplier in the capacity of an agent of the creditor. Moreover, Section 56 provides that the creditor can be liable for representations made by the supplier in the course of those antecedent negotiations.

Due to the effect of both Section 75 and Section 56 Novuna can be held to account for misrepresentations made by H. Moreover due to Section 75 Novuna can also be held to account for breaches of contract on the part of H. I'll look at each in turn.

In this context misrepresentation means a false statement of fact made by H that induced Mrs K to enter into the contract. Specifically Mrs K tells us that H misrepresented the furniture range it was selling her. She asked for what I'll call range 1 and in fact she was sold something else that I will call range 2.

Mrs K talks about what H's website says. I think this is irrelevant as it does not seem that Mrs K viewed the information on the website prior to purchasing. In any event information on H's website for ranges 1 and 2 appears to be correct, so I don't see how this would help Mrs K.

Rather Mrs K indicates that H's salesman verbally misrepresented the contract in that he told her she was getting range 1 and in fact she was sold range 2. She was also shown a sample for range 1 by the salesman. But Mrs K did not enter into the contract solely based on the pre-contractual negotiations. Rather, there were also written contractual documents that stated, reasonably clearly and prominently the basis on which the parties were contracting.

The difficulty for Mrs K is that when I am trying to decide what it is that the parties contracted for I think it is appropriate to look at the written documentation. And that indicates that H provided the goods Mrs K ordered. Moreover it seems likely to me Mrs K would have seen at least some of this contractual documentation before the sale was finalised therefore I find it surprising that she did not object at this point if this information contradicted what she'd agreed verbally.

That's not to say I discount the possibility that the salesman said one thing but documented another. 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. I have Mrs K's version of what happened, but I also have a detailed account from the designer, I'm not sure if this person is a different person from the salesman who Mrs K mentions. I also have a statement from the surveyor, again I don't know if this is the salesman. Both indicate that Mrs K selected the range she wanted, and this was noted down correctly. I don't find it likely that both individuals independently would have got this wrong. Or alternatively that they acted in tandem to give Mrs K incorrect information.

On the balance of probabilities when I look at all the information I have available to me, I'm not persuaded by what Mrs K says about misrepresentation. It follows I don't uphold this part of her complaint.

I'll now turn to Mrs K's complaint point about the breach of contract.

Mrs K is a consumer, H is a trader. I think the Consumer Rights Act 2015 (the "CRA") is also relevant law in relation to this contract.

The CRA implies certain terms into the type of contract that Mrs K and H made. In particular, the CRA provides that in relation to services supplied by the trader to the consumer, these will be performed with reasonable skill and care. In relation the goods, the CRA provides these will be of satisfactory quality.

It does not appear to be in dispute that the work was scheduled to take 3 days and only 1 day of work has been done. So it is not surprising to see that the work is unfinished.

One of Mrs K's points is that the work that has been done so far is not up to scratch. Even Novuna seems to concede that some of the internal fitting work was going to have to be redone. But that work was work-in-progress not the final result and I think that is significant distinction. I say this because whilst I accept Mrs K thought things were not looking good at the end of day one, until the work was actually completed I can't fairly say the work was not done with reasonable skill or care. She had not got the finished product yet and it may well have been that the remedial work would have been done on the job.

I don't agree that H has conceded that the work was not done with reasonable skill and care, as far as I can see what it is saying is that some of the work-in-progress would need to be redone. But as I have already mentioned it had not finished the job yet and it may well have sorted things out by the time the job was completed.

Moreover, Mrs K tells us the doors were "faulty". It is not clear if she means all the doors or some of them. I've already mentioned the CRA says goods supplied under this type of contract must be of satisfactory quality. Goods will be of satisfactory quality if they meet the standard that a reasonable person would consider satisfactory. In any event, I've not got sufficient information for me to say the doors were not of satisfactory quality based on what she says or what H says.

I note the report from the FHIO does not conclude that the services or goods did not meet the required standard so can be rejected. Rather it finds H should be allowed to finish the work. It is an expert in this area, and I find its stance persuasive.

For all of these reasons, it follows I don't uphold this part of Mrs K's complaint.

Why I find that Novuna acted appropriately in releasing the funds to H

Mrs K's position is that Novuna should not have released the funds to H while she was in dispute with H. But nothing in the contract or the law says that just because a debtor is disputing a quality issue with the supplier, the supplier is not entitled to call for and receive the credit used to make a purchase. Even if the purchase was made under buy now pay later terms.

Mrs K tells us H supports her stance on this issue. If it did though it would not have asked Novuna for the money or it would have returned it. Moreover, H's stance is not the deciding factor here.

For all of these reasons I don't uphold this part of Mrs K's complaint.

It follows from everything I've said above I don't find that I've any proper basis to tell Novuna it has to take any further steps.

Just for completeness I make this observation, I found it confusing that Novuna both offered a goodwill gesture but at the same time said it was upholding Mrs K's complaint. Its actions

were contradictory. However, Mrs K has not complained about this, so I make no finding about it.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 17 October 2023.

Joyce Gordon
Ombudsman