

The complaint

Mr D raised a claim with Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance under Section 75 of the Consumer Credit Act 1974 in regard to a piece of art he acquired using a fixed sum loan agreement. He says the artwork was defective at supply and complains that Novuna has declined his request for a refund.

What happened

Mr D acquired a piece of art in September 2016 financed by a fixed sum loan agreement. He says he viewed the art in the gallery and then purchased it by phone around a week later. Mr D says the art was stored until 2019 due to him being in between properties and he then hung it in 2019 at which point a flaw (Mark 1) became apparent. In August 2019, he informed the publisher and contacted the gallery for comment.

Mr D raised a complaint with Novuna in February 2020 about Mark 1 being a defect. He says Mark 1 was accepted but he was told it was caused by his negligence. Mr D had an independent assessment and valuation carried out in March 2021. He says a second flaw was identified and the artwork was valued at £100. Mr D had a further assessment carried out in August 2022 which confirmed Mark 1 was under the paint and so it was present at supply. At this point a third flaw was noted. Mr D submitted a follow up complaint to Novuna in September 2022 based on the outcome of the assessments he had commissioned. His claim was rejected which Mr D says was based on the testimony of the artist's representative which he said was unreliable. Mr D says the art wasn't of satisfactory quality and he wants a full refund of the cost of the art and the additional costs involved in his claim.

Novuna issued a final response letter in December 2022 saying its response to Mr D's claim was in line with its legal obligations. It said it had commissioned expert views in regard to the issues Mr D had raised. These said that Mr D had bought an original piece of art which was made using power tools and so there would be pits and valleys and that the scratches were part of the artwork. It said based on the evidence it had received in regard to the imperfection with the art it wasn't able to require the dealer to take back the art and / or provide a refund.

Mr D referred his complaint to this service.

Our investigator didn't uphold this complaint based on the following reasons:

- Mr D contacted Novuna with the new evidence in September 2022 which was more than six years after Mr D acquired the artwork. Our investigator said this could mean that a claim couldn't be raised as it fell outside the timeframe for the Limitation Act 1980.
- Regarding Section 75 – misrepresentation he said that Mr D had viewed the artwork before purchase and there was nothing to suggest it had been misrepresented to him.
- Regarding Section 75 –breach of contract our investigator said that the material the

artwork was made from could be easily marked, scratched or dented when moved. He also said there was uncertainty about whether the dent was present before the metal was painted and if this was the case it was part of the artist's work. Based on this he didn't think there was enough to say there had been a breach of contract by the retailer.

- Regarding the Consumer Rights Act 2015, he noted that Mr D viewed the artwork before purchase and so if the defects were present at that point, he thought Mr D's viewing should have revealed these.

Mr D didn't agree with our investigator's view. He said that he made his initial claim in 2020 and that his complaint in 2022 was a continuation of that claim. He said that there were two inspection reports. The first established that there were flaws with the art and the second that these flaws were below the paint which he said showed the issues weren't caused by him. He said it couldn't be determined whether the artist intended the marks to be present and that the marks were latent and invisible to the untrained eye.

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.

Where the evidence is incomplete, contradictory or inconclusive, I make my decision based on the balance of probabilities. That is what I consider most likely to have happened given the evidence provided and the wider circumstances.

Mr D acquired a piece of art in September 2016. He initially raised a claim with Novuna in February 2020 saying that there was a defect with the art (Mark 1) which had only been identified when the art had been hung in 2019. Subsequently two further flaws were identified, and Mr D raised a further complaint with Novuna in September 2022.

While I take all relevant rules and regulations into account - in this case I have specifically considered Section 75 of the Consumer Credit Act 1974 and the Consumer Rights Act 2015 - my decision is based on what I consider a fair and reasonable outcome given the unique circumstances of the complaint.

I find it reasonable that Mr D's claim was considered under Section 75 as the price was within the claim limits and there appears to be the required debtor, creditor, supplier relationship in place. For a claim to be valid under Section 75, it would need to be established that the art had been misrepresented to Mr D or that there had been a breach of contract by the supplier.

In this case, the art was hung in a gallery and Mr D viewed it before purchase. No evidence has been provided to suggest Mr D was given false information about the art that led to his acquisition and so I do not find there is evidence of any misrepresentation.

Mr D says that there has been a breach of contract due to the latent defects and that the art wasn't of satisfactory quality at supply. I have considered all of the evidence and specifically the expert reports provided but, on balance, I do not find that I have enough to say that the art wasn't of satisfactory quality at the point of supply, and I have set out my reasons below.

- First, there is a possibility that damage occurred to the art after acquisition. Mr D has explained that the art was stored between 2016 and 2019 when he was between properties. It has been explained that the art is a painting on aluminium and that this is a material that can be easily damaged when being moved. It has also been said

that if damage occurred it would cause the aluminium to deform but the paint wouldn't flake. Therefore, I do not find I can say for certain that Mark 1 wasn't caused by damage while the art was in Mr D's possession.

- Mr D viewed the art before buying it. Had Mark 1 been present it is possible that he should have noticed this and as such acquired the art with Mark 1 being accepted. I note Mr D's comments about Mark 1 only being able to be identified in certain light, but as he was able to assess the art in the gallery, I find it reasonable to say he accepted the art as it was.
- I understand the second two flaws were only identified when the expert inspections took place and so I accept that Mr D was unlikely to have noticed these when he viewed the art. But that doesn't mean the art wasn't of satisfactory quality. The art is an original piece, and it has been explained that the technique to produce the art involves the use of power tools that will result in scratches. The flaws that have been noted are recorded as being under the paint and so it suggests they were part of the artist's work. There is nothing to suggest that the retailer caused any damage to the art or that the art was any different when it was delivered to Mr D as it was when received from the artist.

Overall, while I understand that Mr D feels that he should receive a refund for the cost of the art and I note the valuation he received, in this case I do not find I have enough to say that the art wasn't of satisfactory quality at the point of supply or that there was a breach of contract or misrepresentation by the retailer. Because of this I do not find I have enough evidence to say that Novuna was wrong not to uphold Mr D's claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 December 2023.

Jane Archer
Ombudsman