

The complaint

Miss E complains about the quality of a car that she purchased using her credit card provided by MBNA Limited ("MBNA").

Miss E also complains about the customer service MBNA has provided whilst dealing with her complaint.

What happened

I set out the background to Miss E's complaint in the two provisional decisions I have issued in relation to this complaint. However, I'll set out that background again here to help with ease of reading.

Miss E was in the market for a very specific type of car. She saw an advert for a car which she liked the sound of. She contacted the supplier, a limited company I will call "P". In the advert P described the car, in part, like this:

"This vehicle has 83,000 miles on the clock and has been very well looked after and has full main dealer service history".

P then went on to describe the paintwork which it described as "*beautiful*" with hardly any signs of wear and tear. The interior was also described as were the optional features included in the car.

Further, the advert set out what further work P would do to the car and there was a photo of the car too. The photo showed the car to be in good condition.

During the period before Miss E purchased the car, Miss E and P wrote to each other about the vehicle. In the course of this correspondence P described the car in very positive terms, for example it said:

"you are going to struggle to find anything wrong with this car even though it is ten years of age, on the service receipts it shows that the car had lots of extended warranties at [name of car's manufacturer], all the alloys are excellent, one has a tiddly little scuff, all four tyres are over 6mm, all [name of car's manufacturer] service history, the car drives lovely, we changed the suspension arms as the bushes had dried out so now it is even more perfect"

Plus, P said the car had just been serviced and had its MOT. The car is second-hand (as I have already mentioned) but P indicated that the previous owner kept the car in tip-top condition indeed, so much so that, according to P, within 10 minutes of seeing the car P decided to buy it from its previous owner.

In addition to what was said in writing, P sent Miss E a video of the car. This gave a well-lit 360° view of the car. Miss E watched the video, she apparently liked what she saw and had read and went ahead and bought the car in May 2019. She used credit provided by MBNA to make the purchase.

Miss E wanted the car shipped overseas. In the short space of time between when the car was bought and when it was shipped it stayed with P for most of the time. Then it went to a secure storage facility. As soon as she received the car Miss E noticed that the rear bumper was damaged. She said this had never been mentioned before neither was the damage visible in the video. Right off the bat she complained to P. Miss E blamed P for the damage. P blamed the company that transported the car.

Further, Miss E tells us that the first time she drove the car she noticed some faults with the handling of the car. In particular she was concerned about the handbrake, and about what she called a “*starter issue*”. She suggested the starter issue was so serious that it made her worry the car would break down and she’d be stranded therefore she drove the car much less than she had planned. She also complained about this to P. It suggested the fault lay with Miss E rather than with the car.

Unfortunately, despite some, increasingly tense, to and fro between them, Miss E was not able to come to an agreement with P about how to put things right and who was responsible for this. Miss E and P reached an impasse with both suggesting the other was not acting in good faith.

Shortly after this, in October 2019, Miss E said the car had complete engine failure. It seems that Miss E has had work done on the car but only what she considers to be the bare minimum essential work to keep the car going. She is also proposing to have further extensive work done, but it is not clear if this will resolve all the issues.

Since MBNA provided the credit she used to pay for the car, and given P’s stance, Miss E wants MBNA to take responsibility for paying for all the work she has had done and all the work she proposes to do. When it is all totted up this work totals around about the same amount she paid for the car in the first place. Miss E also wants MBNA to refund the costs she says she has run up due to the faults with the car. Miss E relies on the rights she has under Section 75 of the Consumer Credit Act 1974 (“Section 75”). Further, Miss E suggests MBNA has mishandled her complaint and therefore made the whole process more difficult for her.

MBNA saw things very differently from Miss E. At first it pointed out that while Miss E may have rights under Section 75 that she is entitled to rely on, this provision does not give her the automatic right to a refund. Moreover, its stance was that the onus is on Miss E to prove her case. In order to prove her case MBNA said Miss E would need to supply an expert’s report because her position is that, Section 75 covers her for breach of contract. According to her, there has been a breach of contract because the car she got was not as P described it and does not work as it should. However, whilst Miss E may feel very strongly that this is the case, without an expert’s report MBNA suggested it could not really form an opinion about whether she is right or not. It didn’t agree that it had not provided the level of customer service to Miss E that she was entitled to expect.

Dissatisfied with MBNA’s response Miss E came to our service.

Once Miss E’s complaint was with us MBNA made an offer. It looked at the work that Miss E had told it was needed. It suggested most of the work related to wear and tear. It wasn’t surprised that a car of this age and mileage should have wear and tear and it did not agree this meant the car had faults that it, MBNA was responsible for putting right. That said, there was some work that it agreed should have been done by the supplier in order to make sure the car reached the relevant standard, that is to make sure the car was of satisfactory quality. That being so, MBNA as a goodwill gesture was prepared to pay for these repairs which had cost £1,498 in total. Miss E declined this offer.

I looked at Miss E's complaint in two separate provisional decisions. In the first provisional decision I said.

My first provisional decision

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I wanted to point out 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. 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.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

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

The agreement in this case is a regulated consumer credit agreement – so we can consider a complaint relating to it. In particular, Miss E paid for the car using a form of credit that gives her rights under Section 75. Section 75 says, amongst other things, that in certain circumstances if the debtor has, in relation to a transaction financed by a credit agreement, any claim against the supplier in respect of a misrepresentation or a breach of contract, then she has a like claim against the credit provider.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. In deciding what's a fair way to resolve Miss E's complaint, I've taken Section 75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Miss E pursued a claim for breach of contract. This service is an informal alternative to the courts and operates differently from them.

Further, the Consumer Rights Act 2015 (CRA) is also relevant to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". This provision applies to the car that P sold to Miss E. Miss E says that P breached this provision and she has a like claim against MBNA as against P for this breach.

To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

As I have already said, the car was ten years old and had 83,000 miles on the clock when it was sold. I think a reasonable person might normally expect a second-hand car of this age and with this mileage to be rather more careworn than a brand-new car and to have some wear and tear.

That said, the descriptions applied to the car are also relevant. I don't think it is fair or reasonable in the circumstances to discount what P said as being "advertising puff". Rather it was making representations about the quality of the car. In the circumstances, I am satisfied these representations also became terms of the contract. And when I look at what P said about the car, I think any reasonable person might have expected that this particular car would have very little in terms of wear and tear due to the work that was done under the warranties, due to how the condition of the car was described, and the careful attention the car seemingly received from its previous owner. In addition, I think a reasonable person might have also expected that the car would run for quite a while without needing any sort of repair.

So, I've thought about if all of this is what Miss E actually most likely got, and I don't find that she did. I say this for the following reasons.

Right from the get-go Miss E was complaining about the damage to the rear bumper. The car's finish was described as beautiful, the photo in the advert showed no damage to the bumper and neither did the video. The way I see it there are three most likely possibilities, P caused the damage, Miss E caused the damage, or the car transporter did. I think given that Miss E complained about the bumper straightaway I don't think it is likely she caused the issue herself. The car moving company appears to be a specialist in transporting cars, and whilst I can't completely discount that it caused the damage I think given its expertise it was unlikely to damage a car it had the care of. Moreover, given that the car was it seems, with P longer than it was with the car mover, I think on balance the damage most likely happened while the car was with P.

A car with a damaged bumper is not a car with a beautiful finish. I think that is a breach of contract by itself. But that is not all. Miss E also complained straightaway about the problems with the handbrake and the starter issue. P seems to have tried to blame Miss E for these issues, based on the correspondence between Miss E and P that I have seen. But I think it is significant that in the end, P agreed it would put these issues right although it wanted to do the repairs itself. I don't think it would have taken this approach if it wasn't accepting it was responsible to put things right especially given the increasingly combative tone of its communications with Miss E. Given the nature of the faults I can understand why Miss E was worried about driving the car and the fact that she has shown she drove the car so little, supports what she says about this point. A car that needed repairs so soon to such key components, did not on balance, meet the relevant quality threshold, I find.

Further still, Miss E has supplied us with an invoice from a garage for work she had done (she had tried another garage earlier than this, but it appears it kept the car without doing the work, I see no reason to doubt what Miss E says about this). When I look at the scope and nature of the work required I find it hard to reconcile it with the description of the car, as being one that was hard to find fault with. Even if P had not described the car in such glowing terms, I would still find the car was not of satisfactory quality when sold in the circumstances. The combination of faults made the car unroadworthy and therefore not of satisfactory quality.

MBNA suggests Miss E has not been consistent in what she has complained about. I don't see it that way. It is correct that she did not complain about everything from the beginning. But it seems she did complain about each of the issues as she found out about them. I can't fairly say it undermines the weight I give to her account because she did not complain about faults she did not know about from the start.

I also don't agree that MBNA's offer to pay for some of the repairs goes far enough. In the circumstances, I don't agree that the car ought to have needed any of the repairs that Miss E has paid for, not just the ones MBNA are prepared to pay for.

That said, I take on board, that it is not clear what further repairs the car is going to need to bring it up to the standard that it should have reached. It does not seem proportionate that MBNA should have to pay for repairs that in total are going to add up to around the purchase price of the car. Moreover, there is no guarantee that even the proposed schedule of works will bring the car up to the required standard. It is neither fair nor reasonable to say MBNA must take on an open-ended responsibility for repairs.

For all of these reasons, I find it is fair and reasonable that Miss E be allowed to reject the car and that MBNA must refund her for the purchase price of the car. If Miss E has not already paid off the amount she paid for the car then MBNA must rework her credit card account as if she had never made the purchase. If she has already paid off the amount she paid for the car, MBNA must refund the purchase price and add interest to that sum. The interest to run from the date of purchase to the date of settlement.

In addition, it is fair and reasonable that MBNA must refund Miss E for all the repairs she has done and paid for so far, but she must do no further repairs even the repairs where she tells us the parts have been ordered. Plus, it must refund her the cost of transporting the car abroad to her overseas home and the cost of towing the car to the garage. Miss E has shown she put new trackers on the car, she'll not now get the benefit of these so MBNA must compensate her for this too.

It seems reasonable to me that while Miss E was not able to use her car she had to use alternative means of transport. But it is not clear to me why she had to reasonably use taxis for long journeys instead of public transport. That was her choice to make but I don't find it fair and reasonable to ask MBNA to cover the bill for this.

Miss E suggests that, at times the, the customer service MBNA provided in the course of looking at her complaint about its response to her claim has fallen below the standard that she is entitled to expect. In particular, she has had difficulties with some of its systems. But MBNA is permitted to make its own decisions about what systems it uses, all I can look at is if she has been treated unfairly as a result. And whilst I can see that its systems have sometimes caused her frustration, I don't agree that she has been treated unfairly as a result of MBNA's use of these systems. It follows that I have no proper basis for asking MBNA to

I said the redress I intended to make was as follows:

"My provisional decision is that I currently intend to come to the following decision, namely that MBNA Limited must.

- 1. Refund Miss E for the purchase price of the car £15,609. If Miss E has not already paid off the amount, she paid for the car then MBNA must rework her credit card account as if she had never made the purchase. If she has already paid off the amount, she paid for the car MBNA must refund the purchase price to her directly and add interest to that sum. The interest to run from the date of purchase to the date of settlement.*
- 2. Arrange to collect the car from Miss E at no cost to Miss E.*
- 3. Refund Miss E for the repairs that she has paid for so far as at the date of this provisional decision.*
- 4. Refund the cost of transporting the car overseas £650.*
- 5. Refund her for the cost of towing the car to the garage.*
- 6. Refund her for the cost of the trackers.*

7. MBNA must pay interest on the refunds in 3,4, and 5 above from the date of payment until the date of settlement.

8. The interest paid on the refunds in 1,3,4, and 5 above should be at the rate of 8% simple per year."

The responses I received to the first provisional decision

I invited both Miss E and MBNA to respond to my first provisional decision and they both did. I summarise below their respective responses.

Miss E rejected the suggestion from MBNA that she had not been consistent in the issues she was complaining about. Miss E pointed out that she had supplied us with photos given to her by the company that moved the car which showed, in her opinion, that the bumper damage had been there before it picked up the car.

Further, Miss E indicated that she wanted to do further repairs to the car, repairs she considered to be absolutely necessary for the safe use of the car. Also, she explained why, in her opinion she had been obliged to use taxis rather than public transport to get around.

Moreover, Miss E went on to tell us about expenses she had incurred to make her car compliant with the laws of the country in which she lives. In addition, she reiterated how difficult she had found dealing with this whole matter and why that was.

In brief MBNA's response covered the following issues. It wanted to know if we had got a experts report from P. It appears according to it that P had been willing to supply one.

In addition, MBNA suggested that some of the issues Miss E complains about are wear and tear items. On that basis it didn't agree I had proper grounds to say the car was not of satisfactory quality due to their presence.

MBNA suggested it was inappropriate to require it to take possession of the car and pointed out that the logistics of doing this would be difficult for it. It suggested I had given no clear reason for finding that P caused the damage to the bumper. Later it said it was not even clear what redress it was being asked to provide. Finally, our contact at MBNA told us they were going to take no further action until they got further instructions from colleagues in MBNA.

My second provisional decision

In order to deal with the comments and new information I received in response to my first provisional decision, I issued a second provisional decision. This is what I said in my second provisional decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank both Miss E and MBNA for their responses to my provisional decision. It has been particularly helpful that each of the parties took the time to set out their views on the redress which I proposed in my provisional decision, so that I have been able to gain a fuller understanding of their respective positions and concerns about some elements of the proposed redress.

Once again, I'm very aware that I've summarised this complaint, including the responses to my provisional decision, 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. I haven't. 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.

I recognise that Miss E is upset by the suggestion made by MBNA that she has not always been consistent in her complaint. However, I already dealt with this issue and explained why I did not agree with MBNA's stance in my first provisional decision.

MBNA's stance seems to be that there is not enough information to suggest the bumper damage was caused by P. I disagree for the reasons I already went through in my first provisional decision. I think there is no benefit in repeating what I said here again, in any event, Miss E has sent us the photos which she says the car remover took at the time and I have no reason in the circumstances to doubt what she said about this. For all of these reasons and the reasons I set out in my first provisional decision, I find it likely that P did cause the bumper damage.

I already went through the reasons why I found that the car was not of satisfactory quality in my first provisional decision. MBNA's response to it suggests it thinks I should have asked for P to provide an expert's report. I think that would have got us no further, P is not an impartial third party, quite the opposite. I also dealt with the wear and tear point MBNA talks about in my first provisional decision and again I don't think it is necessary to repeat those points again here. It was open to MBNA to have instructed its own independent expert to do a report it did not. But it has had a fair chance to do so. But in any event I have concluded that I have sufficient information already to make a finding about this point without further information being required.

Moreover, to be considered to be of satisfactory quality under the relevant law the car would need to conform with any description given to the car. In my first provisional decision I talked about how the description of the car had been a representation that formed part of the contract. But this point is in addition to that. P described the car in one way, but the car did not fit with that description so this too I find is a breach of contract.

For all these reasons and the reasons, I set out in my first provisional decision I find that the car was not of satisfactory quality when sold.

In my first provisional decision I focused on breach of contract but for completeness, I will also mention misrepresentation in more detail now. Misrepresentation in this context is a false statement of fact made by P that Miss E relied on to her detriment. I think in the written statements it made and in the photo and video P was representing that the car was indeed a car that any buyer would struggle to find anything wrong with. In particular, I think it was representing, at the very least, that despite its age and mileage the car would be safe to drive and would not need immediate repairs I think it was also representing that the finish was good. I am satisfied given the timing, nature and extent of the repairs that Miss E has had done so far this representation was a false statement of fact that Miss E relied on to her detriment. It follows that it is fair and reasonable that MBNA take responsibility for this and for making things right.

I've thought again about redress since both parties have commented on this. Miss E tells us she had to pay £3,350 to make the car legal to drive in the overseas country she is currently living in. This sum is far beyond what I understand it costs for example to reregister a car in that country. She also tells us she had to spend 150 Euros to test that the car was safe to

drive in that country. I would on the face of it consider that these are consequential losses which she ought to be able to ask MBNA to pay. I also consider these costs to be as costs she would not have incurred but for the misrepresentation, so it would be fair and reasonable to ask MBNA to refund these too. But at the moment I don't have sufficient information such as invoices to show she did incur these costs and that what they were for. On that basis, currently, I can't fairly ask MBNA to pay for these costs.

Miss E wants to do more repairs. That is her choice to make. But it is not fair and reasonable to say that MBNA has to pay for such repairs, given there is nothing to show that the repairs will put things right. Miss E knows that I have stopped the clock because otherwise MBNA would be facing an open-ended bill for repairs that will not necessarily remedy the breach of contract nor put right the misrepresentation. I repeat again here MBNA should only have responsibility for those repairs Miss E did up until and including 13 September 2021.

Moreover, I have looked at what Miss E has said about her use of taxis. She suggests the public transport system in the country where she is living is not as extensive as in the UK. She also suggests on one particular occasion when she had to do what she calls an "essential viewing of a house" neither her start location nor her destination were connected to public transport. However, in the circumstances, given that her country of residence is an advanced developed nation, I am not persuaded that public transport was not a reasonable option.

I don't doubt that MBNA might find it difficult to take possession of the car. But that is not a persuasive reason for saying that in this instance, I should not follow the usual approach of this service in cases such as this one. It is being asked to refund Miss E for the car it follows it is fair it should have the benefit of the possession of the car.

I have not been persuaded, for the moment, by any of the new arguments raised in response to my first provisional decision. It follows, in this second provisional decision I have come to the same conclusions for the same reasons as I did in that decision."

As with my first provisional decision, I invited Miss E and MBNA to respond to my second provisional decision. As far as I am aware this service has received no response from MBNA to my second provisional decision. This service did receive a response from Miss E.

In brief, Miss E indicated that she considers it unfair that I have said MBNA must only refund her for the repairs that she had done as at the date of my first provisional decision (13 September 2021). She tells us she has done further work since and wants a refund for this work too. Miss E reiterated she wants a refund for the taxi fares she paid. Miss E sent in information to show that in August 2020 she paid £3,350 to register her car in the overseas country where she is living. Miss E underlined that she is now experiencing financial difficulty. She suggested that she is contemplating taking legal action.

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 thank Miss E for her response to my second provisional decision. I note that we appear not to have received any further responses from MBNA beyond its initial response to my first provisional decision. However, I am satisfied that both parties have now had a fair opportunity to respond to both of my provisional decisions.

Once again given that we have received extensive submissions from the parties I want to underline that I'm very aware that I've summarised this complaint in far less detail than the parties. Further, 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. I haven't. 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.

Repairs undertaken by Miss E after 13 September 2021

I recognise that Miss E has done further repairs which she considers to have been strictly necessary in order to drive the car safely. It appears these repairs were done on 30 September 2021. I also note she suggests more repairs are also vital for the same reasons. I appreciate that Miss E may consider she had no choice but to carry out the repairs. But she was also aware of my findings on this issue from the point when I issued my first provisional decision on 13 September 2021. In particular, I had found that I did not consider it was proportionate to ask MBNA to pay for any further repairs given the proposed cost and given I was not persuaded that any further repairs that Miss E had suggested would make the car of satisfactory quality. Therefore, if I agreed with her suggested approach, MBNA would be facing taking on an open-ended responsibility for more and more repairs which were unlikely to put things right. I did not consider this was fair and reasonable.

It follows that Miss E did the further repairs at her own risk knowing there was a possibility that I would not be persuaded that it was fair and reasonable to ask MBNA to refund her. In the circumstances, for the reasons I have already gone through, I don't agree it is fair and reasonable to require MBNA to pay Miss E back for the repairs she chose to do after 13 September 2021.

Use of taxis

Miss E has rejected the idea that she could have used public transport for her journeys. But in the circumstances, given she lives in a developed country with a well-established public transport network, I am not satisfied that she was obliged to make her journeys by taxi. It follows I don't agree it is fair and reasonable to ask MBNA to pay for these journeys which she chose to make using this form of transport. I am not upholding this part of Miss E's complaint.

Registration fee

Miss E has provided information to show she paid a fee of £3,350 to register her car in her country of residence. This information was provided to MBNA too by us. In the circumstances, I am satisfied Miss E was obliged to make this payment in order to use her car. I am also satisfied that by reason of being supplied with a car that was misrepresented and is not of satisfactory quality which she is now going to have to hand over to MBNA she will have been caused a loss here. This loss flows directly from misrepresentation and the breach of contract which it is fair and reasonable to hold MBNA to account for. It follows it is fair and reasonable MBNA should now refund Miss E the £3,350.

I am aware Miss E mentioned making a payment of 150 Euros in relation to the registration of the car, but I have not received any further information about this fee. I am not therefore upholding this part of Miss E's complaint.

Beyond the point about the registration fee I have not been persuaded by any of the further submissions I received in response to my two provisional decisions. It follows that for the reasons given that I have come to the same conclusions as I did in those provisional decisions.

My final decision

My final decision is that MBNA Limited must.

1. Refund Miss E for the purchase price of the car £15,609. If Miss E has not already paid off the amount, she paid for the car then MBNA must rework her credit card account as if she had never made the purchase. If she has already paid off the amount, she paid for the car MBNA must refund the purchase price to her directly and add interest to that sum. The interest to run from the date of purchase to the date of settlement.
2. Arrange to collect the car from Miss E at no cost to Miss E.
3. Refund Miss E for the repairs that she has paid for so far as at 13 September 2021.
4. Refund the cost of transporting the car overseas £650.
5. Refund her for the cost of towing the car to the garage.
6. Refund her for the cost of the trackers.
7. Refund the cost of the car registration £3,350.
8. MBNA must pay interest on the refunds in 3,4,5,6 and 7 above from the date of payment until the date of settlement.
9. The interest paid on the refunds in 1,3,4, 5, 6, and 7 above should be at the rate of 8% simple per year.

If MBNA considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate, if it is able to do this, with the payment so that Miss E can reclaim the tax if she is able to.

Miss E should refer back to MBNA if she is unsure of the approach it has taken, and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 23 February 2022.

Joyce Gordon
Ombudsman