

## The complaint

Mr S complains that MBNA Limited, who I'll call "MBNA", didn't uphold a claim he made to them under section 75 of the Consumer Credit Act 1974 ("s.75").

## What happened

I issued my provisional decision on this complaint in July of this year. An extract from that provisional decision is set out below.

### ***What I've provisionally 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 think there's evidence that the work completed on Mr S's boat wasn't completed with reasonable care and skill and that MBNA have therefore been unreasonable to reject his s.75 claim. I'll explain why.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*When something goes wrong and the payment was made with a credit card, as was the case here, it might be possible to make a s.75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.*

*I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.*

*From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.*

*Section 49 (1) of the Consumer Rights Act (2015) says that:*

*"Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill".*

*I think there has been a breach of contract here as I don't think the work the supplier (who I'll call "M") completed on 29 June 2022 was likely to have been completed with reasonable*

care and skill. The invoice suggests the supplier was asked to “Diagnose (an) Issue with (the) boat not starting/cutting out...”. But when Mr S subsequently used the boat he experienced the same problem.

The subsequent invoice from a third party supplier, who I’ll call “AM”, who rectified the issue successfully on 29 September 2022 explains, “Inspect running of 3.0L Mercruiser. Remove head and inspect valvetrain and gasket surface, re fit. Air leak found in clear plastic fuel hose. Replace plastic fuel pipe to flexible rubber fuel hose, replace fuel filter and fittings.” I think that suggests the initial repair was inadequate and that M missed the hole in the fuel hose.

When there’s a failure to complete work with reasonable care and skill we’d usually expect the supplier to be given a chance to put things right. But here Mr S has already had the boat repaired. I don’t think Mr S was unreasonable to get the work completed elsewhere as the boat was almost 200 miles away from M. I’ve looked at the work that was completed by AM and I think the work completed was related solely to resolving the “cut out” issue. I think that invoice for £671.52, therefore represents the real cost of repairing the boats original “cut out” issue.

Mr S paid M £917.31 to M in June 2022 for the repair that didn’t resolve the problem. But I don’t think all of that cost related to work needed to fix the “cut out” issue. Having considered the invoice I think the VAT inclusive charges of £240 to service and de-winterise, and £34.79 for engine oil, were unlikely to be related to that problem; a total of £274.79. So, the real cost of the failed “cut out” investigation and repair by M was £917.31 less £274.79 = £642.52.

When it’s not possible to carry out a repair it may be reasonable to expect a consumer to be given a price reduction and here I think that’s what MBNA should have done.

I think MBNA should provide a price reduction of £642.52 in respect of the failed repair. I’m not asking MBNA to refund any money in relation to the earlier repairs Mr S commissioned from M as they weren’t funded by MBNA credit.

Mr S also had to store the boat before it could be repaired. He’s provided an invoice for those storage costs of £146.88. I think those costs were incurred as a consequence of the failed repair and MBNA should therefore refund those too.

Whilst Mr S may have been inconvenienced by these issues I’m only considering MBNA’s actions here and not the actions of M. MBNA offered Mr S £60 in compensation for not making it clear to Mr S that the independent report they’d asked him to supply needed to be done prior to the work being completed. I think that is sufficient in the circumstances and I’m not asking them to pay any further compensation.

### **My provisional decision**

For the reasons I’ve given above I’m expecting to uphold this complaint and to tell MBNA Limited to:

- Pay Mr S £642.52 as a price reduction.
- Refund the £146.88 Mr S incurred for storage as a consequence of the supplier’s breach of contract.
- Pay Mr S £60 to compensate him for the distress and inconvenience caused by their actions (less anything they may have already paid).

### **Further comments and/or evidence**

MBNA accepted my provisional decision, but Mr S didn't think the compensation was sufficient. He said:

*"... I know £60 has been suggested as compensation from MBNA but this wouldn't even cover my fuel let alone losing my boat for a season whilst the work was completed by AM".*

### **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 explained in my provisional decision that while *"...Mr S may have been inconvenienced by these issues I'm only considering MBNA's actions here and not the actions of M"*. The £60 is in respect of MBNA's failure to let Mr S know the report needed to be provided before the work could start. I'm not persuaded they did anything else wrong and I'm not therefore asking them to increase that compensation.

### **Putting things right**

I've not been provided with additional information that would lead me to change my provisional decision. That provisional decision now becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell MBNA Limited to:

- Pay Mr S £642.52 as a price reduction.
- Refund the £146.88 Mr S incurred for storage as a consequence of the supplier's breach of contract.
- Pay Mr S £60 to compensate him for the distress and inconvenience caused by their actions (less anything they may have already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 August 2023.

Phillip McMahon  
**Ombudsman**