

The complaint

Mr D complains about the outcome of a claim he made to MBNA Limited ("MBNA") under section 75 of the Consumer Credit Act 1974 (s.75). He also complains that MBNA failed to keep him updated on his claim and that they didn't reply to his messages in good time.

What happened

In November 2022, Mr D paid £465 to a company I'll call 'H' using his MBNA credit card, for H to carry out a full structural building and roof survey on a property that he was thinking of buying. Mr D also wanted H to provide a report on the survey with remedial needs and costings for those needs.

H duly carried out the survey on the agreed date. Mr D says that, when he received the report, he noticed that the surveyor who had attended the property wasn't named on it; rather there were two other named surveyors shown who hadn't been present.

Mr D wrote to H asking for the report to be changed to show the name of the surveyor who had attended the property. However, H didn't do this. Mr D complained to H and mentioned also that the report stated there was a concrete lintel fitted above the lounge window which he says wasn't correct as his builder had confirmed there was no lintel. Mr D also complained that the costings stated in the report weren't explained and didn't refer to any of the required remedial work.

Mr D didn't get anywhere with H, so he asked MBNA for help in getting his money back. He said that he had no idea whether the surveyor who attended the property was suitably qualified, and he had increased concerns about this after his builder told him there was no lintel. He also reiterated the complaint point he'd made to H about the costings.

MBNA considered Mr D's claim under s.75 but declined it, and didn't uphold his complaint about the outcome of the claim. MBNA said there wasn't enough evidence to show there had been a breach of contract or a misrepresentation. In particular, they said that there was nothing to prove that H's report was invalid.

Mr D referred his complaint to our service. One of our investigators looked into what happened but didn't recommend that MBNA do anything, for essentially the same reasons as MBNA had given to Mr D.

Mr D didn't agree and so his complaint has been passed to me to decide.

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 want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr D and MBNA that I've reviewed everything on file. And if I don't comment on something, it's not

because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Where the evidence is incomplete, inconclusive, or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is s.75 which subject to certain criteria, gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. I'm satisfied that the necessary criteria for a s.75 claim to be made by Mr D was met.

As Mr D bought services under a sales contract, the Consumer Rights Act ("CRA") is relevant here. The CRA implies into a contract such as this a term that the contract will be performed with 'reasonable care and skill'. What is considered reasonable care and skill isn't focused on the results achieved but the manner in which the service was carried out.

The primary element of Mr D's complaint, and why he feels MBNA should have refunded him the money he paid H, is that there were two surveyors named on the report that didn't attend his property, and that the attending surveyor wasn't named.

I have no reason to doubt what Mr D has said about who attended the property and that this person's name wasn't shown on the report. And H didn't provide much of an answer to him about this discrepancy. Clearly, the report should be accurate. However, that doesn't necessarily mean that the attending surveyor lacked the necessary qualifications or credentials to do what H had contracted to do. And I've not seen sufficient evidence that the report was worthless or invalid because of this discrepancy. I would have needed something more to show me this, for example that the property purchase fell through because the survey was invalid, or the attending surveyor clearly lacked the necessary qualifications, or because the details in the report were so inaccurate that it would have seriously called into question the surveyor's ability. But I've not seen such evidence, although I will come on to a specific point about the contents of the report shortly, and the survey does look to be reasonably detailed and explanatory.

I do understand why Mr D isn't happy that the attending surveyor wasn't named on the report. I have though looked on H's professional social media profile and seen that the surveyor in question is listed as an employee and that his profile states that he has been a property surveyor since November 2022.

I note that Mr D's builder said there wasn't a concrete lintel in the area that the surveyor said there was. Rather, there was cement cladding present that was designed to mimic a lintel, which had cracked. So, Mr D feels this calls into question the attending surveyor's qualifications and competence in carrying out the survey.

However, what I have here are two separate professional opinions and I can't be certain that the surveyor's comments were inaccurate based on how he assessed this. Also, it's not uncommon for builders, who will generally do a more thorough inspection and assessment, to comment on certain things that a survey may not have entirely accurately assessed.

But, even if the surveyor did get that wrong, and I'm not saying that he did, he did identify that there was a problem in that area that needed remedying, as did Mr D's builder. Had the surveyor missed the crack or said there wasn't one present when clearly there was, then I might feel differently about whether the report likely was worthless or invalid. But that's not the case.

I also note that Mr D says he expected H to provide detailed costings on the remedial needs to the property. I've not though seen that H contracted to do this and have seen an e-mail from them in which they said to Mr D after he complained to them that the report contained, *'algorithm costs which were representative of any defects detected and potential repair costs required'*. I've also seen this set out on H's website when you access a link to what they offer for building structural surveys.

Overall, I've not seen sufficient evidence that H breached their contract with Mr D or misrepresented anything to him that made a material difference. So, I don't find that MBNA acted unfairly when they responded to Mr D's complaint about why they declined the s.75 claim.

I've considered MBNA's actions after Mr D referred the matter to them. I understand that they sent Mr D their response to his claim in May 2023 which was about four months after he originally contacted them about this dispute. While it's possible MBNA could have replied to his requests for an update sooner than they did, I note they did try to contact H about the allegations Mr D had made. So, I think they did try to expedite matters and it should be noted that there isn't a set timeframe for a s.75 claim to be considered. Overall, I think MBNA handled the claim reasonably.

Finally, it seems that MBNA didn't attempt a chargeback to try to recover the money. However, I don't think this would have been successful bearing in mind what I said above about the s.75 claim. H also likely would've defended the chargeback robustly bearing in mind the contents of their e-mail correspondence with Mr D after he complained to them.

My final decision

For the reasons I've set out above, I don't 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 15 November 2024.

Daniel Picken
Ombudsman