

The complaint

Mr W complains about the way in which MBNA Limited handled a claim he made under section 75(1) of the Consumer Credit Act 1974 ("section75").

What happened

In December 2021 Mr W engaged a builder to carry out work on his driveway and front garden. He wanted to extend his existing driveway across the garden and create a second entrance. The new entrance would be accessed in part by driving across an existing footpath which runs along the side of Mr W's property. I refer to it as a footpath for simplicity, but access is not limited to pedestrians.

Mr W drew up a plan and a 9-point list of the work required. The plan was not to scale and the list noted that Mr W was not an expert in the field and that he was open to suggestions from the builder.

Mr W agreed a price of £15,400 plus VAT for the work, although he paid some extra when the specification was changed. He paid of the total price £1,000 using his MBNA credit card.

Mr W says that, during the course of the work, he noticed that the new driveway entrance did not appear to be wide enough for a car. He raised this with the builder, who asked what size car he wanted the entrance to accommodate. Mr W said that it should be big enough for the builder's car – a large 4x4. Changes were made to the entrance following this conversation.

The work was finished in February 2022. The new driveway compound needed time to cure but, when it was ready to be used, Mr W found out that he could not in fact drive even a medium-sized car into the driveway. Mr W has provided pictures of the finished work which indicate that this was because of a combination of the width of the entrance, the width of the existing footpath and a flower bed and tree in Mr W's front garden. The flower bed is edged with a kerb, installed as part of the driveway work.

Mr W spent some months trying to get the builder to carry out rectification works or otherwise resolve the problem. He was unsuccessful, and so referred the matter to MBNA. It considered Mr W's concerns under section 75. It did not believe however that he had shown that the builder was in breach of contract and so did not agree to the claim.

Mr W was not satisfied with the response to his claim and referred the matter to this service. As well as the issue I have described above, Mr W said that the work was not satisfactory in some other respects. They included:

- A garden wall pillar which had been moved had been rebuilt lower than previously.
- Kerbing had been installed in the wrong place.
- The boundary of his property had been marked by bricked paving in the wrong place.
- There was a ridge across the pathway, which might be an issue for wheelchair users or those with buggies or prams.
- Some of the brickwork was poorly laid.

- The compound used for the driveway was showing signs of rust staining because of steel used in the sub-base.

One of our investigators considered what had happened but agreed with MBNA that Mr W had not shown there was a breach of contract. He did not recommend that the complaint be upheld. Mr W did not accept the investigator's view and asked that an ombudsman consider the matter.

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.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. I am satisfied the necessary conditions were met in this case, so I have gone on to consider what Mr W has said about the work which was carried out.

The builder in this case was to provide most of the building materials (Mr W said that some material could be reused) and all of the labour. This was, therefore, a contract for the provision of goods and services.

Under the Consumer Rights Act 2015 a consumer contract for the supply of goods and services is to be read as including a term that goods will be of a satisfactory quality and that services will be carried out to a reasonable standard. Goods are of satisfactory quality if they meet the standard that a reasonable person would consider satisfactory. The quality of goods includes their fitness for purpose, appearance and finish.

Mr W has raised the issue of staining of the driveway surface, and has provided photos which appear to show some discolouration. I do not believe however that I can safely take that to mean that the material used was not fit for the purpose for which it was intended or that a change in its appearance makes it unsatisfactory. I do not understand Mr W to have any other issue with the materials used.

As far as the work is concerned, Mr W's primary concern – for understandable reasons – is that the work had been completed in a way which does not meet the primary objective. I have described above why I believe that is; there are a number of factors which combine to make it difficult to get anything more than a small car in the new entrance.

As both MBNA and the investigator noted, however, Mr W's initial plan was not to scale. I don't mean that as a criticism of him, but it does mean that I cannot conclude simply that the builder did not follow the plan.

The sales quotation provided by the builder included: *"Cut back existing wall to create sufficient opening"*. In the context of the work being done, I think "sufficient opening" here must mean an opening that can accommodate a car. Mr W's photographic evidence is that that the entrance can accommodate a car but that other features (and in particular the width of the footpath and the location of a tree in Mr W's front garden) make it impractical – at least for a large car. I do not believe however that I can fairly say that the builder did not carry out, to a satisfactory standard, the work that was agreed.

I note of course that Mr W indicated on his list of work to be done that he was not an expert, and he invited suggestions. And his plan included no scale, so was not intended to be

followed exactly (and could not have been in any event). The work involved an element of trial and error.

It may be of course that the builder could have intervened and suggested a different way of achieving Mr W's overall goal. But the builder was not engaged to provide a design for the project, and Mr W had not paid for that.

As I have indicated, Mr W raised some other issues about the work which was carried out. I am however not persuaded that any of these meant that the work was not carried out to a satisfactory standard.

It is not for me to say whether Mr W does in fact have a claim against the builder. Nor is it for me to decide whether he has a claim against MBNA under section 75. What I must do is decide what I consider to be a fair resolution of Mr W's complaint about MBNA, having regard, amongst other things, to any relevant law – including the Consumer Rights Act and the Consumer Credit Act. In the circumstances, I do not believe that MBNA has acted unfairly.

My final decision

For these reasons, my final decision is that I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 November 2024.

Mike Ingram
Ombudsman