

## **The complaint**

The complaint concerns a claim made under section 75 (s75) of the Consumer Credit Act (CCA) 1974 and whether MBNA Limited (MBNA) has declined the claim fairly.

## **What happened**

In April 2021, Mrs D contracted with a merchant to have a new conservatory installed. She paid an initial deposit of £3,137 using her MBNA credit card. When the work commenced, she paid a further £6,274 to the merchant using her debit card. The total cost of the work was £12,548.

Mrs D has told us that once the work commenced it was not of satisfactory quality. She raised concerns about the specifications, quality and fit but these were not addressed by the merchant so after three days, she stopped the work. Mrs D says she provided a further two opportunities to the merchant to complete the work to the required standard, but both of these attempts failed. She was left with a shell structure.

Mrs D commenced court proceedings against the merchant in September 2021 and received a judgement in default from the County Court in March 2023. The merchant was instructed to pay Mrs D £12,000.51 by 14 April 2023. This amount included debt, interest and costs.

As the merchant did not pay Mrs D by the date specified by the court, she took other court action which was unsuccessful. Mrs D has said the merchant submitted to the court that it did not have any assets and that its bank balance was at around £10 at the end of each month, so it did not have the facility to settle the debt. So, in May 2023, Mrs D raised a claim under s75 CCA with MBNA.

At the outset, MBNA awaited the results of the court action. In September 2023, Mrs D informed MBNA the funds were not recoverable through the merchant and she would like to continue with her claim under s75 CCA.

In October 2023, MBNA issued its outcome to the claim. MBNA declined her claim on the basis that the claim had been reviewed via legal proceedings. MBNA encouraged Mrs D to seek legal advice pursuant to enforcement of the court order she'd obtained.

Unhappy with the outcome, Mrs D brought her complaint to our service. She was unhappy with both the outcome of the claim and the time it had taken MBNA to deliver it. Our investigator considered the complaint and said she was not upholding the complaint. The investigator explained that as the merchant was still trading, she felt there was a risk of double recovery. She didn't think that MBNA had caused delays as it had waited for the results of any court action before providing its outcome to the claim. Mrs D remained unhappy so the complaint was passed to me to decide.

## **My provisional findings**

I recently issued a provisional decision (which forms part of this decision) in which I set out my findings and how I was inclined to conclude the complaint be resolved. My findings in the

provisional decision were as follows:

*“Section 75 specifies that a creditor, along with the supplier, is jointly and severally liable to the debtor. This means that notwithstanding the default judgement that Mrs D holds against the merchant, she is able to bring her claim to MBNA and seek to have it held liable for the breach of contract claim.*

*As the judgement was issued in default, the extent to which the court looked into the merits of Mrs D’s claim was limited. For example, it’s unclear that the merchant submitted any defence to the claim. When the claim was brought to MBNA, it had this information available. In these circumstances, the reasonable action for MBNA to have taken was to assess whether a valid breach of contract claim was being made under s75. MBNA has not done so in this case.*

*I contacted Mr D on behalf of Mrs D on 15 August 2024 to determine what happened to give rise to the breach of contract claim. For ease, I will refer only to Mrs D as any submissions were made on her behalf.*

*Mrs D explains that she had contracted with the merchant to remove her old conservatory and replace it with a new one. The new structure was to have a “warm roof” and adequate insulation so that the space could be used comfortably in all weather conditions. On the first day of the work having started Mrs D noted that the work was not to the correct specifications, quality and fit. She tried to address these concerns with the merchant over the next two days, but no remedies were made. By day three, Mrs D stopped all work. She was left with a shell structure of poor quality and a leaking roof.*

*Mrs D waited with the conservatory in the same condition for three years in an attempt to recover funds from the merchant, via court action. She then made the decision to knock out the conservatory structure and build an extension to the back of her house, at additional cost (some £40,000 more than the conservatory would have cost her).*

*Mrs D was, at all times, able to bring a separate but like claim against MBNA. She did not attach MBNA to the court proceedings she took against the merchant. But as her claim against MBNA exists severally from the action against the merchant, there’s no proper basis for MBNA’s argument that it is not liable to her.*

*Beyond its suggestion that Mrs D has no claim against it, MBNA has failed to provide its position with regard to potential liability for the breach of contract claim. Taking Mrs D’s testimony into account, I have no information to suggest that the contract was performed successfully. As MBNA has elected not to investigate the claim, there is no information that has been supplied to me that makes me think MBNA should not be held liable for the losses Mrs D incurred.*

*Putting things right*

*I will now turn to the actions MBNA needs to take to rectify matters. I have not been provided with any information from Mrs D which suggests that she has recovered any funds from the merchant. Quite clearly the contract with the merchant was not performed, and now the purpose of the contract no longer exists. In these circumstances, I think the fairest way for the complaint to be resolved is for Mrs D to be restored to the financial position she was in prior to entering the contract.*

*Mrs D paid a total of £9,411 to the merchant, some £3,137 of which was with her MBNA credit card. She was not provided with a conservatory. She eventually removed anything that had been constructed by the merchant, and before she did so, the space was not in a*

*liveable condition. So, I intend to order that the total amount of £9,411 she paid to the merchant should be returned.*

*I am not aware of any payment made to Mrs D by the merchant since the court judgement. MBNA are able to confirm this with Mrs D before making payment. This decision does not preclude MBNA from deducting any money Mrs D recovers from the merchant from the total sum payable. It also does not preclude MBNA from recovering from Mrs D any funds it has paid her under any rights they may have in law if she subsequently receives funds from the merchant.*

*For completeness, I will also consider the complaint Mrs D has made concerning the delays she experienced whilst awaiting MBNA's decision on her s75 claim. I can see that when Mrs D first contacted MBNA in May 2023 she did so by way of raising a claim under s75, providing MBNA with information concerning the court action she was taking against the merchant, and stating she would revert to MBNA to either continue or cancel the claim once the court proceedings were concluded. MBNA decided to wait for the outcome of the court proceedings and this was reasonable in the circumstances. In September 2023 Mrs D came back to MBNA and asked for her s75 claim to be progressed as funds hadn't been successfully recovered from the merchant. MBNA provided its response to her approximately 5 weeks later in October 2023. I do not consider this to be a prolonged or unreasonable amount of time. So, I do not intend to propose MBNA take any further action to put things right for Mrs D for this element of the complaint."*

MBNA responded to say it agrees with the provisional decision. Mrs D responded and did not indicate whether she accepts the decision or not. She did however provide more information in relation to the events as they occurred.

### **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.

As neither party has sought to argue that MBNA should not be held liable for the claim, I find no reason to depart from my provisional decision.

In response to the provisional decision, Mrs D told us she provided the merchant with two further opportunities to complete the work to the required standard after it was stopped. Both attempts were unsuccessful and subsequently, court proceedings were commenced. This information has been reflected in my summation of the events giving rise to the complaint.

### **My final decision**

My final decision is that to settle this complaint, MBNA Limited must pay Mrs D £9,411.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 11 October 2024.

Vanisha Patel  
**Ombudsman**