DRN-5293832

The complaint

Mr M complains that MBNA Limited rejected his claim under Section 75 of the Consumer Credit Act 1974 ('CCA'). Mr M made the purchase along with his wife. But as the payment was made using his credit card, he is the only eligible complainant here.

What happened

In September 2019, Mr M agreed to enter into a contract with a business who I'll refer to as 'GGH'. Mr M says that the contract was sold to him as a one-week property ownership located in Mallorca which provided an annual income.

The purchase price agreed under the contract was €38,460 with payment terms specified of:

1. €5,450 due on 19 September 2019 by credit card; and
2. €33,010 due on 4 December 2019 by bank transfer.

Despite attempts to contact GGH in 2023, Mr M received no response. After investigating and making various enquiries, he discovered a UK based online business who were investigating various claims about GGH (the 'Online Investigation Company'). And in doing so, he found it had identified various misrepresentations and deceit from the representatives of GGH and its associated businesses.

On or around 1 August 2024, Mr M submitted a claim to MBNA under Section 75 of the CCA ('S75') highlighting his findings and those of the Online Investigation Business. He told MBNA he'd used his credit card with them to *"put a deposit down of £3,629.06"* for the product he'd purchased from GGH. Mr M wanted MBNA to reimburse the deposit he'd paid together with a further payment he'd made under the contract for £28,617.25.

Having considered Mr M's claim, MBNA rejected it. It said that because the contract documented a total purchase price of €38,460, S75 did not apply as the amount exceeds the permitted limits under that provision.

Mr M didn't agree with MBNA's findings, so complained to them about the outcome of his claim. But MBNA didn't agree it had done anything wrong. So, Mr M referred his complaint to the Financial Ombudsman Service.

Having considered all the evidence and information provided, an investigator didn't think Mr M's complaint should be upheld. In particular because

1. there didn't appear to be the necessary debtor-creditor-supplier relationship to support his claim; and
2. the purchase price under the contract exceeds the monetary limit under S75.

Mr M didn't agree with the investigator's findings. He said that he was aware of other consumers whose claims had been upheld in full. He also referred to advice he'd received from the Online Investigation Business. It told him that the payment he'd made using his credit card wasn't a deposit. Rather it was a separate payment to another business for *"a purported additional administrative and legal service – which can be shown to have been misrepresented and not provided".*

In response, the investigator thought it would be unfair for Mr M to change the basis of the claim he'd originally submitted to MBNA. Particularly as it was MBNA's handling of that specific claim that he'd asked this service to investigate.

As an informal agreement couldn't be reached, Mr M's complaint has been passed to me. In the interim period, Mr M has forwarded a copy of a separate 'Management Mandate Agreement' that he says he entered into at the same time as his purchase from GGH. In doing so, Mr M pointed out that the payment he made using his MBNA credit card was to another business named on the Management Mandate Agreement for an amount specified within that agreement. And as that business didn't provide the contracted service, his claim should succeed.

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.

Having done that, whilst I understand and have every sympathy with Mr M's experience, I do not think this complaint should be upheld. But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable to all parties in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

When deciding complaints, I am required by DISP[1] 3.6.4 R of the FCA[2] Handbook to take into account:

> *"(1) relevant:*
>
> *(a) Law and regulations;*
>
> *(b) Regulators' rule, guidance and standards;*
>
> *(c) Codes of practice; and*
>
> *(2) (where appropriate) what* [the ombudsman] *considers to have been good industry practice at the relevant time."*

The claim under S75

Liability under S75 isn't based on anything the lender does wrong, but on any proven misrepresentation and/or breach of contract by the supplier. S75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a valid S75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful S75 claim, the act or omission that engages this service's jurisdiction is the creditor's (here that's MBNA's) refusal to accept and pay the debtor's (Mr M's) claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier's alleged misrepresentation(s) or breach(es) of contract.

In Mr M's case, as MBNA refused to accept and pay his claim in August 2024, it is MBNA's handling of that claim that this service is investigating – not the alleged actions or failings of the supplier or its associates. So, in considering Mr M's complaint, it is my role to decide

[1] Dispute Resolution: Complaints Sourcebook
[2] Financial Conduct Authority

whether MBNA acted fairly and reasonably when considering and responding to his claim. And my decision is based upon the actual claim Mr M submitted and the associated evidence and information he provided to MBNA.

The specifics of the claim that Mr M made included:

> *"*[…] *used the MBNA credit card to put a deposit down of £3,629.06 for what we thought was 1 week property ownership with yearly income in a resort* […] *in Mallorca in sep 2019 with representatives of a company called* [GGH]*".*
>
> *"In addition to the deposit we are seeking recompense for the further payment we made for £28,617.25* […]*".*

In support of his claim, Mr M provided to MBNA a copy of a 'Contract for purchase of rights on properties by period for tourism purposes' (the 'Purchase Agreement').

The Purchase Agreement clearly sets out the parties to it which include Mr M and his wife ('The Purchaser') and GGH ('The Distributor'). The Purchase Agreement then goes on to reference another business as the 'Promoter' and the 'Service Company'.

Clause 2, under the heading 'Clauses of the contract' says,

"The Real Estate Period(s) and the rights associated with them shall become the property of the PURCHASER upon full settlement of the amounts specified in clause No3.

Clause 3 includes:

"Total purchase price: ***38,460,00 euros(*)***

(Thirty Eight Thousand Four Hundred and Sixty Euros)

[…]

Under the agreements made, payment of the amount mentioned above shall be made by the PURCHASER according to the following terms:

1/	***Amount:***	*5,450,00 euros*
	Payment date:	*19-September-19*
	Method of payment:	*Credit Card,*
2/	***Amount:***	*33,010,00 euros*
	Payment date:	*04-December-19*
	Method of payment:	*Bank Transfer,"*

I think the Purchase Agreement is clear that the total purchase price under it was €38,460.

Having established this, I then considered what S75 says. In particular, under S75(1), it says:

> *"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor".*

However, S75(3) then goes on to say:

> *"Subsection (1) does not apply to a claim—*
>
> *(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 […]"*

So, based upon the Purchase Agreement Mr M provided to MBNA with his claim, towards which he said he'd *"used the MBNA credit card to put a deposit down of £3,629.06"*, it appears the purchase price was for more than £30,000. And with that being the case, I can't reasonably say that MBNA's rejection of Mr M's claim on that basis was unfair or unreasonable.

For completeness, I would add that S75a does allow claims for breach of contract relating to purchases up to £60,260. But that particular provision only applies to 'Linked Credit Agreements'. S75a (5) says,

> *"In this section "linked credit agreement" means a regulated consumer credit agreement which serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service* […]*"* (emphasis added).

In Mr M's case, he says that he used his MBNA credit card. And as the Credit Agreement under which that operates wasn't entered into exclusively to provide funding for the Purchase Agreement with GGH, it doesn't meet the requirements of S75a.

Was there the necessary Debtor-Creditor-Supplier ('DCS') Agreement

Having decided that Mr M's claim appears to breach the limit under S75(3), I think there's another reason why his claim should not succeed. And it is this particular aspect I will explore further here.

I think it is helpful to set out the relevant legal provisions.

S75(1) CCA states:

> *"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor".*

S12(b) CCA states that a debtor-creditor-supplier ('DCS') agreement is a regulated consumer credit agreement being:

> *"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier".*

An agreement is a S11(1)(b) restricted-use credit agreement if it is a regulated CCA agreement used to *"finance a transaction between the debtor and a person (the "supplier") other than the creditor"* […].

The upshot of this is that for a claim under section 75 of the CCA to be successful, there needs to be a DCS agreement in place for the Lender to be liable to the borrower (here that's Mr M) for the misrepresentations or contract breaches of the Supplier. But, on the face of it, it appears there was no such arrangement in place at the relevant time as GGH (as the supplier under the Purchase Agreement) wasn't paid directly using Mr M's credit card. Instead, Mr M's credit card statement clearly shows that the 'deposit' payment was made to another business - who I'll refer to as 'GEC'.

I've carefully considered the entirety of the Purchase Agreement. Having done so, I can find no reference to GEC being a party to that agreement. Or that GEC had any contractual obligations under it.

With that being the case, I can't reasonably conclude that there was the required DCS in place such that it might lead to a valid claim being made under S75. And with that being the case, I can't say that MBNA's ultimate decision to reject Mr M's claim was unfair or unreasonable.

Mr M's response to the investigator's findings

Having received our investigator's findings, Mr M sought further advice from the Online Investigation Business, subsequently copying that advice and response to this service.

In essence, Mr M now maintains that he entered into two separate contracts. The principle one being the Purchase Agreement with GGH, and the other being under the 'Management Mandate Agreement'. The latter of these appears to be a contract between Mr M and GEC whereby GEC undertake to provide various administrative and legal services. Furthermore, clause 2 of that contract says:

> *"The fees received by the Agent shall amount to 3,995,00 euros (Three Thousand Nine Hundred and Ninety Five Euros), which will be payable hereupon by Credit Card. This document serves as full acknowledgment of receipt thereof".*

Mr M's MBNA credit card statement shows that he paid £3,629.06 (€3,995.00) to GEC on 4 September 2019 – the same date as both the Purchase Agreement and the Management Mandate Agreement. However, in his claim to MBNA, Mr M said that payment was the deposit he'd paid under the Purchase Agreement. It is on that basis that MBNA assessed his claim. And as I've already explained in detail, it is MBNA's assessment and handling of that claim that this service has been asked to consider.

Having done that, and for the reasons already explained, I think MBNA's handling of and response to Mr M's specific claim appears entirely fair and reasonable. And for that reason, I won't be asking MBNA to do anything more here.

I appreciate that Mr M believes other consumers have had their claims upheld. However, under the rules that apply I must consider Mr M's complaint on its own particular merits. So, I can't reasonably consider the experiences and outcomes relating to other unrelated consumers.

My final decision

For the reasons set out above, I don't uphold Mr M's complaint about MBNA Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 April 2025.

Dave Morgan
Ombudsman