DRN-5316570

The complaint

Mr G complains that MBNA Limited rejected his claim under s.75 Consumer Credit Act 1974 ("CCA"). Mr G made the purchase along with his wife, but as the deposit was made by him using his credit card account, he is the eligible complainant. For simplicity, in this decision I will refer to him as the sole purchaser.

What happened

In April 2015 Mr G entered into a contract with Group Global Hotels ('GGH') which is the trading name of Intergroup SLU. There was also a Management Mandate Agreement with General European Consultants ('GEC'). Mr G paid GEC £1,118.06 and incurred a non-sterling transaction fee of £33.42 using his MBNA credit card.

Mr G has not told us what payment was made to GGH or how it was funded, but that contract is not the subject of this complaint. Mr G submitted a claim under s.75 in April 2024 for the sum paid to GEC after he had obtained advice from a third party that GEC had not fulfilled the services it had agreed to provide in the contract. The claim was rejected as MBNA deemed that it had been made out of time. It later paid Mr G £20 because the email from the s.75 team was inaccurate, but it did not consider he had a valid claim.

Mr G didn't agree and brought a complaint to this service where it was considered by one of our investigators who didn't consider it should be upheld. He noted that Mr G didn't have a copy of the contract with GEC as the original had been returned and replaced with an updated version in 2019. He didn't consider Mr G had been able to demonstrate that either there had been misrepresentation or a breach of contract.

Mr G didn't agree and reiterated that GEC had been charged with checking the legal processes to ensure that the registration and processing of the contract with GGH was completed appropriately. He explained that despite repeated requests he had been unable to obtain a copy of the original contract.

I issued a provisional decision as follows:

"*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where necessary and / or appropriate, I reach my decision on a balance of probabilities – that is, what I consider is most likely to have happened in the light of the available evidence and the wider surrounding circumstances.*

I have every sympathy with Mr G, but I do not consider I can uphold his complaint. I will explain why.

S.75 Complaint for Misrepresentation

Liability under s. 75 isn't based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by the supplier, for which s. 75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is

notified of a valid s. 75 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 attempt to advance a s. 75 claim, the act or omission that engages the Service's jurisdiction is the creditor's refusal to accept and pay the debtor's claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

As a result, the 6 and 3 year time limit (under DISP 2.8.2 (2) R) to complain about an unsuccessful attempt to initiate a s. 75 claim doesn't usually start until the respondent firm answers and refuses the claim.

In this case, as MBNA refused to accept and pay Mr G's claim in June 2024, the primary time limit (of 6 years) only started at that time. And as this complaint about MBNA's handling of that claim was referred to the Financial Ombudsman Service in June 2024, it was made in time for the purpose of the rules on our jurisdiction.

As a general rule, creditors can reasonably reject s. 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act ('LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr G's s. 75 claim was time-barred under the LA before he put it to MBNA.

A claim under s. 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier. A claim for misrepresentation against the Supplier would ordinarily be made under s. 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see s. 2 of the LA).

But a claim, like the one in question here, under s. 75 is also "an action to recover any sum by virtue of any enactment" under s. 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mr G entered into the purchase of the timeshare at that time based on the alleged misrepresentations of the Supplier – which he says he relied on. And as regards the credit card account with MBNA to help finance the purchase, it was when he entered into the agreement that he suffered a loss.

Mr G first notified MBNA of his s. 75 claim in April 2024. And as more than six years had passed between Time of Sale and he first put his claim to MBNA, I don't think it was unfair or unreasonable of MBNA to reject Mr G's concerns about the Supplier's alleged misrepresentations.

S.75 Complaint for Breach of Contract

I do, however, consider it arguable that the claim for breach of contract was made in time. Mr G says that he became aware of the alleged breach in March 2024. I gather GGH ceased trading in 2023 and this made him aware of the alleged breach by GEC. It has been said by MBNA that the date on which the 'cause of action' accrued was when Mr G entered into the agreement. I have sympathy with MBNA's view since Mr G is claiming that the contract was illegal and so that must have been the case on the date it was taken out.

However, given the basis of Mr G's claim that the whole scheme was a scam I have

considered whether the provisions of s. 32 LA apply here insofar as the limitation period can be extended in instances of fraudulent misrepresentation and/or deliberate concealment. I don't think this is something this service is ultimately able to decide, but I have to consider if it is something on which Mr G could rely on in pursuing his claim with MBNA. In the circumstances of this provisional decision I have concluded it worth considering the merits of the claim on the presumption it was made in time and I will consider any arguments either party puts forward on the application of the LA before issuing a final decision.

The Contract

Mr G has not provided a copy of the contract with GEC and although MBNA rejected the claim as it deemed it to have been made out of time it would not be unreasonable for MBNA to have rejected it on the basis that Mr G had not provided a copy of the contract. It is fundamental to establishing a breach of contract to be able to identify what was in the contract so one can see what, if anything, has been breached. So given the information provided to MBNA I cannot say that it would have been wrong to reject it on its merits if it had believed it to have been made in time.

However, I have considered the position if one assumes the 2015 contract was the standard one GEC provided to other consumers which this service has seen and which is similar to the superseding one from 2019. In the following analysis I have considered whether it would have been reasonable for MBNA to have upheld Mr G's claim had it seen the contract and that contract was identical to those this service has seen in other complaints.

In essence GGH offered to sell and transfer the private right to make use of specified property. In tandem with that there would have been a Management Mandate Agreement with GEC. The usual agreement describes GEC as follows:

"That the Agent is a consultancy company with tax identification number [xxx], which specialises in management consultancy services and support for other largely commercial services.

The Principal wishes to engage the services of the Agent in order to be assisted in the acquisition of a real estate/tourism product, in accordance with the following:-"

It then lists a number of services GEC will provide in very general terms. These include the co-ordination and intermediation of the internal and external procedures, settlement of administration and registrations costs. It also agrees to ensure correct identification of the customer and that the products allocated to the customer are available for registration.

Mr G has had a third party investigate the purchase and it has said that GGH and GEC were controlled by the same individual. Mr G received notice in 2023 that GGH had ceased to trade. He has said that enquiries showed that both contracts were illegal and that as both were illegal it was not possible for GEC to have undertaken the checks it proposed in the contract.

In his claim Mr G set out in some detail what happened and the reasons why he considered there had been both a breach of contract and misrepresentation. However, I am not persuaded that GEC failed to deliver in such a way as to amount to a breach of contract. The standard document setting out the services to be provided by GEC is vaguely worded and it would be very difficult to establish that the contract had been breached. Nor does the documentation indicate that GEC was acting as an agent for GGH. It was providing services to Mr G and not to GGH.

To take one example, of all the services GEC agreed to supply I think the one which offers

the greatest support to Mr G's claim is: "Check with the development company that the products allocated to the customer are available for acquisition under the legislation in force".

The wording used is typical of the document in that it is imprecise. It does not specify which company is the development company, but it is reasonable to presume it is GGH. While I can see that Mr G and others may have taken that to read that GEC will check that the products are legally available for him it does not say that. It simply says it will check with the development company. So in order to meet that clause it simply had to ask the development company if the products were legally available. It didn't offer to do more than that and it certainly didn't offer to ensure the answer from GEC was accurate.

I appreciate Mr G takes it as implicit in the agreement that GEC would ensure everything was in order with the GGH contract. While I can understand why he has taken that view I cannot say that it offered any such service.

So while the deal with GGH may well have been a scam and GEC may have been connected with it I cannot say that GEC failed to deliver what was promised in the agreement and so breached the contract. So, while Mr G may have other avenues to pursue his claim, I cannot say that MBNA was wrong to decline his claim under s.75.

Finally, I would add that I consider the compensation of £20 for the error made by MBNA is fair and reasonable."

Mr G did not agree and sent in an email from a company which supplied the timeshare accommodation. This said that it: "*has never had any relationship with General European Consulting and we are unaware of the services offered by the company. In this sense, it is likely that GGH or any of the companies that were part of the group can provide more information. We regret that we do not have any further information*". He suggested that this showed GEC had provided no service given the supplier had no contact with it.

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 have noted the additional material supplied by Mr G, but I do not consider it gives me reason to alter my provisional decision.

The contract which Mr G signed does not state that it will have any engagement with the supplier of the accommodation. It does refer to a development company, but while it is not named it is reasonable to conclude that was GGH rather than the supplier of the accommodation. The fact the supplier of the accommodation had no contact with GEC does not lead to the conclusion the contract was breached.

In any event, as I set out above in my provisional decision the whole contract is so vague as to be almost meaningless. As such It is very difficult to establish that there has been a breach of contract.

Regrettably I cannot safely conclude that MBNA did anything wrong in reaching the decision to reject Mr G's claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 April 2025.

Ivor Graham
Ombudsman