DRN-5570704

The complaint

Mr M complains that MBNA Limited will not meet his claim under section 75 of the Consumer Credit Act 1974 ("section 75"). He says that it should do so because he was wrongly advised about the protection provided by section 75. Had he been correctly advised, he would have acted differently.

What happened

Mr M engaged a business, which I'll call "P", to supply and fit windows at a total cost of £32,434.80. Half of that amount was to be paid before work started and the balance before completion.

Before making the first payment, Mr M contacted MBNA to ask for a credit limit increase, so that he could pay using his credit card. He also wanted to ensure that he had the protection of section 75, should he need it. He was told that he would have that protection.

The work did not proceed as Mr M had hoped. He has provided copies of exchanges with P, indicating delays, contractors not attending the site, and poor workmanship. At one point, a temporary reduction in price of £4,000 was agreed.

When the final payment fell due, Mr M contacted MBNA again. He says he explained that he wanted to use his credit card to make it, but was assured that, as he had used his card for the first payment, he already had section 75 protection. Relying on that statement, Mr M says he paid by bank transfer instead. Had he used his credit card, however, he would have had the benefit of chargeback protection.

Mr M contacted MBNA to make a claim under section 75. He said he had a claim for a reduction of around £11,000 from the contract price he had agreed with P. MBNA declined his claim on the grounds that the contract price for the work was more than the £30,000 limit which applies to section 75 claims. And Mr M was unable to make a chargeback claim because of the time which had elapsed from the date of the card payment.

MBNA did accept that it had wrongly advised Mr M when he made the card payment in February 2023 that he would have section 75 protection. The adviser had sufficient information at that time to know that the full value of the transaction was over £30,000. It paid Mr M £60 in recognition of its error.

Mr M complained about MBNA's decision and then referred the matter to this service. One of our investigators considered what had happened but did not recommend that the complaint be upheld. Mr M did not accept that assessment and asked that an ombudsman review the case.

I did that and issued a provisional decision in which I said:

Sections 75 and 75A of the Consumer Credit Act 1974

One effect of section 75(1) of the Consumer Credit Act is that a customer who has a claim

for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions include that the price attached to any single item which is the subject of the contract is not more than £30,000.

The total price for the supply and installation of the windows in this case was more than £32,000. Although that price was broken down for each window, I do not believe it can properly be said that Mr M entered into a number of different contracts with P. He entered into a single contract for the supply and fitting of all the windows. The key figure for determining whether section 75 could apply is the price, not the amount paid with the credit card.

It follows that the transaction fell outside the financial limits in section 75(1) and that MBNA therefore has no liability to Mr M under that provision.

Section 75A of the Consumer Credit Act, however, includes similar provisions to those in section 75(1) where:

- *the borrower has a claim for breach of contract under a "linked agreement"* […]
- *the cash price is more than £30,000, and the credit agreement is for £60,260 or less; and*
- *the debtor has taken reasonable steps to pursue his claim against the supplier.*

In its final response letter MBNA said that section 75A did not apply to this type of transaction. It did not, however, explain why it had taken that view. I note that the transaction fell within the financial limits and that Mr M's claim was for breach of contract under a linked agreement.

At the same time, however, I am not persuaded at this stage that Mr M has shown he has a claim for breach of contract. Nor is it clear what steps he has taken to pursue his claim against P, other than exchanging messages during the course of the installation. I would invite both parties' further comments on those issues, so that I can consider them before I issue a final decision.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (Visa or Mastercard). A card issuer (here, MBNA) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is however primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods have been paid for but not delivered. It can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

There are however strict time limits for submitting claims for chargeback. In this case, the time limit had passed before Mr M contacted MBNA about his dispute with P. In my view, it

was reasonable therefore of MBNA to take the view that it should not pursue a chargeback claim.

Information provided to Mr M

MBNA has accepted that it should not have told Mr M that his payment in February 2023 would give him section 75 protection. The adviser he spoke to had enough information to know that the transaction fell outside the financial limits that applied.

I am not persuaded however that Mr M would have acted any differently if he had been given correct information. I think it more likely than not that he would have paid in the same way. And, even if he had used a different method of payment (debit card or bank transfer, for example), he would not have been in any better position. Neither of those payment methods would have given him any additional rights to pursue MBNA as a result of any dispute with P. For those reasons, I believe that the £60 which MBNA paid in respect of this matter was fair in the circumstances.

Mr M says that he thought that he had to make all the payments with his credit card to get section 75 protection. That is not the case; it is sufficient that a relevant transaction is partly financed with a credit card. Mr M was told that, correctly, before he made the final payment to P. But he was not told that he did not in fact have section 75 protection. He says that, had he been told that, he would have made that payment with a card, so that he would at least have the possibility of making a chargeback request. Because a further card payment would have been much later than the first, any chargeback request would have been made within the relevant time limits.

I am not convinced that Mr M would have acted as he says he would. There was nothing he could do to obtain section 75 protection in any event, and I think he probably paid using the method most convenient to him.

But, even if I were to take a different view on that, I do not believe Mr M would have been in a materially different position if he had made a card payment. As I have indicated above, chargeback can have the effect of resolving contractual disputes between payers and payees, but that is not its main purpose. In my view, the nature of the dispute in this case – a relatively complex dispute over quality of workmanship and delays – meant that a chargeback request was unlikely to have been resolved in Mr M's favour.

Whilst, therefore, Mr M was given inaccurate and incomplete information, I am not persuaded that it led to any actual loss.

In his response to my provisional decision, Mr M explained that he had tried to rectify the problems which had arisen during the course of the building work. Some of his issues had been resolved, but he had been advised to raise a claim against the bank (under section 75) before taking any further action against P. He also said that P had recently gone into liquidation.

The investigator therefore contacted MBNA to ask whether it had considered a claim under section 75A. It said that it and referred to a letter of 18 December 2023 in which it had said "… *section 75A doesn't apply to this type of transaction…*"

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 think it may be helpful at this point to summarise my provisional findings. They were:

- Section 75 does not apply, because of the value of the contract.
- Section 75A might apply – but I did not make any findings on that point.
- I did not make any findings either on whether Mr M had a claim for breach of contract or misrepresentation.
- I was not persuaded that, had Mr M been given correct information about the application of section 75, he would have done anything different.

Subsequently, Mr M told us that P had been placed into liquidation, and I note that it was dissolved a few weeks ago. I have therefore considered whether that means that section 75A might apply; it can apply where a supplier is insolvent.

However, section 75A only applies to a credit agreement which is made exclusively to finance an agreement for the supply of specific goods or the provision of a specific service. Mr M's credit agreement was a credit card agreement. He could use his credit card to pay for a range of goods and services; it was not a loan provided for the building work alone. It follows that section 75A does not apply, even though P has been dissolved.

Because of that, I do not need to decide whether Mr M had a claim against P, since neither section 75 nor section 75A applies.

Further, and after careful consideration, I have not changed my conclusions about the effect on Mr M of the incomplete information he had been given. Even if he had he made both payments by card, it is most unlikely that a chargeback claim would have succeeded. And the nature of Mr M's agreement with P was such that he could not bring himself within the conditions required for section 75 or section 75A to apply.

MBNA accepted that it provided incorrect information to Mr M, but in the circumstances, I think that the compensation already paid is sufficient.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 June 2025.
Mike Ingram
Ombudsman