

## **complaint**

Mr C complains that MBNA Limited will not refund to him the money that he paid for a used car. His complaint is made against MBNA under section 75 of the Consumer Credit Act 1974 and he is being helped with his complaint by his wife.

## **background**

Mr C used his MBNA credit card in April 2013 to pay £1,900 towards the cost of a used car which cost £4,100 in total. The invoice shows that the car had driven 95,000 miles. He experienced some problems with the car so complained to the supplier and then to MBNA under section 75. He was not satisfied with MBNA's response so complained to this service.

The adjudicator recommended that this complaint should be upheld. She concluded that it was not unreasonable that Mr C no longer wished to have an independent report because of MBNA's delay in providing payment and she was satisfied that there was enough evidence to show that the car was not fit for purpose or of satisfactory quality at the point of sale. She recommended that MBNA should refund £4,100 to Mr C with interest and that it should pay him £250 in recognition of the delays and inconvenience this matter had caused him and the length of time it had taken MBNA to resolve his complaint.

MBNA has asked for this complaint to be considered by an ombudsman. It has responded in detail and says, in summary, that:

- it queries whether the necessary debtor-creditor-supplier agreement is in place as the vehicle appears to have been bought and used by Mr C's wife;
- at the date of purchase, the car was nearly six years old and had driven 95,000 miles - between April and August 2013 it broke down twice and failed to start twice and each time it was repaired under warranty and has not broken down since August 2013;
- Mr C has not provided an independent report about the faults - even though it agreed to pay for the report and sent him a cheque – and that, in the absence of a report, there is insufficient evidence that the car was not fit for purpose or of satisfactory quality at the point of sale.
- Mr C defaulted on his account with MBNA in January 2014 and his account was sold to a third party in June 2014 – he has not paid MBNA the £1,900 that he paid towards the purchase price of the car and has only paid a total of £596.45 of his total balance since that transaction became repayable - reimbursement of the cost of the vehicle would therefore enable Mr C to get a double recovery.

## **my provisional decision**

After considering all the evidence, I issued a provisional decision on this complaint to Mr C and to MBNA on 8 June 2015. In my provisional decision I said as follows:

*"In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr C's*

*complaint about MBNA under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the supplier of the car.*

*One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier. In this case Mr C is the debtor because he has been provided with credit by MBNA (which is the creditor) and the supplier is the supplier of the car. Although the invoice is in Mr C's wife's name, I consider that the evidence shows that Mr C was involved in the transaction for the purchase of the car, his credit card was used to pay part of the cost of the car and he is a named driver on the insurance policy and continues to drive the car. I therefore consider that there is enough evidence to show that the car was supplied to Mr C and that the required debtor-creditor-supplier relationship is present in these circumstances.*

*Mr C has clearly experienced a number of problems with the car. However, the car was nearly six years old when he bought it and had a mileage of 95,000. Each of the faults has been repaired under warranty which, I find to be an acceptable remedy in this complaint. MBNA has asked Mr C to provide an independent report which would show whether or not the faults occurred because the car was not of satisfactory quality when it was bought by Mr C. MBNA agreed to pay for the cost of the report in December 2014 and it sent a cheque to him which he received about four weeks later. An independent report has not been prepared and, given that the four week period included the Christmas holidays, I do not consider that any delay caused by MBNA not sending the cheque more promptly was unreasonable in the circumstances.*

*Mr C says that, since the repair in August 2013, the car has not broken down although the heating is still faulty and the steering judders and squeaks. The car's mileage in March 2015 was 104,402 so the car has been driven for almost 10,000 miles since it was bought by Mr C.*

*In the absence of an independent report to show that the faults were present when the car was bought by Mr C, I am not persuaded that there is enough evidence to show that the car was not of satisfactory quality when it was sold to him in April 2013. I consider it to be more likely than not that the faults arise from the car's age and mileage. The faults have been repaired by the supplier under warranty and I am not persuaded that it would be fair or reasonable in these circumstances for me to require MBNA to refund to Mr C the money that he paid for the car or to pay him any other compensation."*

Subject to any further representations by Mr C or MBNA, my provisional decision was that I was not minded to uphold this complaint.

Mr C has responded to my provisional decision in detail and says, in summary, that:

- the car was falsely advertised (because it was advertised as having air conditioning but the air conditioning has never worked);
- the supplier has failed to honour its obligations under the terms of the warranty;

- the supplier failed to correctly re-build the engine while undertaking a repair which caused the car to overheat which led to damage to the engine cooling system and damaged the interior heating;
- while repairing the damage it had caused, the supplier failed to correctly repair the car causing it to overheat again in a very short space of time which led to further engine damage;
- the car has overheated a third time, which he firmly believes is a direct result of the damage caused by the supplier's failures;
- the supplier has ignored contact from him and from MBNA; and
- he has complied with every instruction, request and recommendation made by MBNA and this service.

Mr C has also provided a copy of the health check report that was prepared about the car in May 2014 following a manufacturer's recall to correct some issues with its cars. Mr C's wife says that the report shows that the water coolant was overfilled.

Mr C also says that he needed to use the car since the date of my provisional decision but that it overheated again and had to be collected by a recovery company. He says that he had filled the header tank and the radiator before the journey but the radiator was empty when the car was recovered. He also says that the mechanic found a hole in the radiator (which the mechanic said is most commonly caused by the car overheating and an over-pressure developing in the cooling system). As a result, he says that he has been forced to make a statutory off road notification in respect of the car.

MBNA says that it has reviewed the health check report and that the items identified as requiring urgent attention are general wear and tear items. It says that it does not believe that it is liable for those items under section 75 so is unable to offer any settlement to Mr C.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am not persuaded that I should change my provisional decision.

Mr C has clearly experienced considerable difficulties with the car that he bought in April 2013 and I sympathise with him for those difficulties. However, as I said in my provisional decision, MBNA is only liable for those faults under section 75 to the extent that they are caused by a breach of contract or misrepresentation by the supplier.

It was an implied term of the contract for the supply of the car that the car was of satisfactory quality as the point of sale. To be able to uphold Mr C's complaint that there has been a breach of contract in these circumstances, I would need to be persuaded that the car was not of satisfactory quality when it was supplied to him in April 2013. There were clearly some problems with the car between April and August 2013 but those faults were repaired under warranty and the car has been used to drive nearly 10,000 miles since it was bought by Mr C.

In my provisional decision I said that: *"In the absence of an independent report to show that the faults were present when the car was bought by Mr C, I am not persuaded that there is enough evidence to show that the car was not of satisfactory quality when it was sold to him in April 2013."* An independent report has not been produced since then. Mr C has provided a copy of the health check report that was carried out in May 2014. The health check report does say that the water coolant level was low but it does not say that the car was not of satisfactory quality when it was supplied to Mr C. I remain of the view that there is not enough evidence to persuade me that the car was not of satisfactory quality when it was supplied to Mr C in April 2013.

Mr C also claims that the car was misrepresented to him because it was advertised as having air conditioning but that the air-conditioning did not work. I would need to be persuaded that Mr C was induced into buying the car because of a misrepresentation that was made about the air-conditioning. I am not persuaded that there is enough evidence to show that Mr C decided to buy the car only because it had air-conditioning. Nor do I consider that the problems with the air-conditioning are enough to make it fair or reasonable that I should require MBNA to refund the cost of the car to Mr C.

I therefore remain of the view that it would not be fair or reasonable in these circumstances for me to require MBNA to refund the cost of the car to Mr C under section 75.

### **my decision**

For the reasons set out above, my decision is that I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 9 November 2015.

Jarrold Hastings  
**ombudsman**