

## **complaint**

Mr L complains that MBNA Limited declined his claim under section 75 of the Consumer Credit Act 1974 in relation to the misrepresentation of a used car.

## **background**

In January 2019 Mr L bought a second hand Jaguar car in an online auction. He paid about £2,000 (in euros) with his MBNA credit card. The car was in another country. When he went to collect the car a few days later, it was in much worse condition than he was expecting, including widespread corrosion. He had expected the car to be in need of some restoration work, but not so much as to make it uneconomical to try – which in his opinion, it was. So he decided not to collect the car after all. The supplier wouldn't give him a refund, but agreed to resell the car and give him the proceeds (minus the expenses associated with the sale). The car was eventually resold for about a third of what he'd paid for it, and he received less than £500 of that.

Mr L believed that the advertisement for the car was so inaccurate in its description of the car's condition that it amounted to a misrepresentation. So he asked MBNA for compensation under section 75. He asked to be refunded what he had paid for the car (he later deducted what he received when it was resold), plus his travel expenses and other incidental expenses, which came to another £1,200.

MBNA did not agree that the advert was misleading, so Mr L brought this complaint to our Service. But our investigator also thought that the advert was fair, especially when photos and a YouTube video showing the car were taken into consideration. Mr L did not agree, and requested an ombudsman's decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. This complaint is about how MBNA dealt with Mr L's section 75 claim, and whether MBNA was entitled to decline his claim.

The advert describes the car as follows:

“Vehicle has been stored for a long time in all weathers. Corrosion. Beautiful red leather interior. Would have been used until 1995 according to sticker affixed to the windshield. Without a [vehicle registration card].”

Mr L insists that the mere word “corrosion” does not adequately convey the extent of the corrosion he discovered when he inspected the car. He describes lifting the carpets and discovering that the floor was so rusty he could put his foot through it. He provided examples of the seller's adverts for other cars which refer to “significant corrosion” by way of comparison. He also says there were missing engine components, and the doors wouldn't close.

Mr L did not take photos of the car when he inspected it, and consequently he was unable to show MBNA any evidence of the condition the car was in. MBNA only saw the photos the seller published with the advert, and the seller's video. So that is all that MBNA – and my colleague and I – have to go on.

The video makes entertaining viewing. It is three minutes long, and consists of numerous shots of various cars that the seller is offering for sale. Some of the cars are kept outdoors; these ones have foliage and moss growing all over them. The other cars, including the one Mr L bought, are kept in a large shed with big holes in the roof. All of the cars are covered in filth and dust, and the interiors are the same. Many of them have obvious damage and rust. None of them have been looked after. Most of them do not look roadworthy. My impression is that the whole place resembles a cemetery for old cars, much more closely than it resembles a car dealership.

Even before I take the seller's terms and conditions into account (which I will come to later), I think that the condition of the cars, and the kind of business the seller is running – as clearly evident in the video – are enough to put any potential buyer on notice that any car in which he is interested is likely to be defective and in poor condition. And I note, as I said earlier, that Mr L bought the car intending to restore it. This car was not in the condition one would expect to find on a garage forecourt. I accept that the car Mr L chose was in better than average condition when compared with the seller's other cars, but I don't think that means that he was not on notice that the car was still likely to have significant issues. If the car was in worse condition than he'd expected, I don't think that is because of misleading advertising.

I turn back to the wording of the advert. It says the car hasn't been driven since 1995 – 24 years earlier – and has been "stored for a long time in all weathers." It specifically mentions corrosion, and the fact that it does not elaborate further does not, in my view, amount to a misrepresentation of the facts. The reader is on notice that corrosion is present; the extent of it is a matter that could have been verified by asking the seller about it or by inspecting the car before buying it.

There is also, of course, the fact that the car cost only £2,000. For a Jaguar.

The seller's terms and conditions, which the seller provided to MBNA on request, say that interested parties are invited to examine the cars before the auction begins. The descriptions of the cars "cannot constitute any proof or guarantee." It then says "mention of any defect does not imply the absence of any other defect." I think the advert has to be read in this context, although I appreciate that Mr L says he did not see these terms when he bought the car. Nevertheless, I do not think that MBNA's decision to reject Mr L's claim of misrepresentation can be faulted. It was clearly right.

### **my final decision**

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 March 2020.

Richard Wood  
**ombudsman**