

complaint

Mr H complains that MBNA Limited rejected his claim under Section 75 Consumer Credit Act 1974 in respect of building work.

background

In 2017 Mr H entered into an arrangement with a company, which I'll call C, for it to carry out some building work on his house. He made three payments of £200 by credit card and four payments from his bank account. These are shown in his statement as: kitchen £3,365, extension £7,269, loft £9,565 and plans £2,400. A few months later C went into liquidation without carrying out any work, save for supplying the plans.

Mr H is seeking to recover his money from the liquidator and has reported the matter to Action Fraud. He also contacted MBNA which made successful chargeback requests for the credit card payments, but refused his claim under Section 75. It said that he had entered into one contract which totalled £73,600 including VAT plus £2,400 for the plans and this meant Section 75 didn't apply. It explained that the legislation only covered purchases up to £30,000.

It noted that the original quote sent on 30 May was for a project of building works. It referred to the plans which it considered the proposed works to be a single project to increase the size of the house. It noted C provided a costings breakdown into deposit of £18,400 and three subsequent payments of the same amount. It also identified that C had broken down the agreement into three contracts for a loft conversion: £29,461, a rear/side extension £29,876 and kitchen and interior refurbishment £14,263.

However, it didn't think these three contracts could be viewed in isolation and concluded they were inextricably linked. It said the kitchen and side extension couldn't go ahead without the site survey, planning preparation and foundations. It believed the true agreement had been artificially broken down into three contracts to bring it within the ambit of Section 75.

It referred to the shared areas of work such as the site preparation, electrical work etc. It noted that Mr H hadn't supplied any evidence of him seeking quotes from other suppliers that might show how he viewed the work and it argued that only after the initial quote was accepted did C break it down into three separate contracts. Finally, it said that the planning application for the work showed it as one project.

Mr H brought a complaint to this service where it was considered by one of our adjudicators who recommend it be upheld. Mr H said he was now having an extension put in by one company and a kitchen by another with the loft conversion on hold due to lack of funds. He said this indicated that it wasn't one project. He referred to other people who were in a similar situation whose claims had been successful.

The adjudicator was persuaded that there were always intended to be three separate projects independent of each other and that they could be completed separately. He mentioned the planning application and said he didn't think that supported MBNA's view. It wouldn't be reasonable to expect consumers to apply separately for each building work they want approved for their house when they can make one application and pay one fee for this.

He noted that after C went into liquidation Mr H had approached different companies to carry out the work separately. He added that even in the agreement with C the kitchen work was contracted to be completed by a third party. He thought this indicated there were three separate contracts.

He said the arrangement showed that three separate signatures were required for three separate contracts and Mr H could have chosen not to have taken up any or all of those contracts. He didn't think it's reasonable to say that this was all one contract just because a total of the entire work was included when the individual prices of the works are also clearly stated. He gave the example of a customer was buying several different items from a store at the same time and was given a receipt with the total amount. He said that we would look at each individual item when considering a Section 75 claim.

MBNA didn't agree and said the adjudicator was taking a narrow view. It said the design specification listed all the works together and when Mr H first made his claim he referred to it being one contract. It pointed out that when Mr H accepted the contract he did so using one button on the electronic paperwork. It also said the use of the singular in the documentation was also significant and the description of it being broken down into three sections. It suggested the substance of the agreement needed to be considered rather than the way it was presented. It also reiterated the points it had made earlier.

The investigator responded and pointed out that Mr H paid more than the deposit figure shown in the original quote. His payments were in line with the three separate contracts subsequently supplied by C. Nor did he think Mr H's reference to one contract had any significance.

MBNA noted another decision involving C which wasn't upheld. It also felt the works were interdependent and that the kitchen installation followed on from the extension and the loft conversion could not go ahead as planned without the two-storey extension was being completed at the same time.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

I believe it is clear there has been a breach of contract and on that basis Mr H is entitled to make a claim. However, the issue is whether it meets the financial criteria set out in the legislation. Section 75 doesn't apply to a claim "*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.*"

I can see why Mr H believes he has been the victim of a scam and I am aware of other claims involving C. That said, I would make it clear that my decision in this case is based on its particular facts and circumstances. However, there is one common theme in that the documentation provided by C is not a model of clarity and contains several inconsistencies. MBNA have lent on those elements which support its rejection and Mr H on those that

support the validity of his claim. The matter is not clear cut and I have spent some considerable time reviewing the respective positions.

While I have taken into account the circumstantial evidence leading up to the contracts being agreed I have to consider what was finally agreed between Mr H and C. The process of having significant work done on a house is an evolving one and what is discussed at the outset isn't necessarily what is agreed at the end. So while I have taken note of the original quote I have to place greater weight on the final agreement.

I am satisfied that this was for three contracts. I note MBNA thinks this was broken down artificially by C to allow Mr H to make a claim under Section 75. That may be so, but I don't think Mr H should be disadvantaged by the possible motives of C. I don't believe MBNA is suggesting Mr H colluded with C in this regard and so I have to consider what Mr H signed up to. I also have noted that the deposits paid tie in with the three contracts rather than the initial global figure.

I don't place much weight on Mr H's reference to a contract in his initial contact with the bank. Such a contraction is eminently understandable in Mr H's circumstances and does not cause me to believe there was one contract. Nor does a single planning application lead to the conclusion that it must have been one contract. It is not unusual for different works allowed under one planning application to be carried out as separate contracts. That is reinforced by Mr H subsequently having two parts of the work done by two different contractors and leaving the third in abeyance.

That also undermines the argument each element was interdependent on the other. It is clear that they are not and in any event even if they were that doesn't mean that each could not be the subject of a separate contract.

I have noted the reference to the decision of my colleague and while I would say that each case is decided on its merits I am sure MBNA could find other decisions closer to the facts in this one which have been upheld.

Finally it is worth referring to the legislation which refers to a cash price which is attached to a single item. C has attached a cash price to each separate contract in the three contracts which Mr H accepted and for which he made separate payments. Therefore on balance I consider the evidence is such that it shows there were three contracts.

my final decision

My final decision is that I uphold this complaint and I direct MBNA Limited to:

- pay back the deposit amounts of £3,365, £7,269, and £9,565 that Mr H paid to CHI for the three separate projects on 6 June 2017; and,
- add 8% simple interest a year to these amounts from those dates until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 January 2019.

Ivor Graham
ombudsman