

complaint

Mr K complains that MBNA Bank Europe Limited will not refund to him the money that he paid to a supplier for building materials. His claim is made against MBNA under section 75 of the Consumer Credit Act 1974.

background

Mr K went to the supplier with his builder to buy some building materials. He ordered some materials using his MBNA credit card and made a credit for the amount of the order to the builder's account with the supplier. The building materials were not delivered to Mr K so he complained to the supplier and then to MBNA. He was not satisfied with MBNA's response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. He concluded that the debtor-creditor-supplier relationship required for a claim under section 75 to be successful was not present in this transaction because Mr K had not made a payment to the supplier but to the builder.

Mr K says that he thought that he was making a payment to the supplier and that it was only a fraud by the builder or the supplier that allowed the money to be credited to the builder's account. He also says that he made a payment to the supplier which falls within the debtor-creditor-supplier relationship and that his claim under section 75 should therefore succeed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

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. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier. In this case the debtor is Mr K because he has used his MBNA credit card, the creditor is MBNA because it has provided credit to Mr K and the supplier is the supplier of the building materials. However there is no direct relationship between Mr K and the supplier because Mr K has made a payment for the building materials to the builder's account and not to the supplier. I accept that this was not what was intended by Mr K but I am satisfied that his payment was made to the builder's account and not to the supplier. As there is no direct relationship between the debtor, the creditor and the supplier, I am not persuaded that there is any basis on which Mr K's complaint against MBNA can properly succeed. I therefore do not consider that it would be fair or reasonable for me to require MBNA to refund the cost of the building materials to Mr K.

my final decision

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

Jarrold Hastings

ombudsman