

complaint

Mr A complains that MBNA Limited won't refund to him the money that he paid for some folding doors. His complaint is made against MBNA under section 75 of the Consumer Credit Act 1974.

background

Mr A used his MBNA credit card in early 2016 to pay £3,600 towards the cost of the supplying and fitting of some folding doors. He says that the fitting of the doors wasn't completed and that the doors don't work properly. He also says that the supplier didn't supply the doors referred to in the quotation. He complained to the supplier – and then complained to MBNA under section 75 – and he's provided independent experts' reports about the doors. MBNA declined Mr A's section 75 claim – but its letter to him didn't detail its reason for doing so – it apologised for that and paid £50 to Mr A as a gesture of goodwill. He wasn't satisfied with MBNA's response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He said that Mr A's payment was made to a payment facilitator and not to the supplier – so he said that the link between the debtor, creditor and supplier that's required for a claim under section 75 was broken. And he said that the payment facilitator and the supplier weren't associates (as defined in section 184 of the Act) and that there wasn't a commercial entity agreement in place between them.

Mr A has asked for his complaint to be considered by an ombudsman. He says, in summary, that:

- MBNA didn't make the case to him that section 75 doesn't apply to his case; and
- he's a payment industry expert and there's a minimum of 4 parties involved in a credit card payment transaction (the customer, the card issuer, the merchant acquirer and the merchant).

MBNA says that it declined Mr A's claim primarily because it considers that the contract has not been breached. It says that:

- Mr A's home was undergoing major renovation works when the doors were installed in May 2016 and that scaffolding was in place;
- the merchant says that it advised against the doors being installed when the scaffolding was still in place but Mr A insisted that the installation went ahead;
- the two assessments on the condition of the doors only confirm that the doors aren't operating as they should (neither sliding nor locking) and need to be refitted;
- it doesn't consider that it's been proven that the doors were installed with any defects due to the amount of time that has passed between installation and when Mr A approached the supplier to return to his home; and
- the scaffolding wasn't removed until October 2016.

my findings

I've considered all the available evidence and arguments to decide what's 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's 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 A because he used credit provided by MBNA to pay for part of the cost of the doors, MBNA is the creditor because it's provided credit to Mr A and the supplier is the supplier of the doors. But Mr A's account statement refers to a payment services provider before referring to the supplier. And the payment services provider says that it's: *"an independent contractor for all purposes and has not acted as the merchant's bank in respect of the payment that was sent by the payment sender"*; and it confirms that there was no commercial entity agreement in place for the supplier. So I find that Mr A's payment was made to the payment services provider and not to the supplier – so there's no direct relationship between MBNA and the supplier. And for that reason I find that Mr A's complaint can't succeed under section 75.

But even if Mr A's payment had been made directly to the supplier, I'm not persuaded that his section 75 claim would succeed. The doors were installed in May 2016 but Mr A didn't contact the supplier to complain about the doors until October 2016 – five months later. Mr A has provided evidence to show that the doors don't work – but that evidence doesn't show that the doors were installed incorrectly or that the installation wasn't completed. And the supplier says that: the installation was completed; any damage was caused by the building works that continued at Mr A's home after the doors had been installed; and that Mr A needed to sign the completion certificate so that it could supply the product certificate and ten year warranty. And in these circumstances I'm not persuaded that there's enough evidence to show that there's been a breach of contract or misrepresentation by the supplier.

For these reasons I find that it wouldn't be fair or reasonable for me to require MBNA to refund to Mr A the money that he paid for the doors - or to take any other action in response to his complaint.

my final decision

So my decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 November 2017.

Jarrold Hastings
ombudsman