

## **The complaint**

Mr S complains that MBNA Limited haven't refunded a payment he made on his credit card.

## **What happened**

Mr S purchased wood flooring from a retailer I'll refer to as F. He paid £3,099.24 using his MBNA credit card. The purchase was made through F's website, after Mr S had taken receipt of some sample flooring. He says based on the quality of the flooring sample, he decided to place an order.

A delivery date for the flooring was set and Mr S arranged and paid for a fitter to fit the flooring the day after the delivery. Mr S says that the fitter began to lay the flooring and when Mr S arrived on the first day to inspect progress, he discovered that the flooring that had been laid didn't resemble the sample he'd been sent or the pictures on F's website. He says he contacted F to complain. He says F conceded they may have sent a 'bad batch'. Mr S says that it took a few days for F to then agree to exchange the flooring for a different type if Mr S would arrange to have the flooring ready for collection.

By this stage the fitting of the flooring had been completed by Mr S' fitter. Mr S said he wasn't prepared to pay to have the flooring uplifted and for someone to fit new flooring. As F were not prepared to cover the cost of uplifting and fitting, Mr S approached MBNA for help.

MBNA reviewed Mr S' claim for a refund under Section 75 of the Consumer Credit Act 1974("Section 75"). It said that it couldn't find any evidence of a breach of contract or misrepresentation by F. It said the flooring appeared to match the description and images provided by F on its website. In any event, it said that because Mr S had fitted the flooring, this suggested he had accepted the goods in the condition they were in.

Our investigator didn't recommend the complaint be upheld. He too was of the view that what Mr S had received appeared to match the description and images provided by F on its website. For this reason, he didn't think there had been any breach of contract or misrepresentation for which MBNA could be held jointly liable under Section 75.

Mr S didn't agree. In summary, he said that F had sent three samples to them and not one of the sample boards was marked or had knots. He said the majority of the boards he actually received did contain knots and were marked in some way. Had the samples been accurate to what he would actually receive he wouldn't have bought them. He said that the images on F's website compared to the image he had provided of his flooring were completely different.

He said F didn't propose to take back the flooring until around a week after he first complained and he was left with no choice but to fit what he had been sent. This was because he had a number of tradesmen lined up to complete other work in the property which relied on the flooring being in place first.

The complaint has been passed to me for a decision.

## What I've decided – and why

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

In deciding what is fair and reasonable I've taken into account any relevant law, which in this case includes Section 75 and the Consumer Rights Act 2015 ("CRA").

The general effect of Section 75 is that if Mr S has a claim for breach of contract or misrepresentation against a supplier of goods or services paid for by a connected credit agreement, he can bring a like claim against the provider of credit. In order to do so certain conditions must be met, I'm satisfied those conditions are met in this case. So I've thought about whether Mr S did enough to demonstrate there had been a breach of contract or misrepresentation and whether MBNA dealt with his claim and complaint fairly.

The CRA implies terms into a sales contract that the goods must be of satisfactory quality, be fit for purpose, be as described and match any sample provided.

Mr S says what he received didn't match the sample he was provided. Section 13 of the CRA says:

*"(1) This section applies to a contract to supply goods by reference to a sample of the goods that is seen or examined by the consumer before the contract is made.*

*(2) Every contract to which this section applies is to be treated as including a term that—*

*(a) the goods will match the sample except to the extent that any differences between the sample and the goods are brought to the consumer's attention before the contract is made"*

The sample board Mr S received contained no knots or markings (other than wood grain). A large proportion of the boards Mr S received did contain knots and other markings. Clearly, the sample therefore wasn't a match to each and every board Mr S would (and did) receive. However, I'm satisfied that as set out in Section 13 above, these differences between the sample and the goods Mr S purchased were brought to his attention before the contract was made.

I've reviewed F's website where Mr S made the order and all the images of the flooring show a significant proportion contain knots or markings just like the boards Mr S received. The same page also describes the flooring as having *"rich grain markings, a wealth of knots of varying sizes, sapwood, mineral streaks and natural colour variation"*. On a second section of the same page, it says: *"A lively grain with swirling and colour variation, featuring small mineral streaks, sapwood and knots of all sizes for a rustic look"*. The specification document for the flooring on the website also states that filler and colour variation is a feature of these boards. Mr S says that the sample did not contain filler or knots. But the images and description of the flooring on F's website clearly highlighted these as features of the product.

While I accept that Mr S' sample didn't contain these, I'm satisfied he was made aware of the variation that could occur between the sample and the product he received prior to him entering into the contract. What he received appears to be what had been described.

I've also considered whether the flooring was of satisfactory quality. While Mr S says that a number of the boards were unusable because of knots, mineral streaks and other markings, he's provided pictures of the flooring after it was fitted. It appears there was sufficient flooring provided to cover the area he needed, and I've seen nothing to persuade me that the floor

isn't fit for purpose or of unsatisfactory quality taking into consideration the price, description, appearance and all other relevant factors.

I note he says that F has accepted the flooring wasn't of satisfactory quality. However, I don't agree that it has accepted this. From the copies of correspondence I've seen, it has simply agreed to exchange them because Mr S is unhappy with them. While Mr S says F said it had sent a 'bad batch', this comment appears to have been made without F having inspected the goods themselves and just taking what Mr S told it at face value. When it later reviewed Mr S' complaint, it stated that "*there is no fault with this board*". So, I'm not persuaded F has accepted there was a breach of contract or misrepresentation.

I accept Mr S is unhappy with the quality and appearance of the flooring. However, I've not seen anything to persuade me that there has been a breach of contract or misrepresentation that it would be fair and reasonable to say MBNA has liability for under Section 75. For this reason, I don't think it acted unfairly or unreasonably when it declined Mr S' claim and complaint.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 March 2024.

Tero Hiltunen  
**Ombudsman**