

The complaint

Mr M is unhappy with how MBNA Limited (MBNA) handled a quality of goods claim he made to them.

What happened

Mr M says he paid a goods supplier I shall call S the sum of £5,651.71 in September 2022 for delivery of materials for work on his driveway. This payment was made using his MBNA credit card, however Mr M discovered on receipt of these goods that they weren't what he'd asked for.

He subsequently complained to S who advised his payment had been made to his builder's account (whom I shall refer to as Mr N). S said that as the goods were funded using Mr N's account, they couldn't share the invoice for the purchase nor take the complaint further.

As Mr M didn't get a resolution to his complaint with S, he contacted MBNA on 12 October 2022 to raise a chargeback claim and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") so the matter could be addressed.

MBNA has said they emailed Mr M on 18 October 2022 requesting further information to assist with the claim and again on 1 November 2022. As they didn't receive a reply, the claim was closed on 15 November 2022.

Mr M only responded back on 3 March 2023 with further information, and MBNA wrote back asking for more again on 9 March 2023.

The claim was then reopened on 30 May 2023 but declined soon after on 5 June 2023 due to insufficient evidence. They said that an invoice and/or contract would be necessary to see what was agreed with S with regard to the payment made. Without this they said they wouldn't be in a position to determine if a breach of contract or misrepresentation had occurred.

Mr M complained about this outcome on 21 June 2023 but MBNA maintained their position and a final response was issued on 15 August 2023.

MBNA didn't agree they'd done anything wrong and so Mr M referred the complaint to our service in November 2023.

Our investigator looked at the complaint and didn't agree MBNA could've done more with regard to the handling of the claim. They looked at both the chargeback claim and the S75 claim and noted that the former hadn't been raised. However they felt that without any documentary evidence on what goods or services were agreed with S there wouldn't have been a prospect of success under chargeback. Likewise they also didn't think that MBNA had done anything wrong in declining the S75 claim for the same reasons.

As Mr M didn't agree, this matter has been passed to me for a final 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.

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that MBNA aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr M paid for the goods using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for MBNA to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (either Visa or Mastercard). While I don't have the full details of the credit card to determine which of the rules apply, I don't think this matters here due to the lack of documentary evidence on what the claim relates to.

It's likely Mr M's chargeback claim would've fallen under 'goods/services not as described'. The claim also looks likely to be within the required time limits as the issue was initially raised with them on 12 October 2022. This would've then been within 120 days of the transaction date as is generally required under card scheme rules, I note this as the investigator mentioned the claim could've been out of time as Mr M only provided further information in March 2023. However I do think Mr M contacted MBNA within the required time frames in October 2022.

However I think this has little bearing here as there is no requirement for MBNA to raise a chargeback. Specifically in this case, as there was no invoice or agreement provided, they wouldn't have been in a position to determine if there was a valid claim under the relevant chargeback code. As there was therefore insufficient evidence as required to progress the chargeback claim, I'm satisfied MBNA acted appropriately here.

Section 75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

In order to assess a valid claim, MBNA would've needed to consider all relevant evidence with regard to the alleged breach of contract. In order to determine this however, MBNA would need documentary evidence of the contract entered into and what goods or services were expected by Mr M for the payment made under his credit card.

Mr M hasn't been able to attain the invoice from S despite a number of requests. In March 2024 S clarified that the account holder Mr N had denied permission for the invoice to be sent. I note Mr M said in January 2024 that Mr N had provided authority for the invoice to be provided prior but had since lost contact with him. However based on the communications from S in March 2024, it does look like Mr N has denied permission for the invoice to be shared.

The circumstances of this complaint are rather unusual as Mr M seems to have paid into Mr N's account with S. It's possible that Mr N's account may have afforded a discount on the purchase and this is why the payment was made into this. I do appreciate however that Mr M said that he wasn't aware his payment was being made into Mr N's account nor that any discount may be offered as a result.

While it's not clear what discussions were made prior to payment, the fact S have said that the invoice is tied to Mr N suggests that he is the contracting party for the goods and not Mr M.

For there to be a valid claim under S75 there are certain criteria that also need to be satisfied. One of these is that there needs to be a valid agreement between the 'debtor' who took out the finance and the supplier of goods or services in dispute.

In this case there is a question of whether Mr M has the required contractual agreement with the supplier of goods in order for there to be a valid S75 claim for which MBNA is liable. It's likely that if the invoice was available, it may only show Mr N as the contracting party under the account – and so while Mr M may be the debtor here in terms of facilitating the payment to Mr N's account from his credit card, the contract with S would still be with Mr N.

There likely then wouldn't be the required contractual agreement here between Mr M and S as Mr N would actually be the party contracting for the goods. Nonetheless, without a copy of the invoice showing these details and what was contracted for, we're not in a position to determine if the requirements of a S75 claim are met. And so in turn I've insufficient evidence that MBNA need do more with regard to Mr M's claim.

My final decision

For the reasons above my final decision is that MBNA Limited need not to anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 October 2024.

Viral Patel
Ombudsman