

The complaint

Mr P complains about a decision taken by MBNA Limited (“MBNA”) to decline a section 75 claim he made against it.

What happened

In December 2020 Mr P purchased a set of Apple AirPods from a store that I will call “J”. The cost of the AirPods was £124.49 and Mr P paid for them using his MBNA credit card.

In mid-2023 the AirPods and/or accessories (“goods”) failed. J refused to repair or replace the goods for Mr P so he made a claim, as was his right, against MBNA under section 75 of the Consumer Credit Act 1974.

MBNA considered Mr P’s section 75 claim but declined it. Mr P was unhappy with this declination so complained.

MBNA considered Mr P’s complaint about its decision to decline his section 75 claim and concluded it had done nothing wrong in doing so.

Unhappy with MBNA’s decision to decline his section 75 claim and to not uphold his complaint, Mr P complained to our service.

Mr P’s complaint was considered by one of our investigators who came to the view that MBNA had done nothing wrong.

Mr P didn’t agree with the investigator’s view so his complaint has been passed to me for review and 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.

First, I wanted to point out that I’ve summarised this complaint in far less detail than the parties and I’ve done so using my own words. I’m not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement – so we can consider a complaint relating to it. In particular, Mr P paid for the goods using a form of credit that gives him rights under section 75. Section 75 says, amongst other things, that in certain circumstances if the debtor (Mr P) has, in relation to a transaction financed by a credit agreement, any claim against the supplier (J) in respect of a misrepresentation or a breach of contract, then he has a like claim against the credit provider (MBNA).

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. In deciding what's a fair way to resolve Mr P's complaint, I've taken section 75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mr P pursued a claim for breach of contract. This service is an informal alternative to the courts and operates differently from them.

Further, the Consumer Rights Act 2015 ("CRA") is also relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the quality of the goods is satisfactory. This provision applies to the goods that J sold to Mr P. Mr P says that J breached this provision and he has a like claim against MBNA as against J for this breach.

To be considered satisfactory, the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances.

Let me start by saying I've no doubt that the goods failed and MBNA haven't disputed that. And I understand that must be frustrating for Mr P. But for me to hold MBNA liable for the failure and to say the goods weren't of satisfactory quality at the time they were bought by Mr P, I must be satisfied the evidence confirms that. And in this case I'm not persuaded it does.

The goods failed two and half years after Mr P purchased them, outside of the warranty period. The CRA says it's Mr P's responsibility to provide evidence the failure was as a result of a fault that was present or developing when he bought the goods. But, whilst the report provided by Mr P, from J, confirms the goods have failed, it doesn't explain why they failed or that they failed as a result of the goods being faulty, or as a result of a fault developing, at the time of purchase.

I accept that Mr P disagrees, but without conclusive evidence to show there was a fault with the goods, or that one was developing, when Mr P bought them from J, I can't say that MBNA acted unreasonably by declining his section 75 claim. I'm not persuaded, based on everything that I've been provided with, that I can conclude a breach of contract has taken place in this case.

I note that Mr P says the failure of the goods could have had catastrophic consequences and they shouldn't have failed after just two and half years. But my decision can only focus on what has happened in the circumstances of the case, not what could have happened. And there are many reasons why the goods may have failed. None of the evidence provided confirm those reasons. It follows that, without being able to evidence there was a fault present or developing when Mr P bought the goods, I can't ask MBNA to do anything here.

Although not a point raised by Mr P I would like to add, for the sake of completeness, that I'm satisfied that a chargeback couldn't have been raised in the particular circumstances of this case.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 December 2023.

Peter Cook
Ombudsman