

Clinical negligence and Section 75 of the Consumer Credit Act

13 February 2025  Jonathan Fuggle

Where a supplier of services purchased via credit card has caused damage, a purchaser of the service can use Section 75 of the Consumer Credit Act 1974 to recover against the credit card provider, which is particularly useful if a recovery cannot be made against the supplier.

In **Bailey v (1) Bijlani (2) MBNA Ltd [2025] EWHC 175 (KB)** a patient received significant damages from a private dentist following unsuccessful implant surgery. Additionally, the patient successfully claimed against her credit card company, MBNA, which was found jointly and severally liable for the damages since the treatment was paid for by the patient using a credit card.

Section 75 of the CCA seeks to protect consumers. It states that a credit card provider is as responsible as a service supplier or retailer if the supplier breaches a contract or misrepresents their services.

Whilst it was open to MBNA to serve expert evidence to challenge the findings of the experts relied on by the Claimant, they elected not to do so and were also unable to undermine the evidence and opinion of the experts who did give evidence.

MBNA was entitled to an indemnity and/or contribution from the First Defendant in respect of damages and costs, though the value of this indemnity may be limited if the provider is no longer solvent.

Section 11 of the Limitation Act and Section 75 CCA claims

Whilst limitation was not an issue in **Bailey**, it was in the previous case of **David Bond v Livingstone & Co [2001] PNLR 30**. In **Bond** the claimant suffered injuries in a clinic which was designed to cure hair loss. The original defendants became insolvent and a second action was issued against the credit card companies involved.

As this was a claim in contract, the claimant's legal advisors were under the impression that there was a six-year limitation period. Following the insolvency of the original defendants a second action was issued (5 years after the event) against the credit card companies involved.

The court found that it was the three year period in section 11 of the Limitation Act 1980 that was the relevant period within which to bring a claim and the court refused to exercise its discretion under section 33 and so the claimant's initial action failed.

Section 11 of the Limitation Act provides:

"(1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person."

Summary

Section 75 of the Consumer Credit Act provides Claimants with a way of recovering damages and costs when the supplier of services (including medical or dental services) does not have indemnity cover. It may only become apparent at a later date that the supplier does

not have indemnity cover and limitation may therefore become an issue.

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