DRN-4847051

The complaint

Miss H complains about a claim she made to MBNA Limited in respect of a holiday she bought using her credit card.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Miss H bought a package of flights and two week accommodation from a holiday company ('the supplier') using her MBNA card but was unhappy with it. In summary, she says the hotel was nothing like the advert and well below the standard of quality expected. She also says she was injured at the hotel, and that her family left two days early and paid for a replacement hotel. Furthermore, there were problems with the meal options on the outgoing flight.

Miss H made a claim to MBNA which it considered under Section 75 of the Consumer Credit Act 1974 ('Section 75'). MBNA looked into things and came back to Miss H to say that the supplier had made an offer of £750 compensation – and it thought this was fair and reasonable.

Miss H disagrees with this – she says that the amount is not enough – and MBNA failed to investigate things properly and handled the claim poorly.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I am sorry to hear about the issues which Miss H and her family had on holiday. However, as it isn't the supplier of the holiday I look at MBNA's actions in respect of its role as a provider of financial services. With this in mind I consider the card protections of chargeback and Section 75 to be relevant here.

It isn't clear if MBNA attempted a chargeback here – but considering the nature of the claim (involving allegations of misrepresentation and breach of contract along with claims for consequential losses) I think Section 75 was not an unreasonable route for it to have focused on. Ultimately I don't consider chargeback was as well suited to the claim and would not likely have produced a more favourable result for Miss H – so I don't think MBNA acted unfairly in respect of focusing on Section 75. As a result I won't be commenting on chargeback further but the Section 75 claim outcome and overall handling of this.

Section 75

Section 75 in certain circumstances allows Miss H to hold MBNA liable for a '*like claim'* for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by its credit card. This doesn't mean that MBNA are responsible for all the customer service failings of the supplier – but specifically for any apparent breach of contract or misrepresentation.

There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or the way payment was made. After considering these factors I think the requirements are in place for Miss H to have a valid Section 75 claim against MBNA here. So I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation which would reasonably have been available to MBNA at the time it considered the claim. And if so, what MBNA should fairly do now to put things right.

I believe Miss H booked a package holiday with the supplier. A package holiday is generally taken to be the combination of two or more different types of travel services, which are combined for the purpose of the same trip. A travel service can be carriage, accommodation and 'other tourist services' such as an excursion.

From what I can see here Miss H's booking included transport and accommodation. As a result I have taken into account the implied terms under The Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs') which make the supplier she paid using her credit card responsible for all elements of the holiday.

In coming to my findings I have also considered the specific terms of the booking alongside any terms implied by the Consumer Rights Act 2015. In particular the implied terms that services are performed with reasonable 'care and skill' and that information about a service (such as the description of facilities) is taken to be part of the contract.

I can see that Miss H provided MBNA with a description of what she was unhappy with on the holiday and backed this up by credible and compelling photos.

I note that the hotel which Miss H booked from the apparent price, advertising (the rooms are described as 'simple') and star rating (three) is toward the more basic end. However, there is still a reasonable expectation that it will be clean and well maintained. I think from the photos Miss H has provided I am persuaded that the hotel was not to a standard that would be expected even of a hotel in this more basic bracket. For example:

- The room was dirty and poorly maintained (amongst other things the photos show paint flaking off – dirty and mouldy tiles – damaged and worn fixtures like door frames, shower head and light fittings); and
- the common areas such as the pool area were also poorly maintained and dirty.

While some things Miss H complains about (noise and behaviour from other guests) are more difficult to say are the responsibility of the supplier, Miss H has also provided credible testimony about her overall experience at the hotel which backs up the conclusion that the accommodation was not as described and/or provided without reasonable care and skill. In particular that it was dirty and poorly maintained. I also note that Miss H and her family were due to stay for two weeks but left the hotel two nights early to stay elsewhere. This further reinforces the likelihood that the quality of the hotel fell below the standard that would be reasonably expected.

I also think it goes without saying that the hotel would not be advertising the sort of things that Miss H has raised and photographed – so I believe her when she says the hotel was not advertised like this.

I have also thought about what Miss H has said to MBNA about the outgoing flights. From her credible testimony it is clear there were some things which did not go as they should have done in respect of meal options. One thing is that the child meal was not available, and secondly there was no meat option. The experience was disappointing for Miss H and her family and I am persuaded by what she says about what occurred.

However, I don't consider that MBNA or the supplier disputes that the hotel fell below the standard that would be expected or that there was a problem with the meal options on the outbound flight. The issue in dispute here appears to be the value placed on any compensation. So I have turned to this.

It is worthwhile pointing out that the remedy for a situation like this is generally an appropriate price reduction/compensation to reflect the lack of conformity and impact of this.

During its handling of the claim MBNA communicated to Miss H that the supplier was willing to refund her £750 of the total cost of the holiday. It thought this was fair in the circumstances.

Any award (whether that be for breach of contract or misrepresentation) should fairly reflect that Miss H and her family used the services (bar two days of accommodation) but also reflect those services not being up to standard and the impact on the holiday experience.

I note that the supplier confirmed to MNBA that most of the expense of the holiday was because Miss H paid for business class flights. The actual hotel element was £781 (around £55 a night) for 14 nights and the flights were around £8,500. And based on what MBNA would have known about the hotel and the room rate this seemed plausible. I know that Miss H says the package was not advertised as such – but in order to decide if MBNA has acted fairly in deciding appropriate compensation I think this information is relevant.

I know there has been a lot of focus on what the supplier attributed compensation to (as in the hotel or flights). But I don't consider that to be key to MBNA's role here which is ultimately deciding what fair compensation should be as an overall amount.

Compensation is not a science. And with this in mind, overall, I don't think MBNA acted unfairly in deciding that £750 was a fair global amount to settle the claim against the supplier. I say this noting the following:

- the information available to MBNA at the time indicated that most of the issues with the package were about the hotel – and £750 or part of this represents a substantial refund of the cost of accommodation;
- the meal options on the outgoing flight – while frustrating for Miss H and her family (and notwithstanding the gesture by the supplier) would not appear to warrant significant compensation in isolation – and it is even arguable to what extent they are a breach of contract noting that the terms and conditions of the supplier do not guarantee preferred meal choices;
- the supplier alleges that Miss H did not escalate her concerns with the accommodation beyond the hotel management to it as the package travel supplier – and says had she done so it could have provided an alternative room or resort; and
- it would have been apparent to MBNA that Miss H and her family did still benefit from using the package holiday to visit the location and the various attractions it offered.

I have thought about whether an award of additional compensation would be payable – particularly in respect of consequential and other losses here. However, based on the information available to MBNA at the time I don't think there fairly would be. I say this noting that:

- Miss H would need to have provided more compelling information to substantiate her personal injury claim and it is arguable that this is better suited to a negligence claim in court (rather than a Section 75 claim for breach or misrepresentation) in any event; and
- although Miss H paid for another hotel for two nights the compensation on offer would provide adequate coverage for the two nights she didn't benefit from – and while the other hotel was more expensive it appears to be a higher rated resort.

So, noting that fair compensation isn't a science I think MBNA were acting reasonably, based on the information it had in agreeing that the £750 was a broadly fair offer in the circumstances.

However, while it wasn't necessarily unfair of MBNA to point Miss H to this offer which the supplier had relayed to it I think MBNA's answer to the claim should also have recognised that it would arrange payment whether the supplier stood by its offer or not. I say this because Miss H's claim was to MBNA which is jointly liable for any wrongdoing by the supplier. So here I will be directing MBNA to facilitate payment of the offer the supplier relayed to it and ultimately pay Miss H the £750 if the supplier fails to do so. I have already explained this to MBNA – and while it has said that there is no indication that the supplier won't pay out – ultimately MBNA is the party that is jointly liable for resolving matters under Section 75.

Miss H has said she is not happy with MBNA's overall investigation and the service she received during its claim handling. However, overall I don't think that MBNA handled things in such a way as to warrant additional compensation. I will explain why.

I can see that Miss H raised the claim toward the end of June 2023 and by the end of July MBNA had communicated an offer of compensation from the supplier. And by August 2023 MBNA had answered the claim stating its position on what compensation it considered fair. MBNA also then clarified a few other things in its final response to Miss H which is dated in September 2023 (such as how the compensation offer from the supplier broke down as to the hotel and flights element).

Overall, I don't think things took an unreasonable amount of time and while I can see that there was some back and forth with Miss H (and MBNA acknowledge some things took longer they would have liked) ultimately it appears MBNA were liaising with the supplier as part of its investigation. I can see that MBNA kept Miss H reasonably aware of what was going on and kept a dialogue with her over email in response to her queries. At points during this correspondence Miss H acknowledges she is aware that MBNA are communicating with the supplier and acknowledges that they are 'working hard' on her case. And while I acknowledge my points above in respect of MBNA's joint liability, I don't think that the level of liaison with the supplier, or the overall time to give its view on fair compensation was unreasonable in the circumstances.

I know Miss H was frustrated not knowing sooner what element of the supplier's offer was for flights and for the hotel – but ultimately, whatever the supplier attributed to elements I think the key thing was knowing what global figure of compensation MBNA considered fair to resolve the case as a whole. Which MBNA had told Miss H a few weeks after she raised a claim. Furthermore, while Miss H says she didn't get MBNA's final response letter dated 18

September 2023 which added further clarity on this matter it appears to be correctly addressed so I am not sure why she would not have received it.

In summary, I don't think MBNA handled the claim in a way that would warrant further compensation. And broadly I think the way it answered the claim was not unreasonable based on the information available to it at the time. I can understand Miss H is extremely frustrated with the claim outcome – and she clearly feels very strongly that she is entitled to more money back. However, my role is to resolve matters informally. Miss H does not have to accept my decision and may pursue the matter in court instead. If she chooses to do this she may wish to seek appropriate legal advice as to her options.

Putting things right

If Miss H accepts my decision MBNA should check if the supplier's offer of £750 compensation is still valid and if so facilitate the payment of this to her. However, in the event of issues with the offer or any delays by the supplier in actioning it MBNA should pay the £750 to Miss H itself. And in any event MBNA should see that Miss H has the £750 paid to her within 30 days of accepting my decision. For clarity my direction is not that Miss H receives £750 from both MBNA and from the supplier and MBNA will be free to inform the supplier if it ends up paying Miss H directly in order to avoid double recovery.

My final decision

I direct MBNA Limited to arrange payment of £750 compensation to Miss H in accordance with my direction above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 5 August 2024.

Mark Lancod
Ombudsman