

The complaint

Miss M complains about how MBNA Limited handled a claim she made to it.

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 M is unhappy with a hotel booking she made through an online platform ('the agent'). She says that the hotel she booked ('Hotel A') was closed when she arrived with a family member and she ended up having to stay in two alternative hotels with lesser facilities ('Hotel B' and 'Hotel C').

Miss M says that the agent is liable for breach of contract and misrepresentation. She says she spent years trying to get an answer out of the agent and has been ignored so filed a claim with MBNA in early 2023.

MBNA looked into things in respect of Section 75 of the Consumer Credit Act 1974 ('Section 75') but declined the claim. It said it wasn't liable for any alleged wrongdoing of the agent or Hotel A. It said that it had only financed the transaction with Hotel B.

Our investigator did not uphold the complaint about the outcome of the claim. However, Miss M has asked for an ombudsman to take a look at things. I issued a provisional decision which said:

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 very sorry to hear about Miss M's issue with the holiday she went on with a family member and that things did not go as planned. However, it is worth noting here that MBNA is not the supplier of the holiday services. So when looking at what is fair I consider its role as a provider of financial services – and what it reasonably could have done to help with the information that was reasonably available to it at the time. As Miss M used her credit card to pay for part of the holiday I consider the protections of chargeback and Section 75 to be particularly relevant here.

Chargeback

Chargeback is not a consumer right or guaranteed to succeed but can be an avenue to dispute a transaction. I would expect MBNA to raise one where there was a reasonable chance of success.

I note that MBNA did not raise a chargeback when Miss M made a claim to it. But I don't consider this was unfair. The holiday took place in 2019 and Miss M raised a claim to MBNA in 2023 which means any chargeback would be well out of time here under the applicable Visa rules and therefore invalid. In general there will be 120 days to raise a chargeback for something like a service 'not as described' (the relevant grounds here) from the date the service was received or the transaction processing date.

Section 75

Section 75 in certain circumstances allows Miss M to hold MBNA liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement for the supply of goods or services which is funded by the credit card.

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, the way payment was made and the parties to the agreement.

MBNA effectively declined the claim because it considered an aspect of these technical requirements not met. Namely the correct 'debtor-creditor-supplier' agreement was not in place for Miss M to have a valid claim against MBNA for the alleged wrongdoing here.

I don't consider that MBNA's response to the claim was unreasonable. I will explain why.

From what Miss M has said, and what she appears to have approached MBNA with – her claim relates to the alleged wrongdoing of the agent (and perhaps Hotel A). Namely that the agent (or Hotel A) made an error in advertising and allowing her to book Hotel A which she says was closed and which she unfortunately only found out about on arrival. The dispute as presented to MBNA was effectively about that initial booking agreement involving the agent and Hotel A. And I don't consider MBNA was acting unfairly to treat it as a claim about the agent or Hotel A.

However, to my knowledge MBNA's credit card did not fund that initial booking agreement with the agent or a transaction with Hotel A. While a price appears to have been agreed for the booking with said agent it seems it wasn't billed by the agent due to the fact Miss M didn't use that booking as Hotel A was closed. It appears that Miss M then made a separate payment directly to Hotel B which she says she had no choice to do as there was nowhere else to stay.

So it appears that MBNA funded the agreement with the first alternative hotel ('Hotel B') that Miss M booked later on when things went wrong with the original booking. And while the facilities at Hotel B were not the same as Hotel A (it seems a cheaper and lower rated place) there is no persuasive evidence showing that Hotel B breached or misrepresented its agreement for accommodation. Or that this is the nature of the claim that Miss M brought to MBNA in any event – which as I have said appeared to be about the wrongdoing of the agent (or perhaps Hotel A)– not Hotel B (so I don't think MBNA was wrong for not focusing more on the actions of Hotel B here).

For clarity – MBNA funded an agreement with Hotel B for accommodation – not for the original booking of Hotel A (where things are alleged to have gone wrong). So prima facie it isn't liable for the issues with the agreement Miss M had with the agent concerning Hotel A– and which was the subject matter of her claim to it.

Miss M has suggested that the agent was involved with Hotel B too, and that Hotel B itself had links with Hotel A. These things might be true– but I still don't think this means there is the correct 'debtor-creditor-supplier' agreement for Miss M to be able to make a valid Section

75 claim against MBNA for the issues with her original booking. I will explain why.

Even if Hotel B paid some kind of commission or fee to the agent in the background (as Miss M has suggested) – or had some sort of pre-existing relationship with it around sharing data (as Miss M has also suggested)– this does not automatically mean that Miss M's credit card payment to Hotel B is treated as a payment to the agent for the purposes of Section 75. A payment of a fee from Hotel B to the agent (if that is what occurred) is a separate commercial payment between those parties rather than any agreement directly funded by MBNA.

There is a way that MBNA's payment to Hotel B could be considered a payment to the agent under Section 75 via a provision in the Consumer Credit Act 1974. This is if the parties were considered 'associates' as set out in Section 184. This is often where companies share the same directors for example. There is no persuasive evidence to indicate Hotel B is an associate of the agent as per Section 184 here.

However, even if the parties were considered 'associates' I don't think that makes a difference in this case. I say that because even if the MBNA card payment to Hotel B were considered the same as a payment to the agent, said payment isn't funding the agreement which is the subject matter of the dispute Miss M brought to MBNA (the agreement between Miss M and the agent for accommodation at Hotel A). The payment is funding a later agreement for alternative accommodation which Miss M had with Hotel B.

For completeness, there does not appear to be persuasive evidence that Hotel B and Hotel A are 'associates' either. But even if they were – similarly it would not mean that MBNA is liable for the allegations of misrepresentation or breach Miss M brought to it regarding the original booking for Hotel A. As I have said before, the credit card payment appears to be funding a separate agreement for alternative accommodation at Hotel B.

I appreciate this all seems rather technical – and will not be what Miss M wants to hear. But MBNA is only liable via the provisions of Section 75 so it does form the basis for how fair it is to say MBNA should accept responsibility for the allegations of wrongdoing brought to it. I am not saying there was no wrongdoing here in relation to the booking for Hotel A – or that Miss M has no recourse against certain parties for the problems with the holiday. The issue here is the extent to which MBNA is liable for the claim presented to it. And with this in mind I don't think it responded to the claim in an unreasonable way.

For completeness, although not the focus of Miss M's complaint about the claim I note that she mentioned that she filed her claim with MBNA at the start of January 2023 but did not get a response until mid-March 2023. However, due to the nature of a Section 75 claim like this – and the relevant factors needed to be taken into consideration I don't think this was an unreasonably long time so I won't be recommending compensation for this.

I also note Miss M has mentioned the health issues and the general detrimental impact on her family member from the holiday booking. I am very sorry to hear about that but it is also worth noting here that even if I were to say that Miss M has a valid claim against MBNA for the actions of the agent it would not extend to the impact on third parties. This is because Miss M is the debtor for the purposes of any Section 75 claim, and she is also the eligible complainant (as MBNA's customer) for the purposes of any complaint brought to this service.

Again I am sorry to hear about the experience Miss M and her family member had abroad. I remind Miss M that she is free to reject my decision and look at her options for pursuing the issue about the holiday booking via alternative means such as court.

My provisional decision

I don't uphold this complaint.

MBNA did not add anything.

Miss M said, in summary:

1. She contacted MBNA within the chargeback timeframe and was told by it that it would be able to help her when she had exhausted her efforts to resolve matters with the agent. But after trying for years to resolve the dispute she then came back to MBNA and was outside of the chargeback timeframe – so she should not have been given that earlier assurance or she should have been directed to make a chargeback claim at the time.
2. The agent purported to provide a service, and she tendered her credit card details to it for the booking of the hotel room. This tendering of card details should give her Section 75 protection even if the contract was cancelled and no money was taken – *'it would not be in the spirit of the act'* to find she was not protected in these circumstances.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below.

I will address Miss M's points as they are numbered above as follows:

1. Miss M has not been specific about when she first contacted MBNA about raising a dispute which she says was within the chargeback timeframe. It isn't clear from MBNA's records from what I can see. However, even if I accept Miss M did first contact MBNA within the timeframe this doesn't change things for two reasons:
 - a. It is a requirement of the chargeback scheme that Miss M attempts to sort things out with the merchant first – so it wasn't necessarily wrong of MBNA to advise Miss M to attempt to resolve things before raising a dispute. And it would be difficult to say that MBNA would fairly have foreseen that Miss M would have taken years to get back to it.
 - b. Even if I accepted that MBNA should have acted differently in respect of raising a chargeback I think any chargeback would not have had a reasonable prospect of success anyway for similar reasons to the issues I have discussed in relation to Section 75. Namely that in relation to the transaction that MBNA financed for Hotel B the service of accommodation was provided. Miss M's dispute centres on the booking agreement with the agent for Hotel A– which MBNA's card did not pay for.

2. I have carefully considered what Miss M has said – but I still cannot fairly agree that MBNA should have accepted liability for any wrongdoing of the agent here in relation to the booking for Hotel A. I refer back to the specific wording of Section 75 of the Consumer Credit Act 1974 which says:

Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

Here it is clear to me from the specific wording of the legislation that in order for MBNA to have liability for the actions of the agent in respect of the booking for Hotel A there would need to be a transaction financed by the relevant 'debtor-creditor-supplier' agreement. In this case, no payment was made for said booking using MBNA's card so there was no transaction financed by an agreement between MBNA, Miss M and the agent. Essentially MBNA did not provide credit here. Therefore, I don't accept Miss M's rationale that the agent holding card details in the event of payment is sufficient to make MBNA liable. And while I appreciate that Miss M has said this means she has no recourse via Section 75 against MBNA it wouldn't be fair and reasonable for MBNA to be responsible for an agreement it didn't finance. Nor does it necessarily mean Miss M has no legal recourse outside of Section 75 in relation to the alleged wrongdoing of the agent.

I remind Miss M that she is free to reject my decision and look at her options for pursuing the issue about the holiday booking via alternative means such as court.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 27 September 2024.

Mark Lancod
Ombudsman