

The complaint

Miss L complains MBNA Limited failed to recover funds she paid for a package holiday, using her credit card.

What happened

Below details the series of events which has led to the complaint and the arguments raised by both parties.

Miss L used her credit card to purchase a package holiday for a party of four people including herself. The holiday took place from 25th September 2023 to 6 October 2023. The total cost of the package holiday was £2,665.01, and this was made up of four separate payments at the beginning of July, August, September and October 2023.

The package holiday included flights, transfers and hotel accommodation at the following cost:

- Flights - £1,532
- Transfers - £47.25
- Hotel - £1,055.96

Miss L claims that when she and her party arrived at the hotel, the facilities were not at the standard described prior to her holiday. In particular she claims the hotel and their rooms were in a poor state of repair and unclean, the food was of poor quality and a number of the hotel facilities were closed.

Miss L raised complaints with the hotel during her stay and the package travel company. In response the package travel company offered her 10% of the cost of the hotel, but said the holiday she'd booked was non-refundable and that it wouldn't be able to source alternative accommodation for her. Miss L and her party stayed for the duration of the holiday and upon returning home Miss L raised a s.75 Consumer Credit Act 1975 (CCA) claim with her credit card provider MBNA.

MBNA considered her claim and offered to pay her an additional 20% refund of the amount paid for the hotel. Unhappy with this Miss L complained and subsequently referred her complaint to our service. It was considered by one of our investigators who concluded Miss L hadn't demonstrated she met the criteria for bringing a s.75 CCA claim and didn't agree MBNA had handled her claim unfairly. The investigator also thought a chargeback could've been raised; however this was unlikely to recover the funds paid. This was because a chargeback would only recover the funds paid towards the unused portion of the holiday and Miss L and her party stayed for the duration of the holiday. Unhappy with the investigator's opinion, the complaint has been passed to me to consider.

I issued a provisional decision setting out my initial thoughts to both parties. I explained that Miss L hadn't evidenced the requirements for a valid s.75 CCA claim. So I thought by reviewing the claim and making an offer, MBNA had handled the claim fairly. I also agreed it was unlikely the chargeback would be successful. In response Miss L provided evidence which demonstrated she met the requirements of a s.75 CCA claim. She explained that due

to the health and financial circumstances of her party she was unable to move to another hotel.

I considered how MBNA had handled the claim in light of this and sent both parties an email with my initial thoughts. I felt that the offer MBNA had made was fair and as such I think it handled Miss L's claim fairly. Miss L didn't agree. She reiterated that she would have had challenges moving to another hotel and she felt the hotel was misrepresented to her.

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.

Having done so I'm not going to uphold this complaint. I appreciate this will be disappointing to Miss L and I do sympathise with the circumstances she and her party found themselves in on this holiday. However, I think MBNA has handled the claim fairly by making an offer of a partial refund of the cost of the hotel. I will explain why below.

There were two ways MBNA could've tried to recover the funds paid by Miss L. This was through a s.75 CCA claim or by raising a chargeback. I'll address each in turn.

Section 75 CCA claim

As explained in my provisional decision, when something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.

In order for s.75 CCA to apply there are a number of criteria which need to be satisfied. As explained above, I initially didn't have Miss L's booking summary to evidence she contracted with the supplier (who I'll call "X"). However, Miss L has since provided the booking covering page which suggested she did contract directly with X and subsequently she provided the full booking summary. So looking through this documentation, I'm satisfied she did contract directly with X (therefore having the debtor-creditor-supplier relationship needed to make a claim.) And I think Miss L meets the other criteria needed to make a valid s.75 CCA claim.

The Consumer Rights Act 2015 ("CRA") implies certain terms into a contract which would require the service (which a package holiday would be classed as) to be provided with reasonable care and skill. Based on everything Miss L has said, I think the argument she is making is that there was a breach of contract by X. I appreciate Miss L has said she feels the hotel was misrepresented to her. However, I think the evidence she's provided (photos of the hotel during her trip) demonstrates poor quality rather than a misrepresentation. I would expect marketing material for the hotel (which Miss L has also provided) to pose the hotel in the best light, however the reality was that their room and the wider facilities needed refurbishment. Together with this, as described above, there were cleanliness issues with the room, some of the facilities were closed and Miss L said one party became unwell due to food poisoning which she attributes to the hotel. This all contributes to a breach of contract, and I want to assure Miss L that I have considered all the information she's provided and I agree there has been a breach of contract here.

As this was a package holiday the Package Travel and Linked Travel Arrangements Regulations 2018 ("PTR") are relevant. Regulation 15 sets out that the organiser (the package travel company) is liable for the performance of the service for other travel providers. And Regulation 16 allows for a price reduction where there is a "lack of

conformity” with the contract.

When thinking about a fair price reduction I’m mindful that the flights and transfers were used without issue. As I’ve said previously Miss L and her party stayed in the hotel throughout the holiday. I do appreciate the challenges moving hotel could have caused but when thinking about a price reduction I do need to take this into consideration. Additionally, Miss L and her party didn’t curtail the holiday and come home early because of these issues.

Taking everything into consideration, I think a price deduction for the cost of the hotel is a fair way to compensate Miss L for the problems experienced. MBNA considered the claim and offered a 20% refund of the cost of the hotel (in addition to the around 10% offered by X). I think this is fair in the circumstances. It reflects that Miss L had a number of issues with the hotel but was still able to remain there for the full duration of their stay.

Chargeback

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. It allows customers to ask for a transaction/ transactions to be refunded in a number of situations, some common examples being where goods or services aren’t provided or where goods or services are defective/ aren’t as described.

It’s important to explain that a chargeback can only recover the funds paid. It doesn’t provide for additional compensation (in the same way that a s.75 CCA claim can). In this case, my understanding of Miss L’s dispute is that the services provided (the hotel facilities and accommodation) weren’t of satisfactory quality and she’d like compensating for this. However, a successful chargeback in these circumstances is only going to refund the unused portion of the holiday. I appreciate Miss L has told us that due to the health circumstances of one of the members of her party it would’ve been difficult to relocate to an alternative hotel (and thereby end her hotel stay early). However, a chargeback doesn’t provide compensation for the reasons Miss L has described and would only be comprised of a refund for the unused portion of the package. So I don’t think MBNA acted unfairly by not raising a chargeback in the circumstances of this complaint as it was unlikely to result in a refund/partial refund for Miss L.

Miss L has asked if the chargeback rules set out any specific rules for travelling with someone who is disabled, unfortunately, they don’t. As detailed above the chargeback scheme is a voluntary service offered by the scheme operator. It sets out a number of circumstances where a payment can be refunded and strict criteria which needs to be met to achieve this. And for the reasons explained above, I don’t think a chargeback would have been successful in these circumstances.

My final decision

For the reasons above, I don’t uphold this complaint against MBNA Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss L to accept or reject my decision before 13 January 2025.

Claire Lisle
Ombudsman