

The complaint

Mr C is complaining MBNA Limited hasn't refunded an amount he paid for a holiday on his MBNA credit card.

What happened

In July 2020 Mr C says he bought a holiday through a travel agent – who I shall refer to as T to travel in July 2020. He says he booked it on the telephone. T subsequently went into administration and the holiday was cancelled.

Mr C contacted MBNA to request a refund of what he paid. MBNA referred him to the Civil Aviation Authority (CAA) to request a refund directly from them. In January 2020 Mr C contacted MBNA again to say he hadn't received a refund, but MBNA said it needed evidence to show the CAA had declined his claim.

In June 2020 Mr C contacted MBNA again to dispute the transaction. MBNA then processed the chargeback. The merchant defended the claim. I understand it did so on the basis there was no evidence Mr C had received a response from the CAA. MBNA processed the chargeback claim again, but the claim was defended again on the same grounds. MBNA then considered the claim under Section 75 of the Consumer Credit Act 1974 (Section 75). But it said Mr C hadn't provided copies of the booking invoice or evidence of the holiday, other than an insurance document. So it didn't think there was sufficient evidence to show there was a breach of contract and it declined the claim.

Our investigator upheld the complaint. She was satisfied that Mr C had booked a holiday through T that wasn't provided. And she was satisfied Mr C hadn't received a refund from the CAA. So she didn't think it was fair for MBNA to have declined his Section 75 claim. She thought MBNA should refund the amount Mr C had paid for the holiday and reconstruct the credit card to remove any interest charged on this transaction.

MBNA didn't agree with the investigator as it maintained that, without the booking invoice or confirmation, there wasn't anything to show that the transaction was for a holiday. It also queried how Mr C would be able to travel without travel documents.

As MBNA didn't agree with the investigator, the complaints been passed to me to decide.

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.

I've decided to uphold this complaint.

Mr C is complaining about the way MBNA handled a dispute over a payment he says he made for a holiday. Where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute under two guises – chargeback and SECTION 75. I would expect the card provider to consider both avenues. I'll consider both

avenues separately.

Chargeback

As Mr C paid for the holiday by card, there are certain circumstances in which MBNA might be able to recover her money through the chargeback process.

Chargeback is the process by which a bank or credit card provider looks to resolve a settlement between a consumer and a merchant under the relevant card scheme. Initially the card provider will temporarily refund the payment back onto the card account and will raise a dispute with the merchant. The merchant is then required to respond within a prescribed period of time with any further information it wishes to provide and set out why it thinks the chargeback shouldn't go through. If the chargeback is defended, then the temporary refund is returned to the merchant. The rules under which the chargeback can be pursued are strict and are set out by the individual card scheme provider. The two main possible rules he could potentially have a chargeback right is – "service not provided" or "credit not received".

In this instance Mr C looked to receive a refund of the tickets because T went into administration and his holiday was cancelled. MBNA responded to say that he needed to contact the CAA before he could raise a chargeback claim. I don't think it was unreasonable it said this, as it's a requirement under the chargeback rules of the scheme provider that Mr C needed to look to resolve the matter through the relevant bonding authority. I've looked at the guidance that was being provided by ABTA at the time and this said consumers needed to contact the CAA. So it wasn't unreasonable for MBNA to say Mr C needed to contact the CAA first before it could consider the chargeback claim.

I can see that MBNA did later process the chargeback claim twice, but each time T defended the claim on the basis there was no evidence the CAA had declined the claim. I'm conscious Mr C hasn't provided anything in writing to show the CAA had declined the claim. However, he has provided detailed testimony for why it was declined – i.e. that he didn't have a booking reference.

MBNA decided to not continue with the claim because of T's response. But I'm not persuaded this was fair given Mr C's testimony – which I've found to be plausible and persuasive. So I think MBNA should have given stronger consideration to continuing this claim. But I don't need to make a finding on this, because I think MBNA should have upheld Mr C's Section 75 claim. And, had it done so, there would have been no requirement to continue with the chargeback claim. I'll now explain why.

Section 75

Mr C paid for the holiday on his MBNA credit card. SECTION 75 sets out that in certain circumstances, as the finance provider, MBNA is jointly liable for any breach of contract or misrepresentation by the supplier. I'm satisfied those circumstances apply here.

MBNA doesn't believe there's anything to show that the amount Mr C paid was for a holiday – it suggested it could equally have been extras for the holiday he was on at the time.

While I accept that Mr C hasn't provided an invoice or booking confirmation for the holiday, I don't think this is necessarily fair grounds to decline the claim. I would expect MBNA to consider all evidence provided – including Mr C's testimony – in assessing whether Mr C has done enough to show T has breached the terms of the contract and that he has suffered a loss as a result of this. I don't think MBNA has done this in this case.

I've found Mr C's testimony to be plausible and persuasive in this case. He's been consistent

with what he's told MBNA and this service and I find it's supported by the evidence he's provided. Mr C has said he bought the holiday on the telephone while he was on holiday at the time. He's told us the holiday cost around £1,400 and he paid a deposit of £564, with the balance to pay shortly before the holiday. He's also provided a copy of the insurance policy he took out to cover that holiday. This is issued on the same date he paid for the alleged holiday and is for 16 days travelling in Europe. It's also on T branded paperwork. So, taking everything into consideration, I'm satisfied the transaction in question was for a holiday where T was the supplier.

T went into administration and I'm satisfied the contract was cancelled and I haven't seen anything to show Mr C has received a refund of what he paid for the holiday. So I think Mr C has reasonably shown T breached the terms of the contract. As I said, MBNA is liable for any breach of contract by T. So I think it's liable for the losses Mr C has suffered and I think it should do the following to put things right:

- Reconstruct Mr C's credit card as if the transaction had never taken place; and
- If Mr C is out of pocket as a result of the transaction, MBNA should refund this*.

* It should add 8% simple interest per year on these payments from when Mr C paid them until he gets them back. If MBNA thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

Mr C has told us he didn't pay the remaining balance of the holiday, so MBNA doesn't need to refund anything further.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require MBNA Limited to compensate Mr C in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 October 2022.

Guy Mitchell

Ombudsman