

## **The complaint**

Mrs J has complained that MBNA Limited has behaved unfairly in not refunding her for a payment she made to Airbnb.

At times, Mrs J has been represented in bringing her complaint. But for clarity, I'll refer to all submissions made on her behalf, as having been made by her directly.

## **What happened**

Mrs J paid for accommodation with a host, through Airbnb, using her MBNA credit card. However, the host's representative then said she needed to download an app, in order to get the key information to access the property. Mrs J was then required to upload personal details, such as a bank statement/passport. Mrs J feared this was a scam, so cancelled the booking.

Mrs J then contacted MBNA for a refund. It didn't provide one, either through section 75 of the Consumer Credit Act 1974, or through the chargeback process, but did offer £50 for poor service while handling her claim. Unhappy with this, she brought her complaint to our service.

One of our investigators looked into what had happened, and recommended that the complaint should be upheld, but only in part. She was satisfied that MBNA had behaved reasonably in declining the claim for a refund, but considered it should increase its compensation for poor service, from £50 to £150.

As Mrs J disagreed, her complaint was passed to me.

## **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 only upholding it in part, for the same reasons as our investigator. I know this will be disappointing for Mrs J, but I'll explain why I've reached this decision.

Under section 75, there needs to be a valid relationship in place, between the debtor (Mrs J), creditor (MBNA) and supplier (Airbnb). It is unclear whether this was in place here, as the only evidence I've seen is of correspondence with Mr J, not Mrs J. However, if I am to assume the required relationship did exist, I'd then need to be satisfied there had been a breach of contract, or a misrepresentation, made by Airbnb. And I'm not persuaded there was.

Mrs J has noted that case law in England and Wales says that neither party to a contract can unilaterally change significant terms of the contract - and this is what she feels happened here. This is on the basis that the host only later required them to submit passports and an unredacted copy of a bank statement, otherwise they would not be able to access the property.

I have sympathy with Mrs J regarding her misgivings about this. But, the relevant contract here for the purposes of section 75 is that between Mrs J and Airbnb, not between Mrs J and the host. Airbnb's terms say:

*"We offer you the right to use a platform that enables Members to publish, offer, search for, and book Host Services. When Members make or accept a booking, they are entering into a contract directly with each other. Airbnb is not and does not become a party to or other participant in any contractual relationship between Members".*

I've seen nothing to suggest that Airbnb didn't provide what it said it would. And it was not party to the contract with the host. So, I'm satisfied it was reasonable of MBNA to decline the section 75 claim. I know Mrs J feels Airbnb should be responsible for the host's actions, but that isn't the position.

Likewise, I'm also satisfied a chargeback claim would not likely have been successful. MBNA would have needed evidence that Mrs J was entitled to a refund under Airbnb's terms and conditions and, as set out above, there's no evidence that persuades me that was the case.

Finally, I've looked at compensation for how the claim was handled. MBNA offered Mrs J £50 for how it progressed things. Our investigator considered this should be increased to £150, as there were then further delays. MBNA agreed, but Mrs J queried how this figure had been reached. Awards for distress and inconvenience aren't an exact science, but I'm satisfied £150 is fair in the circumstances, to address delays in progressing matters. Such an award is in line with what our service awards in similar circumstances.

### **Putting things right**

To put things right, MBNA should increase its compensation from £50, to a total of £150.

### **My final decision**

It's my final decision to uphold this complaint in part. I require MBNA Limited to pay Mrs J a total of £150 compensation, insofar as it hasn't already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 17 July 2024.

Elspeth Wood  
**Ombudsman**