

The complaint

Mr R complains MBNA Limited has failed to refund him the amount he paid on his credit card for some event tickets.

What happened

The parties to the complaint are well aware of the background so I will only cover the key facts in brief:

- On 30 July 2020 Mr R used his MBNA credit card to pay £209 for tickets to a comedy event. The purchase included four tickets costing £45 each, £10 for “premium parking” and a £19 booking fee.
- The event was rearranged due to the coronavirus pandemic and a new date had been set in 2022. However, the company running and promoting the event ceased trading before it could take place. Mr R set about claiming a refund from MBNA, first contacting them early in March 2022.
- MBNA initially considered whether it could claim the money back through the Visa card scheme via a “chargeback”. However, it considered it was too late (more than 540 days from the date of the original payment) for it to do so and wrote to Mr R on 10 March 2022 to explain this.
- Mr R then asked MBNA to refund him under the provisions of section 75 of the Consumer Credit Act 1974 instead. MBNA told him section 75 protection didn’t apply because, firstly, his payment had been made through a third party processor and, secondly, the tickets had only cost £45.
- Mr R complained about this decision but MBNA wrote to him to explain its stance remained unchanged. He then referred the matter to the Financial Ombudsman Service for an independent assessment.

One of our investigators looked into Mr R’s complaint. He came to the following conclusions:

- By the time Mr R had contacted MBNA to dispute the payment, it was too late for MBNA to attempt to have claimed the money back via the chargeback process.
- Section 75 of the CCA did not apply to the purchase because, although Mr R had bought all the tickets together, it was the price of the individual tickets which determined whether section 75 applied or not. As each ticket was not more than £100 in price, section 75 of the CCA did not apply and MBNA had been right to decline Mr R’s claim.

Mr R asked to appeal the investigator’s assessment and so the complaint has 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.

When a person pays for goods or services using a credit card, their credit card provider may be able to help them if there is a dispute over the purchase. There are two avenues via which a credit card provider can assist: the chargeback process, and claims brought under section 75 of the CCA. I will cover each in turn.

Chargeback

Chargeback is a way in which a card issuer can dispute payments made on a card on behalf of its customer, for reasons which are specified in the rules of the relevant card scheme. In Mr R's case, the relevant card scheme was Visa. While chargebacks don't constitute a consumer right, I would still expect a card issuer to attempt a chargeback if its customer requests one (or when presented with a situation where a chargeback would be appropriate), so long as to do so would be compliant with the rules of the card scheme, and would have a reasonable prospect of succeeding.

The Visa card scheme's rules include provisions relating to how long after a transaction takes place it is permissible to raise a chargeback. Where a service has been paid for and not provided, as here, the relevant time limits to attempt a chargeback were as follows:

- No more than 120 days from the last date it was expected that the service would be provided. In Mr R's case this would mean the last date the event was rescheduled to; and...
- No more than 540 days from the date of the card transaction.

If either of these limits is exceeded, it is too late to attempt a chargeback. As our investigator observed, the date of the card transaction was 30 July 2020 and Mr R approached MBNA about the problem in March 2022. This was a period of more than 540 days and so unfortunately, it was too late for MBNA to help Mr R in this way. It follows that I don't think MBNA treated Mr R unfairly by failing to pursue a chargeback.

Section 75

This leaves the matter of a potential claim under section 75 of the CCA. Where it applies, section 75 of the CCA allows a consumer to claim against their credit card issuer in respect of any breach of contract or misrepresentation by a supplier of goods or services they have paid for using the credit card.

In order for section 75 to apply to a purchase, there are certain conditions which need to be met. One of these is set out in the legislation as follows:

"[section 75 protection] does not apply to a claim-

...

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000..."

Mr R disagrees with our investigator's findings on this point. He has argued that it is the

overall price he paid for his purchase which is relevant, not the price of the components which made up his booking.

I do not think this is the correct analysis. The legislation refers to “single items” rather than an overall purchase, and a purchase could be made up of multiple single items. The way in which a purchase is presented is, in my view, a strong indicator of what should be considered a “single item” for the purposes of section 75 of the CCA.

For example, if a person went into a shop and bought a pair of trousers, a suit jacket and a waistcoat for £99 each, each individual article of clothing would be a “single item” and section 75 of the CCA would not apply to the purchase of any of them. However, if those same three items were advertised and sold together by the shop as a “suit” costing £280, then the single item would be the suit, and section 75 of the CCA *would* apply to the purchase of the suit.

I’ve seen two sets of documents in Mr R’s case which can be used to establish what should be considered the “single items” for the purposes of his purchase. These are a confirmation email related to the purchase, and a set of five tickets. The confirmation email provides the details of the event, alongside five separate line items under the heading “Ticket Details”:

Block: D1 Row: C Seat: 10
Block: D1 Row: C Seat: 11
Block: D1 Row: C Seat: 12
Block: D1 Row: C Seat: 13
Premium Car Park (x1)

Next to each item is a price. £45.00 appears next to each seat, while £10 appears next to the car park ticket. Underneath the list is a separate “Booking fee” next to which £19 appears. Underneath that is a line titled “Total”, next to a figure of £209.

The set of tickets is made up of five pages each containing a description, a price, a QR code, entry instructions and a short set of terms and conditions. The descriptions and prices all correspond with the details and prices in the confirmation email.

None of the evidence indicates that the set of tickets was presented for sale to Mr R as a single item. The evidence strongly suggests that when Mr R made his purchase, he was buying separate tickets for four different seats, and a ticket for car parking. He was also charged a booking fee. Each ticket was clearly a single item with a price under the threshold from which section 75 of the CCA would begin to apply, and so I must reach the conclusion that no part of Mr R’s purchase was covered by section 75 of the CCA.

I appreciate MBNA has referred to another reason why section 75 may not apply to the purchase, namely that a third party processed the payment, but it is not necessary for me to make any findings on this point given I have already concluded the items purchased were outside of the relevant monetary limits.

This means I consider MBNA did not act unfairly or unreasonably when it declined Mr R’s section 75 claim.

My final decision

For the reasons outlined above, I do not uphold Mr R’s complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 February 2024.

Will Culley
Ombudsman