DRN-4353812

The complaint

Mr E complains about how MBNA Limited responded to a claim he made in respect of a transaction on his credit card.

What happened

The facts of this complaint are well known to the parties so I won't repeat them in detail here. My focus will be on giving reasons for my decision.

In summary, Mr E says he booked short term holiday car hire and paid for it using his MBNA card. However, he was unhappy with an additional deduction made by the supplier after the hire period completed. Mr E says he didn't agree to this charge and doesn't know what it is for.

Mr E raised the matter with MBNA but it didn't raise a dispute with the merchant as it says it didn't have sufficient information to do so. Mr E maintains that he sent MBNA the relevant information to consider his dispute.

The complaint about the way MBNA handled the claim was looked at by this service. Our investigator could see Mr E had responded to MBNA's request for further information – but that Mr E had sent it to an incorrect email address. So he didn't think MBNA had acted unfairly at the time in not taking the claim further.

Mr E disagrees. In summary he says MBNA should have taken all reasonable steps to dispute the charge, and thinks it must have got his email.

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.

I have read and considered the evidence submitted by the parties but won't necessarily comment on everything – this isn't intended as a discourtesy but reflects my role in resolving disputes informally.

The charge in question was made on Mr E's card which I understand is a Visa credit. So I think the Visa chargeback scheme and Section 75 of the Consumer Credit Act 1974 ('Section 75') are relevant considerations in looking at how MBNA could have fairly assisted Mr E in recovering his money here.

Chargeback

Any recourse through the chargeback scheme is dependent on the rules of the card scheme. So I have considered these in deciding what it fair and reasonable in the circumstances.

It appears this dispute is about a charge made post a hire car contract. Mr E doesn't dispute he hired a car during a holiday (and paid for this upfront) – but he said he doesn't recognise the charge made after the period of hire and confirms that it wasn't agreed.

MBNA has explained that for this type of claim it is able to raise a compliance dispute in respect of Visa terms for merchants regarding proper application of delayed/amended charges (detailed in section 5.8.8.3 of the Visa rules here). However, it says it didn't raise a compliance dispute in this instance because Mr E had not provided the information it needed. It said that it requested this information from Mr E on the 11/8/22 but he then emailed this information to the incorrect email address.

After looking through the file I identified that MBNA's system notes on 21/8/22 show it recorded what appears to be the same information that it requested from Mr E on the 11/8/22 (and which Mr E sent in his email including the reason for his dispute). This information includes the period he rented the car, confirmation of the lack of any documentation provided / notification in respect of the charge, and confirmation he has contacted the merchant via email but not received a response.

So to all intents and purposes it appeared to me that MBNA had received sufficient information in order for it to progress the dispute for Mr E.

I put this to MBNA recently but it then came back to say that in order to raise the dispute it needed this information specifically as a written statement from Mr E. It says that because he didn't send his email to the correct email address it didn't have this.

However, in deciding what is fair and reasonable I note the following:

- *I have looked through what appear to be the relevant Visa chargeback rules for when Mr E raised his dispute and cannot see where in the 'Compliance Filing Conditions' it shows that in order to raise a dispute of this kind MBNA needs to provide a written statement from the customer. I can see that in some specific situations this might be required – but not here (where a delayed charge is made in Mr E's absence).*

- *I accept MBNA's entry on the system on 21/8/22 might in fact be a result of a phone call. However, if Mr E had called in with the information at the time I question why MBNA would not have alerted him that it could not proceed without something in writing if that was what was essential for it to continue the dispute. In fact, in its notes MBNA refers to its request to him on 11/8/22 as a request for 'more details' rather than a need to satisfy a particular rule about obtaining a written statement.*

- *Even if a written statement from Mr E were required to progress the dispute:*

    - *it is not clear to me that Mr E's initial written correspondence with MBNA about the dispute (which he sent it in July and which MBNA associated with his account shortly after) would not (in combination with the information it had gathered from other records of contact with Mr E) have been sufficient to raise a dispute. This correspondence shows he has a dispute about the charge and that he has heard nothing from the car hire company since handing back the car.*

    - *I am not entirely persuaded MBNA did not receive Mr E's email to its systems despite confirming the mailbox he addressed it to is incorrect – it has not explained how after requesting the information from him on 11/8/22 it then*

came to log a system note containing what appears to be the information he sent to it in said email.

All things considered I am not persuaded MBNA was unable to raise a dispute for Mr E in respect of the delayed charges based on the information it had received from him.

Therefore, I have gone on to consider what would be fair redress here. It isn't clear what would have happened had a compliance case been raised. However, I do note that in the Visa rules there appears to be specific onus on the merchant to provide information justifying delayed charges in respect of car rental agreements. Mr E has mentioned that when he returned the car the supplier pointed out some damage underneath (which he had to bend down to see)– however, he says that he told the supplier that this wasn't him and was in fact not possible for him to have caused as they did not park near any high pavement as the car was small. Mr E apparently thought that was the end of the matter. There is no compelling evidence that the charges were justified or that the merchant carried out the correct procedure (as detailed in the Visa rules) for notifying Mr E of the charges and connecting these with his specific use of the rental car. I note that in credible testimony Mr E says he emailed the merchant to find out further information and it didn't respond to him at all.

While I accept there is an element of uncertainty in respect of the outcome of any disputes process, I note the factors I have discussed appear to indicate Mr E would have a reasonable prospect of winning this particular dispute. I also note that in not raising a dispute MBNA has deprived Mr E of the ability to find out what would have occurred. So, prima facie it appears that the fair resolution to this complaint would be to refund Mr E the additional charge made to his card.

Even if I were mistaken about MBNA's ability to raise a Visa compliance dispute with what it had received from Mr E I also note the following when considering what is overall a fair and reasonable resolution to this complaint:

- *The email address Mr E used to send MBNA further details was not misspelt or omitting a character – it added the word 'group' at the end. Mr E indicates MBNA told him over the phone this was the email address to use and questions why else he would have used the address if he hadn't been told it. While I can see how a typographical error could easily occur I note that adding 'group' is quite specific so as to indicate Mr E was plausibly told this was the address by MBNA. I also note that despite me asking for phone records MBNA has not provided these – so I am not persuaded that MBNA did not give Mr E an incorrect email address.*

- *In any event, it doesn't appear to be in dispute that by late August MBNA had sufficient information to understand the dispute and start the process for a Section 75 claim for Mr E including contacting the merchant and gathering evidence to show this charge was in fact a valid one. It appears that the requirements for a valid Section 75 claim are likely to be in place against MBNA here. Furthermore, to date there is no compelling evidence to show this extra charge is justified and it would have been within MBNA's reasonable control to have obtained this information during its own enquiries with the merchant (using all the relevant details which Mr E had provided it). I don't consider it fair at this stage to make Mr E go through an additional process of now raising a Section 75 claim when this should have been progressed by MNBA in the first instance.*

All things considered I think it fair and reasonable for MBNA to now re-work Mr E's credit card debt to remove the £311.81 along with any associated interest and charges related to

this amount. If Mr E has paid this amount off already (and any associated interest or charges) this should be refunded back to him with out of pocket interest.

I asked the parties for their comments. Both agreed with my decision.

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.

As both parties have agreed with my provisional findings I see no reason to alter these. So my final decision is to uphold this complaint based on said findings (as copied above).

Putting things right

MBNA should put things right in accordance with my direction below.

My final decision

I direct MBNA Limited to re-work Mr E's credit card balance to remove the £311.81 charge – in doing so it should remove any interest and charges associated with this amount. If Mr E has paid any of the amount off (or associated interest and charges) or any credit balance arises as a result of the re-working it should refund this to Mr E including yearly simple interest at 8% calculated from the date of payment / date of credit balance to the date of settlement.

If MBNA considers that it needs to deduct tax from any interest element of my award it should provide Mr E with a certificate of tax deduction in case he is able to obtain a refund of this from HMRC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 October 2023.

Mark Lancod
Ombudsman