

The complaint

Mrs C complains MBNA Limited has failed to assist her with a dispute over payments she made on her credit card to a company for a timeshare exit service.

Mrs C has been represented in her complaint by a claims management company ("CMC"). When I refer to actions taken, or things said, by Mrs C, then this should be taken to include things said or done by her CMC, unless stated otherwise.

What happened

Mrs C used her MBNA credit card on 23 September 2020 to pay £1,500 to a company I'll call "AD". She made a further payment of £2,000 on the same card on 30 September 2020, and a debit card payment from a bank account with a different financial institution on the same day for £4,000.

On 15 March 2022, Mrs C's CMC contacted MBNA by email to make a claim under section 75 of the Consumer Credit Act 1974 ("CCA"). The CMC stated that AD had mis-sold a timeshare relinquishment or termination service to Mrs C, and had now ceased trading. It said AD had made misrepresentations to Mrs C around a compensation claim against her timeshare provider(s) and had also misrepresented the benefits of their timeshare termination service.

It's not necessary to go into all the details, but there were various communication issues which meant MBNA didn't look into the matter for Mrs C for a long time. MBNA says it asked Mrs C in February and March 2023 for some evidence to support her claim, but didn't hear back from her.

Mrs C referred the matter to the Financial Ombudsman Service and we wrote to MBNA in July 2023 to say we were intending to investigate Mrs C's complaint. The following month MBNA provided a final response to Mrs C about her complaint. It said it couldn't agree with Mrs C's section 75 claim because it hadn't received the evidence it had requested.

One of our investigators was assigned to the complaint. She didn't think it should be upheld, and wrote to both parties in December 2023 to explain why. In summary, she considered that it hadn't been unreasonable of MBNA to decline Mrs C's section 75 claim as she had not supplied the evidence MBNA had requested to look into her claim. Specifically, our investigator noted that no contract between Mrs C and AD had been supplied either to MBNA or to the Financial Ombudsman Service.

Mrs C's CMC responded to say that all discussions with AD had been on the phone and she had not received a written contract. It said she had not needed AD's services because she had written to her timeshare provider to surrender her membership in 2015 and had not heard from them since that year.

Our investigator considered these points but was not persuaded to change her view. She explained that although she agreed a contract could be formed over the phone, she felt there was insufficient evidence to support a claim for breach of contract or misrepresentation, and

that the onus was on Mrs C to show this.

In response to our investigator, Mrs C's CMC reiterated its previous points and asked that an ombudsman review the case. The matter has therefore 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 consumer buys goods or services using a credit card, and something then goes wrong with the purchase, they may approach their credit card issuer for assistance. The card issuer may be able to help in obtaining a refund of any card payments made via a chargeback, or it may need to honour a claim under section 75 of the CCA.

In this case, no parties to the case have suggested that a chargeback could have been a potential avenue for recovery of any of the funds paid to AD. For the sake of completeness, I don't think this was a viable means for MBNA to recover any of the funds. This is because chargebacks are subject to time limits, set by the card schemes, and by the time Mrs C contacted MBNA it would have been too late for it to attempt to recover any funds in this way.¹

The focus in this case has been on section 75 of the CCA. This allows a consumer to claim against their credit card issuer, so long as certain technical conditions are met, in respect of any breach of contract or misrepresentation by a supplier of goods or services they have made a purchase from using the card.

It's not been argued that any of the technical conditions for a section 75 claim have not been met, so I don't intend to cover this point in detail. I'll say only that, having considered the available evidence, I conclude the technical conditions have been met. However, there still needs to have been a breach of contract or misrepresentation by AD, for MBNA to have any liability to Mrs C under section 75 of the CCA. This has been the main point of dispute between the parties.

A misrepresentation in Mrs C's case would be a false statement of fact or law made by AD to her, and which induced her to enter the contract with them and make the payments to them that she did. A breach of contract occurs when one party to the contract fails to discharge its obligations to the other. These obligations may come about as a result of the express terms of the contract, or because of terms implied by legislation.

There is very little evidence to consider in this case. Mrs C says she never received a written contract from AD, so there is no documentary evidence of what was discussed or agreed between them. Given the fact that Mrs C's case hinges on alleged verbal misrepresentations and discussions which took place between her and AD, it's unfortunate that there is no direct testimony from Mrs C about those discussions or anything else which took place. There are no copies of letters or emails between Mrs C and AD. All we have is a set of submissions from her CMC which is, I'm afraid, very generic in nature. I've seen the same letter of claim submitted on behalf of other consumers in relation to claims about other timeshare termination/relinquishment providers. The letter even contains an accidental reference to one of these other providers. It is clearly not specific to Mrs C's set of circumstances and as a result I'm not able to attach much weight to it.

¹ For a situation like Mrs C's a chargeback could normally be attempted up to 120 days from the date of the transaction, or (if the service from AD was meant to have been provided later) 120 days from the date the service paid for was meant to have been provided by.

Given the generic nature of the evidence and the lack of any written contract or specific testimony from Mrs C, I'm unable to conclude AD induced her to enter the contract with them by making misrepresentations to her.

I've reached a similar conclusion regarding whether or not there is sufficient evidence of AD breaching its contract with Mrs C. Ultimately, there's no evidence of what AD had contracted to do for Mrs C, or by when. Given the nature of AD's business, I think it's safe to assume that it had agreed to arrange for the relinquishment of one or multiple timeshare or holiday club memberships. Mrs C's CMC says she had not heard from a particular timeshare provider since requesting to relinquish her membership in 2015, and so it wasn't possible for AD to fulfil the contract and she didn't require their services in the first place. However, given the lack of evidence of which timeshare or holiday club membership the contract with AD related to, I'm unable to reach a conclusion that AD failed to discharge its contractual obligations with Mrs C.

I'm aware that certain aspects of Mrs C's case bear a resemblance to scams which have been known to target timeshare and holiday club members. However, the level of evidence supplied to support Mrs C's case has been of such a limited standard that it has been difficult to conclude that MBNA acted unfairly or unreasonably in declining her section 75 claim. Indeed, I think this was a reasonable position for MBNA to take.

My final decision

For the reasons explained above, I do not uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 9 May 2024.

Will Culley
Ombudsman