

The complaint

Mrs A complains that MBNA Ltd won't refund her for payments for beauty products and clothing.

What happened

Mrs A made four separate payments using her MBNA credit card to a company I'll call 'B' in July 2023. The transactions were for £696, £690, £655, and £439 and these were for the purchase of beauty products and dresses. Mrs A says that when she went to collect all the items, B didn't have any of the items to give her so they said they would refund the money. Mrs A says she never received the refunds and couldn't contact B, so she contacted MBNA.

MBNA considered her dispute with B both the chargeback process and under a claim under section 75 of the Consumer Credit Act 1974 ("S75" and "CCA" respectively). It concluded that it didn't have to do anything further for Mrs A. Feeling that MBNA's position to be unfair Mrs A brought her complaint to this service.

Our investigator looked into the matter. Overall, she felt that MBNA had fairly treated Mrs A. However Mrs A didn't agree. 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.

I should make very clear that this decision is not about B which isn't a financial services provider and doesn't fall within my remit regarding either chargeback or Section 75. Whatever the issues there maybe with B here, and just because Mrs A says she has lost out, it doesn't necessarily follow that MBNA has treated Mrs A unfairly or that it should refund her. And this decision is solely about how MBNA treated Mrs A. I hope this important point is clear.

chargeback

There's no dispute that Mrs A's MBNA card was used here. So I don't think MBNA did anything wrong by charging these amounts to her account when it did. In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mrs A does here, MBNA (as the card issuer) can attempt to go through a chargeback process. Chargeback is a voluntary process which is decided simply on the facts of the dispute within the rules of the card scheme (not managed by MBNA). I don't think MBNA could've challenged the payment on the basis Mrs A didn't properly authorise the transactions, given the conclusion on this issue that I've already set out.

This service considers it good practice to raise chargebacks where firms feel that the chargeback has a reasonable prospect of success. Here MBNA raised the chargeback, so it followed good practice in doing so. This chargeback received a response as to why the transactions shouldn't be refunded. MBNA considered this carefully and decided not to take

the dispute to the final stage of the chargeback process. I've carefully considered everything Mrs A has said and all the evidence available. As such I'm not persuaded that Mrs A has lost out due to what MBNA did here. I don't think taking this chargeback further would have, on balance, been successful. So Mrs A hasn't lost out here due to what MBNA did.

The CCA

The CCA introduced a regime of connected lender liability under S75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier"). S75 says:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, she shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

I'm satisfied the CCA pre-requisites of financial limits and the Debtor Creditor Supplier arrangement are met. So the test is here, did MBNA consider Mrs A's S75 claim to it fairly, or in other words is there a breach of contract or material misrepresentation made out here against B that MBNA should fairly be held responsible for. It is of note that breach of contract and misrepresentation is all that MBNA can be accountable for. It isn't responsible for the customer service Mrs A received. Nor is it responsible for not meeting Mrs A's expectations, as is clearly the case.

To consider whether it's fair for MBNA to be held responsible for these amounts I've considered all the information available here. I've also considered this as a 'like claim' as S75 sets out. Although payments have been shown to be made and Mrs A has given some description of the contract agreed, I note there is very little documentary evidence showing exactly what was agreed in terms of the items to be provided, on what basis, timeline for delivery and what the exact terms of the contract were. Similarly although Mrs A points to receipts and emails which suggest she is to be refunded I've not seen any supporting information as to why she'd get a refund other than Mrs A's assertion that she was told. For MBNA to be held responsible I have to be persuaded that Mrs A has shown that it would be likely that she would be successful in court in the 'like claim' against B. Having considered all the evidence available I'm not persuaded it would be fair for MBNA to be held responsible for these transactions as I'm not persuaded Mrs A would be likely to be successful in such a 'like claim'. So I appreciate this isn't the conclusion Mrs A wishes to read. Nevertheless I'm not persuaded she would be MBNA has treated her unfairly.

I do appreciate that this isn't the decision Mrs A wants to read. And that it leaves her disappointed and at a loss that she's described suffering at the hands of B. But that doesn't make it fair for MBNA to refund her either as a result of how it considered chargeback or S75. Accordingly Mrs A's complaint about MBNA is unsuccessful and thus it doesn't have to do more.

My final decision

For the reasons set out above, I do not uphold the complaint against MBNA Ltd. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 16 December 2024.

Rod Glyn-Thomas
Ombudsman