

The complaint

Mr S complains that MBNA Limited hasn't handled a claim he's brought under section 75 of the Consumer Credit Act 1974 ("CCA") in an appropriate way.

What happened

Mr S part paid for dental treatment from a supplier, "E", using his MBNA credit card, in August 2023. The total amount Mr S paid for the treatment was £9,900, with £4,000 being on the MBNA card.

Mr S was extremely dissatisfied with the treatment he received from E. As well as complaining to E, he contacted the Care Quality Commission (CQC), the General Dental Council (GDC), a firm of solicitors, and the Equality Advisory Support Service (EASS).

In addition to contacting all of these organisations, Mr S contacted MBNA in September 2023. He considered he received poor service from MBNA when he asked for them to help get his money back. This included members of staff being unhelpful and discriminatory, being bullied by the disputes team, and delays in dealing with his claim.

MBNA responded to the complaint on 2 October 2023. It said that it agreed it had provided a poor level of service and paid Mr S £50 compensation for this. It explained that it could dispute the payment to E through a "chargeback", or it could consider a claim under section 75 of the Consumer Credit Act 1974. It said that both of these were "*evidence based process[es]*" and that if he was unhappy with the outcome of these claims he could raise a separate complaint.

Mr S was unhappy with this and contacted the Financial Ombudsman Service about his complaint with MBNA on 19 October 2023. He said he was unhappy about a number of things including:

- MBNA not actioning his section 75 claim.
- MBNA not handling his complaint well, for example by not giving him a reference number, deactivating his complaint, and passing him around different departments.
- MBNA asking him for documents which weren't relevant.

One of our investigators looked into Mr S's complaint. She said she would only be able to look at what had happened up to the point MBNA sent its final response to the complaint on 2 October 2023, and came to the following conclusions:

- Section 75 of the CCA allowed Mr S to claim against MBNA if E had breached its contract with him, or misrepresented something to him.
- MBNA hadn't yet made a decision on Mr S's claim, so her investigation was limited to considering what MBNA had done up to this point, in terms of looking into his claim.

- Mr S was making a claim about dental treatment, and MBNA needed testimony and evidence from both parties (Mr S and E) to determine what had happened, what had gone wrong, and any liability they might have. While Mr S had provided testimony, MBNA was entitled to ask further questions of him and of E to help it figure out what it needed to do next.
- There had been a breakdown of communications between Mr S and MBNA over the claim which MBNA had accepted some responsibility for and paid £50 compensation, and which was fair compensation at this stage.

Mr S was unhappy with our investigator's assessment. He said that he felt he had provided enough evidence to MBNA for it to make a positive decision on his claim and that it was delaying and bluffing to get out of paying. He said he'd provided a communication from E which clearly showed it wouldn't complete the dental work, and if E wasn't co-operating with MBNA and providing evidence then he shouldn't have to bear the consequences of that.

Because no agreement could be reached, the case has been passed to me to decide. Before making a decision I asked our investigator to query with Mr S some comments he had made about having felt discriminated against by MBNA during the process of trying to make a claim. Mr S did not reply to our investigator and I have now decided to proceed to determine the complaint.

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.

The complaint I've been asked to decide is a little unusual in that MBNA has not yet given Mr S an outcome to his section 75 claim, and so the complaint is about how MBNA has handled the claim up to the point Mr S complained about its claim handling, and not about any *decision* it has made on the claim.

Section 75 of the CCA gives some protection to consumers who have bought goods or services using a credit card. So long as certain conditions are met, the consumer can claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of the goods or services. Section 75 is not a type of insurance against absolutely anything that could go wrong with a purchase.

When presented with a section 75 claim by a consumer, I would expect a credit card company to carry out an investigation to establish if, legally, it needs to honour the claim. This is likely to involve asking for evidence from the claimant, and possibly also from the supplier they have purchased goods or services from. I would not expect a credit card company simply to accept whatever they had been told by their customer, but to gather evidence and weigh this up when deciding whether it needs to honour the claim.

The evidence here indicates that when Mr S first contacted MBNA, he was asked to go back to E first to try to resolve things. He was then asked to provide further information to support his claim. I don't think these were unreasonable requests. Having looked at the evidence Mr S provided to support his claim, I can understand why MBNA has been requesting further information from him. The information Mr S has provided appears to me to be unclear, incomplete, and confusing. MBNA tried to obtain evidence from E, which said it would only release with Mr S's consent. When MBNA asked for his consent, he declined to provide it. He is of course entitled to withhold his consent, but he should understand that this will make it more difficult for MBNA to investigate his claim and could potentially lead to adverse inferences being drawn about the merits of the claim.

I can see Mr S mentioned to MBNA that he thinks they've bullied him and discriminated against him, and they wouldn't treat him this way if he had an English name. Mr S hasn't been clear about how specifically he thinks MBNA bullied him or acted in a discriminatory way, so I'm not sure exactly which interactions he's had with MBNA have led to him feel this way. Based on the information I've seen, I think MBNA has asked the kinds of questions I would expect any card issuer to ask of a customer making a claim under section 75 of the CCA – and there's nothing wrong in that. While I don't doubt that Mr S is unhappy with how MBNA has responded to his claim, I've not seen evidence to suggest it has treated him unfairly or in a bullying or discriminatory manner.

MBNA accepts that it could have provided better service at times. It's paid him £50 compensation in recognition of this, and I think that's fair based on the information I've seen. I don't think it would be reasonable to require MBNA to pay anything further at this point.

My final decision

For the reasons explained above, I do not uphold Mr S's complaint about the way MBNA has handled his section 75 claim, up to 2 October 2023.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 August 2024.

Will Culley
Ombudsman