

## **The complaint**

Miss M complains MBNA Limited have acted unfairly by not refunding the payment she made for flights using her credit card.

## **What happened**

In August 2023, Miss M used an Introducer website, that I'll refer to as Company E, to book return flights from London to South America. She paid a total amount of £606.48 using her MBNA credit card, directly to the Airline.

Miss M flew to South America in September 2023, travelling a different route outbound than the return flight was scheduled to take. The return journey transited through the United States (US). But when she attempted to check in, Miss M was denied boarding by the Airline who explained she didn't have the necessary travel documents to transit through the US.

In order to return to London, Miss M booked a flight with another Airline via an alternative route.

After her return Miss M contacted Company E to complain, saying it hadn't been made clear she'd need a US visa or travel documents when transiting through the country. Company E responded, explaining as the ticket owners, any complaint would need to be dealt with by the Airline directly.

Miss M didn't agree so contacted MBNA, in an attempt to claim a refund. MBNA reviewed matters, but declined Miss M's claim, saying Company E had fulfilled their requirements and they didn't consider the Airline had breached their contract with her either. MBNA refused to change their position after Miss M complained, and so she referred the matter to this service.

An Investigator here looked into things but concluded there'd been no breach of contract or misrepresentation by Company E or the Airline. They said both Company E's terms and conditions as well as the Airline's put the onus on the consumer to ensure they had the necessary travel documentation and as such he didn't consider MBNA had acted unfairly.

Miss M didn't agree and asked for her complaint to be considered by an Ombudsman, saying the necessary terms and conditions hadn't been made available to her prior to booking. As such, the complaint was passed to me to decide.

I issued a provisional decision, explaining why I didn't intend to uphold this complaint. In this provisional decision I said:

*"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 approaches their credit card issuer with a problem with a purchase made using their card, there are two avenues via which the business can help.*

*The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme (Visa in this case), and which is often known as “chargeback”. They can also consider honouring a claim under section 75 of the Consumer credit Act 1974 (CCA). I will consider each of these mechanisms in turn below.*

*I think it would be helpful to explain at this point, in this decision I’m only able to consider how MBNA handled the dispute Miss M raised with them. I’m not able to consider the actions of Company E or the Airline, as that isn’t within the jurisdiction of this service for these types of complaints.*

*I’ll now go on to consider how MBNA handled the dispute.*

## **Chargeback**

*Chargebacks are governed by rules set by the card scheme to which the consumer’s card belongs. While a consumer cannot require their card issuer to attempt a chargeback, as it isn’t a right, our service does consider it good practice to do so, if it is within the time limits and there is a reasonable prospect of success.*

*MBNA didn’t attempt a chargeback in this instance, they said given the flight was available to Miss M, there wasn’t a reasonable chance it would have succeeded.*

*I’ve thought about whether that led to Miss M being unfairly denied the opportunity to have the money returned. Chargebacks can only be raised for reasons specified by the card scheme. If a particular dispute doesn’t fall neatly within one of those reasons, then it may not be a suitable dispute to raise via a chargeback.*

*Miss M says she was denied boarding by the Airline as she didn’t have the necessary travel documents to transit through the US. In the Airline’s terms and conditions, that Miss M agreed to when making the booking, it’s made clear that each passenger is responsible for having the necessary travel documents. So if Miss M didn’t have the necessary travel documents, I can understand why the Airline didn’t let her board.*

*Ultimately, having considered the reasons for which a chargeback can be raised under Visa’s rules, I think it unlikely a chargeback would have been successful under any reason code. I say that because the flight Miss M was scheduled to board, flew. So the service was available, Miss M just wasn’t on it. As such, I can see why MBNA didn’t consider there to be a reasonable prospect of success in this instance.*

*Given this, while MBNA didn’t attempt a chargeback, I don’t consider Miss M lost out as a result. Because I don’t think a chargeback would have succeeded in any case, because the Airline made clear it wasn’t responsible for travellers having the appropriate travel documentation.*

## **Section 75 of the CCA**

*Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.*

*One condition which needs to be met for section 75 to apply to a purchase is the claim must relate to an item with a cash price of over £100 and no more than £30,000. The cash price here met this condition.*

*Generally, for a section 75 claim to be successful there also needs to be what is known as a debtor-creditor-supplier (DCS) agreement in place. However for the reasons I'm about to explain I don't need to make a finding on this issue here.*

Has there been a breach of contract or misrepresentation?

*Miss M says she wasn't made aware she would need certain travel documents to transit through the US. She has relied on many of the same arguments to say Company E and the Airline both misrepresented matters, by not telling her what information was needed and also breached their respective contracts with her, by not sharing this information. So I've considered these in turn below.*

Misrepresentation

*For the purposes of this case, a misrepresentation is a false statement of fact which induces another party into a contract which leads them to suffer a loss.*

*Miss M has pointed to several statements made by the various parties involved here, but I've not seen persuasive evidence that anything said is untrue. As such I've not seen that any misrepresentations have been made.*

*In addition, not only do I consider there hasn't been a false statement of fact, I think the information Miss M wanted was available. I say that because, having reviewed Company E's website I note, it says:*

*"If you're travelling internationally, you may need travel documents such as a passport, travel visa, ETA, or ESTA"*

*More detail is then provided about specific international travel requirements for several countries including the US.*

*While Miss M hasn't pointed to this specifically, I think it's also important to say, throughout the booking process it was made clear her return flight would transit in the US.*

*Miss M hasn't pointed to any misrepresentations by the Airline, that she says she's relied on – her argument in terms of the Airline is in relation to a breach of contract. As I've also seen nothing that would represent a false statement by the Airline or Company E, I'm not able to conclude there has been a misrepresentation in this case, for the purposes of section 75.*

*I've therefore gone on to consider whether there has been a breach of contract.*

Breach of contract

*A breach of contract occurs when one party to the contract fails to discharge its obligation to the other. These obligations may come about as a result of the express term of the contract, or because of terms implied by legislation.*

*Miss M has said both Company E and the Airline failed in their contractual responsibilities to make all information available to her – regardless of the channel she purchased the ticket. She's also said they breached their contract with her by doing this.*

*By purchasing the tickets using Company E's website, Miss M was confirming she had read and agreed with Company E's various terms and conditions. Which I note include reference*

*to travelling with the required travel documents, such as visas and passports. So I can't say there has been a breach of contract as a result.*

*The Airline's own terms also go on to say:*

#### Rule 19 Travel Documents

- A. Each Passenger desiring transportation across any international boundary is responsible for obtaining prior to travel and presenting upon request at any time all necessary travel documents, which shall be in good condition and for complying with the laws of each country flown from, through or into which he/she desires transportation.....[Airline] also reserves the right to deny boarding to any Passenger whose necessary travel documents...do not comply with the laws of the specific country the Passenger is departing from, transiting through, or travelling to.

*Here, Miss M didn't have the necessary travel documents to transit through the US, so the Airline complied with their own terms and denied Miss M boarding. As such, I also can't say there has been a breach of contract by the Airline in not allowing Miss M boarding.*

*Miss M also says the Airline breached their contract with her because the same information wasn't made available via Company E, as on their own website – but I don't agree. I've not seen anything to say the Airline needed to do this. And in any case, as explained, the necessary information about what travel documents Miss M needed were made available to her prior to booking. The Airline's requirements for travel documents were no different to those provided by Company E.*

*Ultimately, the necessary information was made available to Miss M, before she booked her flights, and there's nothing within either Company E's terms and conditions or the Airline's to say information needed to be provided in a specific way. As such, I'm satisfied there has been no breach of contract in this case.*

*I appreciate this will come as a disappointment to Miss M, but I hope I've helped explain why in this case it's not been possible to say there has been a misrepresentation or a breach of contract. I've also not seen anything wrong in how MBNA handled Miss M's claim, so I don't intend to uphold this complaint."*

I invited both parties to respond with any further points or evidence they wanted me to take into account before I made a final decision.

MBNA accepted what I'd said and didn't have anything further to say.

Miss M also responded – she didn't agree with what I'd said and reiterated her concerns, saying the evidence she'd submitted hadn't been considered. In summary she said:

- Her complaint relied on Company E's term which said: *"The Rules and Restrictions of the Travel Providers of flight Travel Services are made available prior to making a booking and can also be reviewed here"*
- The snapshot of information Miss M provided from Company E's website showed the terms are not available prior to purchase, so this should be considered as a breach of contract.

Overall, Miss M said she'd evidenced there had been a breach of contract in this case.

## **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.

Having done so, I've reached the same outcome as set out in my provisional decision.

I'm sorry to see Miss M doesn't feel I've considered the evidence she's provided. I want to reassure her I've taken everything into account when coming to my findings, and that includes both the terms she's referred to and screenshots of the process to purchase flights that she provided.

As explained in my provisional decision, by purchasing the tickets using Company E's website Miss M was confirming she's read and agreed to the various terms and conditions. And having reviewed the process on Company E's website, and also shown in Miss M's screenshots, when pressing the button 'Buy now', it says:

*"By clicking on the button below, I acknowledge that I have reviewed the Privacy Statement and Government Travel Advice and have reviewed and accept the above Rules & Restrictions and Terms of Use"*

By pressing this button Miss M has confirmed she's read and agreed to everything that's been said in those documents, the section above, as well as all connected information found in those documents. And it is within those that the requirement to have the correct travel documents is set out. Given this, MBNA was entitled to expect the information had been read so I can't say they've acted unfairly in assuming Miss M had done so.

Taking everything into account, I can't conclude that MBNA has treated Miss M unfairly by declining her section 75 claim. This is because I don't think there has been a breach of contract or misrepresentation in this case.

## **My final decision**

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 13 November 2024.

Victoria Cheyne  
**Ombudsman**