

The complaint

Mrs C complains about a claim she made to MBNA Limited ("MBNA") in respect of a holiday having gone wrong.

What happened

In January 2024, Mrs C paid £1,026 using her MBNA credit card for a packaged holiday which was to take place later the same month. Once she arrived at the hotel, she was unhappy with her room and the service received. Mrs C has told us she experienced issues with the room as follows:

- a strong malodour in the room;
- hot water taps dispensing brown and murky water;
- wastewater coming back up from the shower drain;
- the toilet syphon running over constantly; and
- the constant reappearance of cockroaches in the room.

Additionally, she experienced the following:

- stolen money from the room;
- housekeeping failing to sweep away dead cockroaches when cleaning her room;
- being shouted at by a receptionist; and
- a bad experience at the hotel restaurant.

After the first night at the hotel, Mrs C complained to the hotel staff who sent an engineer to the room. This engineer managed to rectify the issue with the wastewater coming back up from the shower drain and the toilet syphon. All the other issues with the room remained for the five days Mrs C stayed there, until a representative from the packaged holiday company (who I'll call B) met with her and had the room changed for the last two days of the holiday.

Mrs C raised a complaint with B when she returned home. She said she must've killed around 40-50 cockroaches and was given an insecticide to spray on them which left her and her partner feeling ill. Mrs C has medical issues which specifically relate to breathing and had to use her medication at a higher frequency. She also experienced nausea, headaches and a sore throat from the chemicals. She said she suffered anxiety, upset and paranoia during this holiday and asked for 70% of the amount she paid to be refunded to her by means of a breach of contract claim under Section 75 of the Consumer Credit Act 1974 ("Section 75").

B reviewed her claim and offered her £60 to resolve it. Mrs C then took her claim to MBNA who said it couldn't raise a chargeback but under Section 75, offered her 20% of what she paid for the holiday. MBNA said she had accepted a voucher from B for £250, a room change and a late check out as recompense for the issues she experienced whilst at the hotel. In light of all else she had received, it thought 20% for the issues she experienced was fair. Mrs C told MBNA she had not received anything but a change of room for the last two days of her holiday, but MBNA maintained it thought the 20% it was offering was fair.

Mrs C brought her complaint to our service and the investigator said she thought a chargeback could have been raised. She also endorsed the offer of 20% made by MBNA. The investigator said that as this was a packaged holiday, and other elements of the package were utilised, she thought this amount was fair to refund Mrs C for the dissatisfaction she had with her room.

Mrs C disagreed and so the complaint has been passed to me to decide. I issued a provisional decision (which forms part of this decision) in which I set out the following:

“Chargeback

Chargeback is a voluntary scheme under which settlement disputes are resolved between card issuers and merchants, under the relevant card scheme. A card issuer will review the claim against the possible reasons for a chargeback and look at whether it would be able to make a successful claim for the customer. Card issuers do not have to submit claims and usually will only do so if it is likely to be successful. We don't expect them to raise a claim if there is little prospect of success.

In this particular case, MBNA has said that as Mrs C stayed at the hotel, the service was received, and thus there is no valid code under which it could raise a chargeback. Generally, claims such as this would be conditional on cancellation and limited to the unused portion of the services or goods. As Mrs C stayed at the hotel for the duration of the holiday, I find that the action MBNA took to consider a Section 75 claim rather than a chargeback was appropriate in these circumstances.

Section 75

Section 75 of the CCA allows – in certain circumstances – for a creditor (MBNA) to be jointly and severally liable for any claim by the debtor (Mrs C) of breach of contract or misrepresentation made by a supplier of goods and/or services (B). Both MBNA and Mrs C accept that this was a package holiday arranged through B, and under the relevant legislation¹ B is contractually liable to Mrs C for performance of the travel services.

So, I have considered that Mrs C booked a holiday, the main object of which is relaxation and enjoyment. Neither party is disputing that what Mrs C experienced fell some way short of this, such that there was a breach of contract. Rather the dispute concerns what is the appropriate quantum to put things right for Mrs C – so I will focus on this in this provisional decision.

There are certain things which would have caused Mrs C loss of enjoyment on her holiday, for example:

- *a terrible smell which caused her to sleep with the bathroom door closed and the balcony door open;*
- *brown and murky water coming out of the hot water taps; and*
- *the regular and persistent appearance of cockroaches for which she was provided with insecticide.*

Considering Mrs C did not have the same cockroach issue in the next room she was moved to, I am inclined to agree with her that the conditions in her room were likely the cause of the appearance of them. There is also the matter of repeated exposure to an insecticide which I do not doubt would've made her feel unwell, and an inability to use the hot water in the room. So I can see how this impaired the pleasure and enjoyment of the holiday she'd

¹ The Package Travel and Linked Travel Arrangements Regulations 2018 – Part 4, Regulation 15(1-2)

expected to receive.

Mrs C has admitted that she should have used the safe to secure her cash which she says was taken from the room. I understand housekeeping didn't clean well, and staff were rude and refused to assist her husband who is registered disabled when she was moving rooms. Mrs C has also told us about an incident at the hotel restaurant. I appreciate these were upsetting incidents and no doubt had an impact on their overall holiday experience. That's not the same as saying that these matters all formed part of her contract with B, or that those that might form part of the contract amount to a breach of it, rather than simply poor customer service.

There is no exact science to measuring Mrs C's likely loss here. Mrs C has asked for 70% of what she has paid, whereas MBNA has offered 20%. What constitutes a suitable remedy needs to take account of the extent to which Mrs C lost out on the relaxation and enjoyment that was the object of the holiday, while recognising that the package itself included aspects that were not impaired, such as the flights and other hotel amenities that were available for Mrs C to use and about which she hasn't complained. Mrs C also had the comfort of a new room for the last two days of the holiday.

That said, I find it difficult to believe that to stay in a room of this quality, one would achieve this purpose of relaxation or pleasure. I've also considered that Mrs C had booked a four-star hotel and the corresponding expectations she would have had about where she would be staying.

Having thought carefully about all of the above, I'm minded to propose that MBNA pay Mrs C 40% (that is, £410.40) of the cost she paid for the holiday. I consider this a fairer remedy and an appropriate sum to reflect the condition of the hotel room, the overall holiday experience and its impact on Mrs C."

I asked both parties to provide me with anything further before I reached a decision. MBNA confirmed it accepted the provisional decision and had nothing further to add, and Mrs C didn't provide a response.

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 neither party has provided anything further, I see no reason to depart from the findings I set out in my provisional decision.

My final decision

My final decision is that MBNA Limited should pay Mrs C £410.40 to settle this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 27 November 2024.

Vanisha Patel
Ombudsman