

## The complaint

Mr H complained about the way MBNA Limited dealt with a claim for money back after a flight he purchased using his credit card, was cancelled.

## What happened

The circumstances of the complaint are well known so I won't go over everything again in detail. But in summary, in August 2023 Mr H bought flights to travel in September 2023 from an airline I'll call V for around £238. V cancelled the return flight and emailed Mr H explaining his options. These included rebooking an alternative flight with V, receiving a refund by way of a credit, or obtaining a full refund of the fare. The email also explained what Mr H could do if these options didn't meet his needs and referred him to the general conditions of carriage for further details.

Mr H said he contacted V by phone to discuss his options. He said V only offered him a refund or a flight three days later and didn't offer any earlier flights including those with a different airline. Mr H said he asked for an earlier flight, but V said that this wasn't possible to book and suggested he try other airlines himself. Mr H said he was concerned about returning home so agreed to the flight offered by V three days later. However, Mr H said that as he wasn't offered options for food or accommodation, he found an earlier flight the next day with a different airline and extended his stay at a hotel, paid for an evening meal and paid for transport. He used his MBNA credit card to pay for these costs which totalled around £470.

Mr H said that he contacted V after taking the earlier flight the next day to let it know he no longer required the flight that was rebooked for him. The flight was cancelled, and Mr H was given a refund of around £11 after a cancellation charge was applied.

Mr H said he contacted V to claim for his expenses. V said that it wasn't liable for any consequential losses as Mr H didn't travel on the rebooked flight and voluntarily cancelled.

Mr H raise the matter with an ADR scheme, which declined it. He then made a claim to MBNA under Section 75 of the Consumer Credit Act 1974 (Section 75), saying V had failed to meet its responsibilities under Regulation (EC) No 261/2004 of the European Parliament and of the Council (the EC regulations). He argued V had not provided the rerouting options required under the EC regulations and that, because of this breach of contract, MBNA was responsible for refunding his expenses.

MBNA said it didn't believe it was liable for Mr H's consequential losses under Section 75, and it declined to refund him.

Mr H referred his complaint to the Financial Ombudsman. Our investigator considered the complaint but didn't uphold it. She didn't think there was a breach of contract. She said the express terms of the contract made reference to the EC regulations but didn't say that V would pay for Mr H's expenses. Therefore, MBNA couldn't be held liable for this.

Mr H didn't agree and considered that the EC regulations were implied into the terms, as well as other consumer protection legislation. He said that he wasn't presented with all of the options available under the EC regulations and said he felt he was coerced into taking the option of a rebooked flight three days later. And because V didn't offer him what he was entitled to under the EC regulations, he looked for a flight earlier and subsequently incurred additional costs.

As the matter remains unresolved it 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've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a courtesy but reflects the informal nature of this service in resolving disputes.

When considering what is, in my opinion, fair and reasonable, I must take into account relevant law and regulations; regulator's rules including Consumer Duty, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time.

I think it's worth explaining that I'm not considering a complaint about V, but rather I am looking at MBNA as the financial services provider and considering if it has acted fairly and reasonably in the way it handled Mr H's request for money back.

I can see Mr H feels strongly about this matter and I'm sorry he was unable to travel on the return flight he booked with V.

Section 75 is a legal protection that allows Mr V to bring a like claim against MBNA where there has been a breach of contract or misrepresentation by the supplier for the supply of goods or services paid for by a credit card, under the agreement it had with him. But there are certain conditions that need to be met for Section 75 to apply. I think the value of the transaction falls within the financial limits and the correct debtor-creditor-supplier (DCS) agreement was in place for a claim to be considered.

I have noted Mr H has said that he isn't claiming compensation but the expenses he incurred as a result of the flight being cancelled and his entitlement under the EC regulations. As V didn't refund him these costs he said there was a breach of contract.

The EC regulations are a set of consumer protection regulations which set out the minimum rights for passengers when their flight is delayed, cancelled or they are denied boarding. It explains the specific situations in which passengers have rights for assistance and rights to compensation in certain circumstances.

However, for me to consider if MBNA acted unfairly by declining the Section 75 claim, I would need to see that V's failure to pay compensation under the EC regulations amounted to a breach of contract or misrepresentation, which MBNA was liable for.

Having considered the following terms, I'm not persuaded they incorporate the rights under the EC regulations. While the contract refers to the EC regulations, I don't think this means that V was required to pay the additional costs Mr H incurred:

*"6.3. Amendment of the Contract of Carriage by (V)*

*6.3.1. We may need to change the scheduled flight time, date or route (including the Place of Departure or Place of Destination) subsequent to issuance of Your Itinerary. We will contact You to inform You of any such change via email, App or by telephone, at the email address or telephone number provided at the time of Your Booking. In case of a change of flight time, date or route, if You accept the changes in any form, the Contract of Carriage between You and Us will be deemed amended accordingly.*

*6.3.2. Except as otherwise provided by the Convention or Regulation 261, or any applicable regulation that may apply from time to time, if after You make Your booking, but before the scheduled departure time of Your flight We cancel your flight or change the scheduled departure time and (i) the change and/or the offered new flight is unacceptable to you, and (ii) we are unable to book you on an alternative flight which is acceptable to You, then upon contacting Our Call Centre, You may choose from the following options:*

*6.3.2.1. We re-book You on another flight operated by Us on the same or – if necessary – a comparable route, within 14 days before or 30 days after the scheduled date of departure of the delayed/cancelled flight, subject to availability of seats; or*

*6.3.2.2. You may cancel Your Booking and request a refund in credit on Your "customer account" for the cancelled flight and for the return sector, if applicable; or*

*6.3.2.3. You may cancel Your Booking and request the refund of the Total Fare paid for the cancelled flight and, if applicable, for the return sector.*

*6.3.2.4. If, after selecting an option from 6.3.2.1 – 6.3.2.3, You wish to change Your choice, You may do so according to the general rules in these Terms, and by paying the relevant fee."*

Mr H said that the EC regulations are implied into the contract. I've considered this but I can't see from the wording of the regulations that they are automatically written into the passenger's contract with an airline. I think Article 12 of the EC regulations is relevant here, and I think this suggests that the compensation under the EC regulations is not the same as the right to damages for a breach of contract.

*"Article 12 (Further Compensation)*

*1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation...."*

Because of this I'm persuaded the EC regulations is intended to be separate and sits alongside any other rights that a consumer might have – including the right to pursue damages for a breach of contract. I'm more satisfied than not, that the compensation a passenger might claim for under the EC regulations aren't implied into contracts. So while Mr H may have had a legal entitlement under the regulations under certain circumstances, I don't think this formed part of his contractual rights. I don't think it would be fair to hold MBNA liable for a like claim for compensation that Mr H may have been able to claim for under the EC regulations.

I'm satisfied V informed Mr H about the options he had available to him in line with the terms and conditions. Mr H accepted one of the options available to him under the term 6.3.2.1. As Mr H accepted a change and the contract of carriage had been amended, I'm persuaded that V calculated a refund based on Mr H voluntarily cancelling the rebooked flight. I don't think MBNA can be held liable for any financial loss Mr H incurred as a result of this. Therefore, I don't consider MBNA needed to do anything further in response to the claim. I think its response to the Section 75 claim was fair.

I've also thought about if there were any other options MBNA may have tried to help get Mr H's money back, like a chargeback, but I don't think this would have led to a different outcome.

While I know it'll disappoint Mr H, I'm not going to direct MBNA to refund him the additional costs he incurred.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 December 2025.

Amina Rashid  
**Ombudsman**