

The complaint

Mr R complains MBNA Limited trading as MBNA acted unfairly by not refunding a payment he made using his credit card.

What happened

In March 2025, Mr R used his MBNA credit card to pay for a package holiday with a company I'll refer to as J. He's said the total cost of the holiday was £2,683.53.

When Mr R arrived at the hotel in June 2025, he upgraded his room. Paying £513.37 to the hotel, using another card, not provided by MBNA. Mr R says the hotel told him the upgrade included, amongst other things, an adults-only floor, spa access with treatments, a stocked minibar, special dining and enhanced accommodation.

From the outset Mr R says there were problems and considered the upgrade had been misrepresented. This included issues specific to the upgrade, such as the floor not being adults only and treatments not included for the spa. Mr R also raised concerns about the quality of accommodation more broadly. As a result, Mr R says he was required to change rooms on a number of occasions, causing him to lose days of his holiday. While away Mr R says he complained to the hotel and J about the quality of the accommodation and the upgrade he'd paid for, which he followed up on his return.

J reviewed matters but didn't offer Mr R a refund. Overall, it said Mr R had received the service and upgraded room he'd paid for. It added that while there had been some service failures, the hotel had worked to resolve matters at the time and offered a complimentary meal during his stay.

As J didn't agree to provide a refund, Mr R contacted MBNA for help in getting his money back. He explained the upgrade he'd paid for was not as described and misrepresented. In addition, he said there'd been overall issues with the hotel, which included not having running water for periods of time.

MBNA considered Mr R's claim under Section 75 of the Consumer Credit Act 1974 (CCA). In doing so it contacted J for further information. J said Mr R entered into a separate contract with the hotel when purchasing his room upgrade. It went on to explain Mr R had paid for a deluxe room, with sea view, rather than the adults-only area, as he'd considered. As such it explained the correct room type and additional benefits were provided by the hotel in any case. J also said it wasn't responsible for the provision of the contract Mr R entered with the hotel and as such didn't agree a refund was due.

MBNA considered this, along with the information Mr R had provided, but concluded the upgraded room wasn't part of the package holiday he'd purchased from J. In addition, MBNA said there wasn't sufficient evidence there'd been a misrepresentation or breach of contract by J and declined Mr R's claim. As MBNA didn't change its answer after Mr R complained, he referred the matter to this Service.

An Investigator here reviewed matters but didn't think MBNA had acted unfairly. They said

the payment had been made directly to the hotel for the upgraded room, using a different card, meaning a dispute would not have succeeded, had MBNA pursued one. They also said there was no evidence there'd been a misrepresentation or breach of contract with the original booking and Mr R had accepted the upgraded room.

Mr R didn't agree and in summary said, many of the issues he'd raised were not isolated to the upgrade he paid for and related to service he'd received under the payment he'd made to J using his MBNA credit card. In addition, he considered upgrading didn't remove J's obligations under the original package contract. Mr R also said J had attempted to arrange an alternative accommodation, and the hotel offered complimentary meals, which he considered indicated an awareness of the issues.

To resolve matters Mr R considered MBNA should pay:

- £513.37 (the total cost of the upgrade)
- 60% of the holiday cost, paid to J, due to the severity and duration of the failures.

As no agreement has been reached, 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.

In doing so, I've taken into account the relevant industry rules and guidance, including Consumer Duty and what would be considered as good industry practice.

I think it would be helpful to explain that, in this decision I'm only able to consider how MBNA handled the dispute Mr R raised with it. I'm not able to consider the actions of J or the hotel, as that isn't within the jurisdiction of this Service for these types of complaints.

In this decision I've thought about whether MBNA has treated Mr R fairly in declining his claim for a refund – thinking about the potential avenues of redress, for Mr R, in turn below.

Chargeback

Chargeback is a process whereby a card issuer – MBNA, can ask the merchant for a refund, via rules set by the card scheme provider. Chargebacks are not guaranteed to succeed, the recipient of the funds can choose to challenge or defend a chargeback if it doesn't think it is valid. A consumer also cannot require their card issuer to attempt a chargeback, as it isn't a right.

MBNA doesn't appear to have attempted a chargeback in this case. It's given two reasons for this. Firstly, Mr R's concerns related to the room upgrade – which wasn't paid for using its card. That seems reasonable and as our Investigator has said, I don't think a chargeback would have had a reasonable prospect of success here. That's because in order for MBNA to dispute the transaction, its card needed to be used to fund the transaction, which wasn't the case in relation to the upgrade.

For completeness, it doesn't appear MBNA raised a chargeback in relation to the payment Mr R made to J either, but I don't think that's unreasonable. MBNA's system notes say he didn't have chargeback rights as he stayed for the full duration of the stay. In order for MBNA to pursue a chargeback, it would have needed to do so under the card scheme rules, relevant to Mr R's card, here that's Visa.

Visa's scheme rules make clear that a chargeback situation like Mr R's (where services are alleged not to have been described) can only be made for the "unused portion" of the service. There is also separate guidance for Visa, that gives examples of this, which suggest the "unused portion" refers to nights where the accommodation has not been stayed in.

Given this, I think even had MBNA pursued a chargeback for Mr R relating to the payment made to J, there would have been no real prospect of success. That's because he stayed at the property and didn't cancel. As such, I don't think Mr R has lost out as a result of MBNA not pursuing a chargeback in this instance.

Section 75

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 a breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

Here Mr R used his MBNA card to pay J and the payment was within the cash price limits necessary for section 75. So the necessary conditions have been met in relation to the purchase for the initial package holiday he booked.

However, Mr R upgraded his room on arrival and made a payment of £513.37, directly to the hotel, using another card. That means he can't make a claim against MBNA for any misrepresentation or breach of contract made by the hotel in relation to the upgrade. I will come on to this in more detail below.

I also need to be persuaded there has been a breach of contract or misrepresentation and if there has, what the resolution should be.

Has there been a breach of contract or misrepresentation?

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.

Mr R's primary argument here is that he was told the upgrade included, amongst other things, an adults-only floor, spa access with treatments, a stocked minibar, special dining and enhanced accommodation. He's said he didn't receive these after making the additional payment and as such, considers the upgrade was misrepresented to him.

However, I want to start by saying, based on what I've seen, this purchase formed an entirely separate contract. Mr R has said he wasn't provided any paperwork at the time and was verbally given an explanation of what the upgrade would include. However, although Mr R was on a package holiday supplied by J, it doesn't mean J is responsible for everything he's told or any upgrade he purchased while on that holiday. The contract he entered with J included a certain room type, which he subsequently chose to upgrade directly with the hotel. Based on the information I've seen, it appears the explanation he was given that led him to upgrade, was from the hotel. As such I can't fairly say J was responsible for any misrepresentation that may have been made related to this.

I can't say whether Mr R has a case against the party that offered him the upgrade, as that isn't something I can decide. As our Investigator has said, Mr R can contact the provider for the card he used, if he'd like to pursue this. However, this also means it isn't something I can say J and subsequently MBNA is responsible for.

I've also seen nothing that would represent a false statement of fact by J, which induced Mr R to enter a contract with it, when he initially purchased the package holiday. So, 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.

As explained above, I'm persuaded, based on the evidence available that Mr R entered a separate contract with the hotel when he purchased the upgrade. He understood this to include several additional benefits, including an adults-only floor and spa access with treatments, amongst other things. If these weren't received, it's possible the contract he entered with the hotel could be said to have been breached. However, as this wasn't funded by MBNA, it can't be held responsible for any breach of contract that may have occurred.

The room type Mr R was allocated when he purchased his package holiday with J was never utilised – because he upgraded straight away. That means any problems Mr R incurred, as a result of the room he was in, occurred following the upgrade he'd entered. Not as a result of the booking and contract he entered with J. As such, while Mr R had to move rooms on a number of occasions, which I can appreciate would have been inconvenient, that isn't something MBNA can be held responsible for.

That said, Mr R has raised concerns about issues he incurred with the hotel more broadly, including there being no running water for a short periods of time during his stay. This appears to have impacted the whole hotel, so even had he not upgraded the room, it seems more likely than not, this would still have impacted him. So, I've considered whether this could be considered to be a breach of contract.

Our Investigator has said there is no evidence to show there has been a breach of contract with the original booking. While they haven't gone into detail around this, I'd agree; brief interruptions to water supply, and other issues Mr R has raised, such as loose tiles and fittings, while I appreciate may be frustrating, don't amount to a breach of contract in this case.

Having reviewed everything here, I can't see any defined standards specific to the concerns Mr R has raised about the quality of the hotel, and I should say, are subjective. But just because Mr R was unhappy with these issues, doesn't mean there has been a breach of contract.

It would have been an implied term of Mr R's contract with J that the service it provided would have been carried out with "reasonable care and skill". It would also have been a requirement for J to accurately describe the accommodation.

Within the CRA reasonable care and skill isn't defined, allowing the standard to be flexible between sectors and industries. Mr R has provided several images of the accommodation, along with testimony of the impact this had. However, having reviewed these, I'm not persuaded there is sufficient evidence here that J hasn't provided a service with reasonable care or skill or that it wasn't as described.

While I accept there were some areas of the accommodation where tiles and other fittings were loose, and Mr R says injury was incurred as a result, I've not seen enough to say this amounted to a breach of contract. Many of the images Mr R provided seem to be general wear and tear and what I'd expect to see – this however is not grounds for concluding there

has been a breach of contract.

In relation to the water outage, I also don't think this could be considered a breach of contract. While it caused Mr R inconvenience, it appears to have only lasted for short periods of time. As a result, the hotel made a goodwill gesture and offered Mr R a meal voucher, which I understand he chose not to accept. So, while it acknowledged there was a problem, I don't think it amounted to a breach of contract.

In regard to the complimentary meal and support Mr R says J offered, I don't consider this means it accepted there'd been a breach of contract either. Merchants can make offers such as this, in order to try and resolve matters, but it doesn't therefore mean a breach of contract has occurred. It can simply be a way of acknowledging problems and making a gesture of goodwill, which seems fair in the circumstances.

Taking everything into account, I haven't seen there has been a breach of contract in this case, for which MBNA can be held responsible for.

Overall, while I appreciate this will come as a disappointment to Mr R, I don't think MBNA acted unfairly. While it didn't pursue a chargeback, I don't think this had a reasonable prospect of success in any case. Because the upgrade wasn't paid for using the MBNA card, and Mr R stayed at the accommodation. And section 75 is prescriptive in the way a claim can be made and based on what I've seen, there's no evidence there has been a breach of contract or misrepresentation by J. So, I don't think MBNA acted unfairly in declining Mr R's section 75 claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 May 2026.

Victoria Cheyne
Ombudsman