

## **complaint**

Miss L complains about a holiday she bought from a travel firm. She brings her complaint against MBNA Limited (MBNA) under section 75 of the Consumer Credit Act 1974.

## **background**

Miss L booked accommodation and transport with a travel firm using her MBNA credit card. She says that the hotel was not of the standard she expected and associated complaints.

Miss L complained to MBNA about the travel firm under section 75 but it refused her claim. In summary, it said that the travel firm which Miss L paid on her credit card was acting as agent and was not the supplier of the accommodation. So there was not the correct 'debtor-creditor-supplier' relationship for a valid claim under section 75.

Our adjudicator did not recommend this complaint be upheld. He considered that the travel firm was not the supplier but acting as an agent. So he concluded there was no valid 'debtor-creditor-supplier' relationship between the parties for Miss L to have a claim against MBNA. The adjudicator also considered whether what Miss L bought was a packaged holiday and decided it wasn't for the purposes of applying section 75.

Miss L has disagreed. In summary, she says that she has a valid claim because the travel firm supplied her with a package holiday.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I thank both parties for their submissions. Where there is a dispute about what happened I make my findings on the balance of probabilities – which is to say, what I find most likely to be the case based on the evidence available and the wider surrounding circumstances.

I see Miss L has made reference to decided cases which have been heard in court. While this service will take into account all relevant law, guidance and good practice, our decisions are based on what is fair and reasonable in the individual circumstances of each complaint.

### *does section 75 apply?*

Section 75 says that, under a very specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from her or her credit card provider.

There can only be a valid claim under section 75 if there is a valid 'debtor-creditor-supplier' agreement and if it can be shown that the supplier misrepresented the contract and/or acted in breach of contract. Under the rules of section 75 I can deal with a claim for breach of contract or misrepresentation against the supplier of goods or services which directly received the card payment.

In this case the credit card payment for the accommodation was made to the travel firm Miss L booked with. So what is it responsible for? If it was providing a holiday 'package' then it would be responsible for those travel and accommodation elements which formed the package. I have looked at the booking along with the relevant legislation and in particular

The Package Travel, Package Holidays and Package Tours Regulations 1992 (the 'Regulations').

I see that the travel firm's website terms and conditions state that they act as "agents". So Miss L is not contracting with them, but instead is entering separate contracts with the third party suppliers for each element of the holiday – the flights, the accommodation, and/or other tourist services. This is supported by the receipt provided in a letter it sent dated 8<sup>th</sup> May 2014 which shows that the separate elements of the holiday are with different third party suppliers.

Miss L says she thought she was buying a 'package' holiday. However it seems that the website required Miss L to choose the various elements of the holiday in terms of flights, transfers and accommodation that she wanted. These were shown in different sections and it doesn't seem that the choices she made had been rolled up together and advertised for sale to her prior to her making those selections.

Before she travelled Miss L was sent a variety of documents including an ATOL Certificate (which shows different elements of the holiday being provided by different named providers), a flight voucher (showing a different named supplier) and a transfer voucher (showing a different named supplier).

The flight and transfer vouchers say that those vouchers must be presented before travel as no tickets are sent out. So it seems Miss L probably received these documents before travelling.

I don't think that the holiday was sold as a 'package' under the Regulations. So I am satisfied that the travel firm which Miss L paid is not the supplier of the accommodation which is the subject of her complaint. The supplier in this case appears to be the third parties. So the 'debtor-creditor- supplier' chain for a valid section 75 claim is not present for me to consider her complaint against MBNA for breach of contract or misrepresentation by the travel firm.

I understand that this is not the outcome Miss L wanted. I am not saying that she does not potentially have other avenues available to pursue her complaint – only that taking into account under the defined limits of section 75 I don't think it's fair or reasonable to uphold this complaint.

### **my final decision**

For the reasons given my final decision is that I do not uphold this complaint against MBNA Limited. Under the rules of the Financial Ombudsman Service,

I am required to ask Miss L to let me know whether she accepts or rejects my decision before 12 October 2015.

Rod Glyn-Thomas  
**ombudsman**