

complaint

Mr M complains that MBNA Limited won't refund to him the money that he paid for orders on two crowdfunding platforms. His complaint is made against MBNA under section 75 of the Consumer Credit Act 1974.

background

Mr M used his MBNA credit card in December 2015 to make payments of £147.69 and £113.61 for orders on two crowdfunding platforms. He didn't receive the items that he'd ordered so he claimed refunds from MBNA under section 75. It responded to one of his claims – which it didn't uphold – but not the other claim. So Mr M complained to this service. After it had been contacted by this service, MBNA responded to the other claim – which it didn't uphold – but it credited £50 to Mr M's account because of the poor service that he'd received.

The adjudicator didn't recommend that this complaint should be upheld. She said that Mr M's payments were made to two crowdfunding platforms and his payments were then passed to the companies from which he was expecting to receive items. So she said that the debtor-creditor-supplier relationship required to establish a claim under section 75 wasn't present. And she said that the crowdfunding platforms had fulfilled their contractual obligations by passing his payments to two crowdfunding campaigns. She also said that Mr M had contacted MBNA about the payments too late for it to make chargeback claims. So she concluded that she was unable to request MBNA to do anything further to assist Mr M.

Mr M has asked for his complaint to be considered by an ombudsman. He says that he was misled and that he was given order numbers (not investment numbers) for the items that he'd ordered.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier.

For these payments, Mr M is the debtor because he used his credit card to make payments, MBNA is the creditor because it provided credit to Mr M and the suppliers are the companies that Mr M was expecting to supply him with the items. But his payments were made to the crowdfunding platforms and not to the suppliers. So there's no direct relationship between MBNA and the suppliers – and for that reason Mr M's section 75 claims about the suppliers of the items can't succeed. And the crowdfunding platforms have passed his payments to the suppliers – as they agreed to do – so there's been no breach of contract or misrepresentation by them.

Even if there had been a debtor-creditor-supplier relationship, I consider it to be clear from the evidence that Mr M was making a crowdfunding investment. And it's the nature of such investments that there is considerable risk that any items ordered may not be received. That

is one of the reasons that they are often called perks. So I'm not persuaded that there've been breaches of contract or misrepresentations by the suppliers of the items.

Mr M contacted MBNA about his payments in September 2017 – about 21 months after the payments had been made. That was too late for it to make any chargeback claims and there was no reasonable prospect of a successful chargeback claim in these circumstances.

MBNA has accepted that it provided poor customer service to Mr M. It initially only responded to his claim about one of his payments and there were delays in it sending a final response letter to Mr M. Then it only responded to his claim about the other payment when it was contacted by this service. But it has credited £50 to Mr M's account because of the poor service that he received. And I consider that to be fair and reasonable in the circumstances.

For these reasons, I find that it wouldn't be fair or reasonable for me to require MBNA to refund to Mr M either of the payments that he made to the crowd funding platforms – or to take any other action in response to his complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 June 2018.

Jarrold Hastings
ombudsman