

## **complaint**

Mrs F complains that MBNA Limited won't refund to her account the money that was paid for some imported goods. She also complains about the service that's been received from MBNA. Her complaint is made against MBNA under section 75 of the Consumer Credit Act 1974 and the chargeback rules – and she's being helped with it by her husband.

## **background**

Mrs F's husband is an additional card holder on her credit card account with MBNA and he used his credit card to make two payments for some goods to be imported. He didn't receive those goods so he contacted MBNA. The first payment was for £753.10 and MBNA was able to make a successful chargeback claim for that amount so it was refunded to Mrs F's account. The second payment was made in November 2016 for £2,334.43 but the supplier of the goods successfully defended MBNA's chargeback claim. And MBNA concluded that it wasn't liable to refund that payment to Mrs F under section 75. But it accepted that there was a delay in processing the two chargebacks and it paid £75 as a gesture of goodwill. Mrs F wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She said that Mrs F didn't have a contract with the supplier for the goods so the debtor-creditor-supplier link that's required for a claim under section 75 was broken. And she said that, even if Mrs F had made the payment, it was made to an online marketplace and not to the supplier - so the debtor-creditor-supplier link wouldn't have existed. But she said that MBNA's payment of £75 for the delay in processing the chargeback claims was fair and reasonable.

Mrs F's husband – on her behalf - has asked for this complaint to be considered by an ombudsman. He has responded in detail and says, in summary, that:

- the adjudicator didn't investigate why the chargeback for £2,334.43 was unsuccessful;
- Mrs F is the beneficiary of the purchase and sale of the goods – and she has the account with the online marketplace and the card and account are in her name;
- he's looking after Mrs F's financial affairs because of her ill health;
- he was told to send the goods back to the supplier and the chargeback should've been successful;
- he's entitled to a refund under the online marketplace's returns and refund policy; and
- he refers to his rights under the Sale of Goods Act 1979, other legislation and specified case law.

## **my findings**

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

There's no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there's a reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made. MBNA made chargeback claims for both payments. The claim for the payment of £753.10 was successful – but the supplier defended the claim for the payment of £2,334.43. MBNA said that the invoice referred to different products than the goods that Mrs F's husband had purchased - and the supplier says different goods were returned to it than the

products that it had supplied. MBNA says that it was unable to challenge that further so passed the claim to be reviewed by its section 75 team. I consider that MBNA has dealt with the chargeback claims fairly and reasonably – and I'm not persuaded that it was required to take any further action on the unsuccessful chargeback.

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.

In this case Mrs F is the debtor because she's been provided with credit by MBNA, it's the creditor and the supplier is the supplier of the goods. But I'm not persuaded that there's enough evidence to show that the goods were supplied to Mrs F. Although the account with the online marketplace was in Mrs F's name, I consider it to be more likely than not that the goods were supplied to Mrs F's husband for his business and that he was then going to sell the goods for a profit. I'm not persuaded that there's enough evidence to show that Mrs F was involved in that business. And the payment was made by Mrs F's husband to an online marketplace – and not to the supplier. So for those reasons, I'm not persuaded that there was the direct relationship between the debtor, the creditor and the supplier in these arrangements that's required for a successful claim under section 75.

Mrs F's husband has referred to the online marketplace's returns and refund policy and to the rights given under legislation and case law. But none of those would give him (or Mrs F) a right to claim a refund from MBNA. They provide rights against the supplier of the goods. But Mrs F would only be able to make a claim against MBNA for the supplier's breach of contract or misrepresentation under section 75. And for the reasons I've given above, I'm not persuaded that Mrs F is able to make a claim under section 75 in these circumstances.

MBNA has accepted that there was a delay in processing the two chargebacks and it paid £75 as a gesture of goodwill. I'm not persuaded that there's enough evidence to show that MBNA's representative was rude to Mrs F's husband or that, other than that delay, it's customer service has been below an acceptable standard.

I sympathise with Mrs F for her health issues, but I find that it wouldn't be fair or reasonable for me to require MBNA to refund the payment of £2,334.43 to her account - or to take any other action in response to her complaint.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 20 November 2017.

Jarrold Hastings  
**ombudsman**