

complaint

Mr G complains that MBNA Limited will not refund to him the money that he paid for a holiday club membership. His complaint is made against MBNA under section 75 of the Consumer Credit Act 1974.

background

Mr G paid £7,300 for a holiday club membership in 2009, £1,500 of which was paid using his MBNA credit card. He says that the membership was misrepresented to him and asked MBNA to refund to him, under section 75, the full amount that he paid for the membership. He was not satisfied with MBNA's response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. She concluded that the debtor-creditor-supplier relationship required for a claim under section 75 to be successful was not present in this transaction. She also concluded that the company to which Mr G's credit card payment was made and the company which was to provide the holiday club membership were not associates.

Mr G has asked for his complaint to be considered by an ombudsman. He has provided a copy of his membership certificate which he says shows the connection between the two companies. He also says that he understood that by using his credit card he would be protected and was not aware of what he calls this "trickery clause". He feels that the obstructions to his claim are not fair.

my findings

I have considered all the available evidence and arguments to decide what is 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 has 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 the debtor is Mr G because he made a payment using his MBNA credit card, the creditor is MBNA and the supplier is the company that was to provide the holiday club membership. However, Mr G's credit card payment was made to a company that was not the supplier and the required relationship between MBNA and the supplier is therefore not present.

Although there may be a "*connection*" between the two companies as shown on the membership certificate that has been produced by Mr G, for section 75 to apply in these circumstances, the two companies would need to be "*associates*" as defined in section 184 of the Consumer Credit Act 1974. I am not persuaded that there is enough evidence to show that the companies are "*associates*" as defined in that section. Although I sympathise with Mr G for the difficulties that he has encountered, I consider that the debtor-creditor-supplier relationship required for a claim under section 75 to be successful is not present in these circumstances. I therefore do not consider that it would be fair or reasonable for me to require MBNA to refund to Mr G the money that he paid for the holiday club membership or to pay him any other compensation.

my final decision

For these reasons, my decision is that I do not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 12 January 2015.

Jarrold Hastings
ombudsman