

complaint

Mr C says MBNA Limited has acted unfairly by not refunding him money paid for a faulty item on his credit card, contrary to section 75 of the Consumer Credit Act 1974.

background

Using his MBNA credit card, Mr C bought a laptop through Amazon marketplace. A number of months later Mr C says the laptop developed problems. MBNA tried to carry out a chargeback but he'd had the item too long for the chargeback to be successful.

Mr C says MBNA should refund him what he'd paid for the goods under section 75 of the Consumer Credit Act 1974 (the CCA). MBNA says its obligations under section 75 of the CCA don't apply to this transaction.

Our investigator didn't uphold Mr C's complaint. He didn't think section 75 of the CCA applied in this case because the necessary debtor-creditor-supplier relationship wasn't in place. Mr C disagrees and has asked for an ombudsman to look at everything afresh. So his complaint's been passed to me to look at.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't uphold Mr C's complaint.

Amazon sells products directly to consumers. But it also acts as an intermediary to facilitate transactions between consumers and other third parties. And that's what happened here. The company that sold him the goods was a third party not connected Amazon.

Section 75 of the CCA says a consumer can recover money from their credit card provider paid under a contract with a supplier - but only in very specific circumstances. That's when a payment is made under a 'debtor-creditor-supplier' agreement. And it's established the supplier was in breach of contract, or misrepresented the goods it was selling.

Here Mr C – who would be the debtor - paid for the goods using his MBNA credit card. MBNA was the creditor. The third party who provided the goods to Mr C was the supplier.

The credit card payment was made to Amazon. But as the contract to buy the goods was between Mr C and third party, Amazon was just acting as a third party agent to match that third party with Mr C. Amazon would've been paid by MBNA and in turn it would've paid the third party.

As Amazon wasn't the supplier – just the facilitator for the transaction to take place - and as MBNA had no relationship with the third party, I don't think there's an unbroken chain between debtor-creditor-supplier in this case. MBNA's relationship was with Amazon and Amazon isn't part of the chain. So the debtor-credit-supplier agreement breaks down.

So whilst it's possible Mr C may have a valid claim against the third party for breach of contract, that isn't a claim MBNA is equally liable for under section 75 of the CCA. It would've been different, for example, if Mr C had bought the laptop directly with the third party using his MBNA credit card.

I've taken into account all of Mr C's comments including what he says about Amazon's returns policy, it still being 'in the picture' after the transaction was completed, suppliers being covered under Amazon's safe buying guarantee and there being a commercial entity agreement between Amazon and the third party. But the provisions of section 75 of the CCA are strict. And, in this particular case, I don't think these things mean Amazon is associated with that third party to the extent needed for it to become the supplier in the debtor-credit-supplier agreement.

my final decision

I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 October 2016.

David Curtis-Johnson
ombudsman