

The complaint

Ms R complains that MBNA Limited won't refund to her the money that she paid for some holiday club membership points rights. Her husband is also involved in her complaint and she's being represented by a claims management company.

What happened

Ms R and her husband entered into a series of purchase agreements to buy holiday products from a holiday company between August 2011 and January 2013, including a purchase of 20,000 membership points rights in March 2012 and a purchase of 2,000 membership points rights in about November 2012. The total price payable for the March 2012 purchase was £10,000 and Ms R used her MBNA credit card to pay £2,000 of that amount, with the payment being charged to her credit card account in April 2012. I understand that the balance of £8,000 was paid by other means. The total price payable for the November 2012 purchase was £4,500 and Ms R used her MBNA credit card to pay all of that amount, with the payment being charged to her credit card account later that month.

Ms R's representative, on behalf of Ms R, made a claim to MBNA in July 2017 under section 75 of the Consumer Credit Act 1974. MBNA said that it was of the view that there was no debtor-creditor-supplier agreement in relation to Ms R's contracts with the holiday company because the merchant that debited her account wasn't the holiday company so she didn't have a valid section 75 claim. Claims were also made to other providers of the finance that Ms R and her husband had used to pay for their purchases – and those claims are being dealt with separately.

MBNA then said in a final response letter that was sent to Ms R's representative in February 2018 that it considered that the debtor-creditor-supplier relationship was broken so it had no liability under section 75. Ms R wasn't satisfied with MBNA's response so a complaint was made to this service that the holiday company was in breach of the contract by misrepresenting the contract to Ms R and her husband and breaching the EU Timeshare Directive. Ms R's complaint form said that the transaction that she was complaining about took place in August 2011.

Our investigator didn't recommend that Ms R's complaint should be upheld as she didn't think that MBNA's decision to turn down Ms R's claim was unfair or unreasonable. She said that the claim letter refers only to a *"fractional points membership"* and not the membership points rights that Ms R and her husband had bought in March and November 2012 and for which Ms R had made payments using her MBNA credit card. She didn't think that MBNA had a claim to answer and she didn't think that MBNA did anything wrong by declining Ms R's claim.

Ms R's representative has provided a generic submission from a legal counsel about the holiday company and the unfair terms that it uses. As Ms R hasn't accepted our investigator's recommendation, I've been asked to issue a decision on this complaint.

What I've decided – and why

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 agree with our investigator that Ms R's complaint shouldn't be but upheld for these reasons:

- Ms R's claim was made under section 75 which 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 (provided that certain criteria set out in that section are met);
- Ms R's complaint form says the holiday company was in breach of the contract by misrepresenting the contract to Ms R and her husband and breaching the EU Timeshare Directive and Ms R's complaint form says that the transaction that she's complaining about took place in August 2011;
- I'm not determining the outcome of Ms R claim under section 75 in this decision as only a court would be able to do that but I'm considering whether or not MBNA's response to her claim was fair and reasonable in the circumstances;
- Ms R and her husband entered into a purchase agreement in August 2011 to buy 6,000 membership points rights from the holiday company for a total price of £6,500 but I've seen no evidence to show that Ms R used her MBNA credit card to pay any part of the price payable so I don't consider that Ms R is able to make a section 75 claim to MBNA about that purchase;
- Ms R did use her MBNA credit card to make payments relating to the purchases that she and her husband made in March and November 2012 but I've seen no evidence to show that the membership points rights that they bought at those times were misrepresented to them, that there's been a breach of contract relating to those purchases or that there's been a breach of the EU Timeshare Directive for which MBNA would be liable under section 75;
- our investigator said that Ms R's representative's claim letter refers only to a *"fractional points membership"* and not the membership points rights that Ms R and her husband had bought in March and November 2012 but the only information that Ms R's representative has provided in response to our investigator's recommendation is a generic submission from a legal counsel about the holiday company and the unfair terms that it uses;
- MBNA said in September 2017 in response to the claims that had been made to it that it was of the view that there was no debtor-creditor-supplier agreement in relation to Ms R's contracts with the holiday company because the merchant that debited her account wasn't the holiday company so she didn't have a valid section 75 claim – and it said in its final response letter that it considered that the debtor-creditor-supplier relationship was broken so it had no liability under section 75;
- one of the criteria for a claim under section 75 is that there must be a debtor-creditor-supplier agreement but, as Ms R's credit card statements show that the payments of £2,000 and £4,500 that she made using her MBNA credit card were made to a trustee, and not to the holiday company (even though the holiday company is also referred to on the statements), it's now possible that there was no such agreement in place following the High Court's judgment last year in the case of *Steiner v National Westminster Bank plc*;
- but as I'm not persuaded that there's been a misrepresentation or a breach of contract for which MBNA would be liable under section 75, I consider that there's no

need for me to make any finding as to whether or not there were debtor-creditor-supplier agreements in these arrangements;

- I sympathise with Ms R and her husband for the issues that they've had with the holiday products that they bought from the holiday company, but I consider that MBNA's response to the claims that had been made to it was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require MBNA to refund to Ms R any of the money that she paid for the membership points rights that she and her husband bought from the holiday company in March and November 2012, to refund to her any of the money that she's paid for any other holiday products, to pay her any compensation or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Ms R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 5 January 2024.

Jarrold Hastings
Ombudsman