

The complaint

Mr J complains about the way MBNA Limited handled his request for help getting money back in respect of flights he paid for using his MBNA credit card.

What happened

In November 2021 Mr J bought flights for himself and two others from an airline I'll call R, via a travel agent I'll call M. He paid around £260 to M (from a payment source that was not his MBNA credit card) and was due to travel in February 2022. The booking confirmation that M sent to Mr J apportioned the cost of the flights as follows:

Mr J	£72.98
Person two	£72.98
Person three	£72.97
Checked baggage (listed against Mr J)	£47.99

In January 2022 R told Mr J that the flight had been cancelled. R said Mr J could either re-route to his destination or get a full refund. R said *"If you avail of re-routing at the earliest opportunity, you will be entitled to reasonable meals, refreshments, accommodation, and transport between the airports and / or your place of accommodation, as applicable. If this is not offered, please keep all itemised receipts for any reasonable expenses and submit these to (R) to claim back your expenses"*

Mr J said he agreed to be re-routed from an airport that was around 190km away from the one he was originally scheduled to fly from. Close to when Mr J was due to fly, he made some changes to his flight, adding priority boarding and two cabin bags. R sent Mr J a new travel itinerary showing the cost of the re-routed flight with the add-ons was around £17.60 more than the original flight. Mr J paid the £17.60 using his MBNA credit card.

Mr J booked a taxi to get him and his family to the new airport. This cost him around £85. Mr J asked R to reimburse him the cost of this and his refreshments at the airport. R paid him the cost of the refreshments but not the taxi. It said this was because public transport was available to Mr J to use, so he didn't need to get a taxi.

Mr J claimed the cost of the taxi from MBNA under Section 75 Consumer Credit Act 1974 ("section 75"). He said R had breached its contract with him by refusing to pay the cost of the taxi to him, so MBNA should meet the cost of this in accordance with its liability under section 75.

MBNA did not meet Mr J's claim. It said the £17.60 he paid to R using its credit card appeared to relate to a separate transaction from the original contract for the flights with M. It also thought his claim related to a single item (the priority boarding) to which R had attached a cash price of less than £100. It said this meant Mr J did not have a valid claim under section 75.

Mr J referred his complaint to this service. An investigator didn't think MBNA unreasonably declined to meet Mr J's complaint. She said the cost of the individual tickets that Mr J originally purchased was less than £100 per ticket (£72.98) and the checked baggage was listed as a separate item on the invoice M provided. So even if the £17.60 Mr J paid using his MBNA credit card was part of the same overall supply transaction with R as his ticket, she didn't think section 75 applied to the claim as no single item in the transaction was priced at more than £100.

Mr J disagreed and asked an ombudsman to review his 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.

I am looking here at the actions of MBNA and whether it has acted fairly and reasonably in the way it handled Mr J's request for help in getting his money back. This will take into account the circumstances of the trip and how the supplier has acted, but there are also other considerations, such as relevant legislation, which in this case includes section 75.

Section 75 provides that subject to certain criteria and limitations the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods or services.

Part of the criteria for a claim is that it must relate to a transaction financed by a debtor-creditor-supplier agreement in which Mr J was the debtor.

Also, one limitation (found in section 75(3)) is that section 75 does not apply to a claim so far as it relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000.

So, in order for Mr J to have been able to claim for any additional losses he suffered (such as his taxi fare) as a result of an alleged breach of contract or misrepresentation by R from MBNA, his claim needed to relate to a single item priced within the necessary financial limits. And, MBNA needed to have financed a transaction between Mr J and R.

Mr J paid M when he bought the flights – who's role as agent was to arrange for Mr J to enter into a contract with R. And Mr J paid M using a method of payment that wasn't his MBNA credit card. Mr J did pay R for something however when he paid for priority boarding and two checked bags just before he was due to take his re-routed flight.

I think that MBNA did therefore finance a transaction between Mr J and R. It is not clear to me however whether the transaction it financed was simply the supply of the additional service he had bought (i.e. priority boarding and two checked bags), or whether by financing that additional service, it was in effect now financing all of the arrangements Mr J made with R. There was no breach of the agreement to provide priority boarding and two checked bags. So, for me to find MBNA was liable to Mr J under section 75 for a breach of contract, I think one of the things I'd need to find is that it financed the agreement between him and R for it to provide carriage to him – as that is what the alleged breach of contract related to. This is far from straightforward and is complicated further by the fact that R did not bill Mr J originally for the flights, M did. However, even if I were to find that MBNA somehow financed all of the arrangements between Mr J and R, there are problems in respect of the financial limits set out in section 75(3) which I will explain.

Mr J says the payment of £17.60 he made using his MBNA credit card was made towards an

item within a wider transaction to which R attached a cash price of more than £100. He said this included his flight ticket, checked baggage, two cabin bags and priority boarding. He said that the combination of these things was a single item for the purposes of section 75(3) - essentially because the different services are indissoluble from each other i.e. one must have booked a seat on the flight to be able to purchase checked/additional baggage or priority boarding.

I've looked at the email R sent to Mr J after it cancelled his flight and agreed to re-route him. This sets out the new departure airport, flight times, passenger names, the fact Mr J had *'checked baggage, priority and 2 cabin bags'*. It then says *'receipt total paid via Visa ending in ****'* (the last four digits of Mr J's MBNA card number) *3017.99 MAD*. After conversion this was £17.60 more than the original cost of all three flights and add-ons. Although the email says the total paid via visa was 3017.99 MAD, I've seen no evidence this was the amount actually paid on Mr J's MBNA credit card, only the additional £17.60.

The email from R does not break down the cost of the items Mr J paid for in the same way as the email he received from M after making his original booking. It just shows a new total price. However, I don't think this meant the items Mr J purchased were no longer itemised in the same way they had been originally – Mr J's new flight appears to have been a re-routing in accordance with the terms of his original contract with R rather than a whole new contract. So, for example, it appears Mr J was still purchasing three separate tickets to fly and checked baggage for him even if those things were not individually itemised on the email he got from R relating to the re-routing.

Also, looking on R's website it appears the cost of priority boarding and two cabin bags ranges from anything between £6 and £38. It seems unlikely therefore that the cost of Mr J's ticket or the other items listed on the original booking invoice had increased beyond £100.

This means that individually, the items Mr J paid for all still appear to have been under £100. I still need to consider therefore whether MBNA unreasonably concluded that Mr J did not purchase a combination of services which together were one 'single item' priced at more than £100 (and that the limitation in section 75 (3) did not therefore apply).

Looking at the available evidence, including R's terms and conditions of carriage, it appears that purchasing a ticket for carriage on the flight did not entitle Mr J to checked baggage. It was an optional and individually priced and itemised extra service that he was able to select separately in addition to his ticket. And although the invoice that itemised the tickets and checked baggage separately was from M and not R, this does appear to be consistent with the way R would have itemised such items too – its terms, and its website, contain provisions for checked baggage and set out this is subject to a separate fee.

With everything in mind, I've not seen enough to make me think that Mr J's ticket and the checked baggage were one 'single item' for the purposes of section 75 (3). So, whether Mr J's payment of £17.60 was made towards a wider transaction or not, it's not clear enough to me in this case that his claim relates to a single item to which R attached a cash price of more than £100. I don't find MBNA unreasonably concluded the limitation in section 75(3) applied to Mr J's claim based on the evidence available to it.

Taking everything into account, I've not seen enough to make me think that MBNA unfairly declined to meet Mr J's claim in this instance. So, I don't find it needs to do anything in respect of his complaint. That's not to say that I think Mr J was treated fairly by R, just that MBNA doesn't appear to have acted unreasonably when deciding it was not liable to him for the cost of the taxi under section 75.

My final decision

For the reasons I have explained, I do not uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 8 January 2024.

Michael Ball
Ombudsman