

The complaint

Mr J complains about the way MBNA Limited handled his request for a refund in respect of flights he bought using his MBNA credit card.

What happened

In January 2022 Mr J bought airline tickets from London to Phuket via Zurich and Bangkok with an airline I'll call S, through an online travel agent I'll call E. Mr J paid using his MBNA credit card and the payment went directly to S.

Mr J said he needed a particular type of pass to enter Thailand due to the ongoing situation with the Covid-19 pandemic. He said after purchasing his flights, and after speaking with the issuer of the pass, he realised that the sequence of flights he'd bought was not compatible with the pass he needed.

Mr J said he tried to change the flights via both E and S to make them compatible with the pass. He said E told him that he'd need to speak to S to make the change and S's website said that tickets booked via an agent could only be changed by that agent. Mr J said having not got anywhere with either E or S, he had to book flights with an alternative provider.

In February 2022 S contacted Mr J and explained it had refunded £245 to him. It did not say what this was for.

Mr J asked MBNA to step in and help him get a refund for the remainder of the cost of the flights.

MBNA said it couldn't help Mr J. It said the terms of his contract made it clear he was responsible for ensuring he met the foreign entry requirements for where he was travelling. It said that because his tickets were non-refundable, there were no grounds for it to attempt to recover the money from S via a process called chargeback. And it didn't think it was liable to him under Section 75 Consumer Credit Act 1974 ("section 75") as there hadn't been a breach of contract or a misrepresentation.

Dissatisfied Mr J referred his complaint to this service.

An investigator didn't think MBNA needed to do anything about Mr J's complaint. She didn't think it would be fair or reasonable to ask MBNA to pay Mr J the cost of the flights as there were no grounds to recover the money under chargeback and no liability to him under section 75.

Mr J did not agree with the investigator and asked an ombudsman to review his complaint. He said should not have been sold flight tickets which were incompatible with the entry requirements in Thailand.

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 failed trip and how the supplier has acted, but there are also other considerations, such as the scheme rules a bank has to follow and its own obligations.

There are two main ways a bank can help a customer to recover money paid to a supplier who hasn't provided what was promised. It can try to recover the money from the supplier through a process known as chargeback. Or it can assess whether its customer has a valid claim under section 75.

MBNA said it couldn't raise a chargeback in Mr J's case, or pay him the flight costs under section 75, because the service went ahead and the tickets were non-refundable. I know this will come as a disappointment to Mr J, but I don't think, looking at the relevant rules and obligations on MBNA that it has acted unfairly or unreasonably here. I'll explain in more detail why I think that is the case.

Chargeback

In certain circumstances the chargeback process provides a way for a bank to ask for a payment Mr J made to be refunded. Where applicable, the bank raises a dispute with the supplier and effectively asks for the payment to be returned to the customer. While it is good practice for a bank to attempt a chargeback where the right exists and there is some prospect of success, the circumstances of a dispute means it won't always be appropriate for the bank to raise a chargeback. There are grounds or dispute conditions set by the relevant card scheme and if these are not met a chargeback is unlikely to succeed.

Looking at the numerous dispute conditions under the card scheme rules, it doesn't appear there were any that fit the circumstances of Mr J's case. The relevant transaction here was with S as that is who Mr J paid. I've not seen anything that shows me S was contractually obliged to change Mr J's flights in the event he requested this or provide him with a refund. But even if they did it appears Mr J never made a direct request to S for this any event.

It appears the flight tickets permitted carriage to the holder of the ticket, subject to the necessary conditions, such as possessing the appropriate entry documents to the relevant destination countries. So, it doesn't appear Mr J would have met the card scheme conditions for services not being as described or misrepresented either.

It does not appear therefore that a chargeback would have been successful if raised. Chargebacks are subject to the scheme rules and are not typically a determination of someone's legal rights in a dispute. I don't think MBNA was acting unfairly or unreasonably when it didn't raise one.

Section 75

Section 75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services

A claim under section 75 must relate to a transaction funded by a debtor-creditor-supplier ("DCS") agreement. What this meant in this case, because Mr J paid S, is that MBNA was only potentially liable to him in relation to any like claim for breach of contract or misrepresentation he may have had against S, not E.

As I've already alluded to, I've not seen anything that appears to have contractually obliged S to permit Mr J to make changes to his flight once he'd booked it. And from he has said it appears he may not have directly requested S to do so anyway. Mr J said the information on S's website said he'd need to make changes via E. So, if E failed to make provision for this, it didn't mean S was necessarily in breach of contract to Mr J.

It appears the terms may have made provision for refunds in certain circumstances, but only if the applicable ticket tariff conditions made such provision. I've not been provided with anything that makes me think the tickets Mr J bought were refundable in the circumstances of his case. So, it doesn't appear S was in breach of contract by declining to provide a refund either.

Mr J has said the tickets were mis-sold because S misrepresented the fact they would permit travel from London to Thailand. Mr J bought the tickets via E. S simply acted upon the instructions E gave it to make the relevant booking. S was contracted to provide flights from one airport to another, not entry through the border at the destination. And it was seemingly able to provide what it had contracted to supply – there is no suggestion the flights did not go ahead. It appears S's terms would also have set out that it was Mr J's responsibility to ensure he could provide the necessary entry documents required by the law of the countries concerned, not S's. So, I don't find the flights were misrepresented by S.

I do sympathise with Mr J and recognise the significant sum of money he's lost out on. But I can only reasonably ask MBNA to pay him the cost of the flights if it treated him unfairly by declining his request for a refund. Having considered the relevant provisions under chargeback and MBNA's potential liability to Mr J under section 75, I don't think it has treated him unfairly. So, I don't require MBNA to pay him the cost of the flights or do anything else in respect of his complaint.

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 9 October 2023.

Michael Ball
Ombudsman