

The complaint

Mrs N complains about how MBNA Limited handled a claim she made to it.

What happened

The background facts are well known to the parties, so I will cover these briefly and focus on giving reasons for my decision.

Mrs N bought various life coaching courses using her MBNA credit card. She paid several thousand pounds in total for three separate courses. However, Mrs N was not happy with the purchases. In summary, she says:

- The course provider ('the supplier') acted unethically in the way it sold the courses to her at a time in her life where she was in a crisis and desperate.
- The first course was not working for her but the supplier did not provide empathy and just offered and sold her another course.
- She eventually purchased a third course to become a certified life coach – but the course had no clear direction or advice, the person who ran the course was leaving unexpectedly and it wasn't a recognised course. She says she also had issues accessing live calls at times. So she stopped her regular payments and later requested a refund but the supplier says the course was non-refundable and in order to regain access she needed to pay her outstanding balance.

MBNA did not uphold her claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') so Mrs N complained. The complaint then came to this service.

Our investigator did not uphold the complaint so Mrs N has asked for the matter to be considered for a final decision by an ombudsman.

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 have considered the evidence submitted by the parties but I will only be commenting on the matters I think most relevant here. This is not intended as a discourtesy but reflects the nature of my role resolving disputes informally.

It is important to note that MBNA is not the supplier of the training courses. So my role here is to look at what it could reasonably have done for Mrs N in its role as a provider of financial services. In this regard I consider it relevant to look at Section 75 and the chargeback scheme as options open to MBNA to explore getting back Mrs N's money.

I am very sorry to hear about Mrs N's personal circumstances and how she feels about the way the supplier treated her. I think it worth stating early that I am not upholding this

complaint. However, it is important to note that my decision is only about whether MBNA acted fairly in handling the claim based on the information it reasonably had available to it and in respect of the particular limitations of Section 75 or the chargeback scheme. It isn't about the supplier's wider customer service or ethics. Although my decision is likely to disappoint Mrs N she doesn't have to accept it and is free to pursue the supplier directly via other means if she wishes (and with any legal advice she considers appropriate).

Section 75

In certain circumstances Section 75 allows Mrs N to have a 'like claim' against MBNA for breach of contract or misrepresentation by a supplier of goods or services she paid for using her MBNA credit card.

Certain criteria must be met for Section 75 to apply to a transaction. I consider the relevant criteria is in place here. So I have moved on to consider if MBNA's response to the claim in respect of any alleged breach of contract or misrepresentation was fair and reasonable.

MBNA responded to say it was unable to uphold the claim because the supplier had explained:

- The courses she bought are non-refundable; and
- the coaching course is still available to restart if Mrs N continues her payments.

MBNA explained it was unable to determine that the supplier had breached its contract here. From what I can see I don't think it acted unfairly in concluding this.

There is limited information about the terms of the service which Mrs N signed up for here – which makes it difficult for me to establish a breach of contract. However, in deciding what is fair and reasonable I have considered any persuasive evidence that certain express terms have been broken or if (under the Consumer Rights Act 2015) there appears to be a breach of the implied term to provide a service with reasonable 'care and skill'. It is worth noting that care and skill is not necessarily about the results achieved from a particular service but the manner in which the service was carried out.

As a starting point, although I don't have a copy of the contract here it appears the benefits of a product of this kind would likely be expected to vary from person to person, and be somewhat subjective. It would be unusual to see a product of this kind offer a refund because a student decides it isn't for them or that it didn't work for them. Furthermore, Mrs N has not provided any information to show that there were any guarantees in place from the supplier or promises of refunds if certain results were not achieved. So prima facie I am not persuaded that Mrs N was likely entitled to a refund because she changed her mind or because the courses were not beneficial for her.

If I were persuaded the course wasn't being offered or there were significant issues with its delivery then I might be able to establish a breach has occurred. However, from the supplier's response it appears they were willing to continue to provide the updated course to Mrs N if she continued to make her payments. It was only put on hold at Mrs N's request due to what appear to be her financial difficulties at the time. The supplier also explained that even though a coach left they had other replacement coaches running the sessions, and that recorded videos of live sessions were available to make up for any connection difficulties. So I am not persuaded a breach of an express term of the contract has likely occurred here in respect of the provision of the service, or that there has been a breach of the requirement to perform a service with reasonable care and skill.

I know Mrs N has said that she wasn't told the last course would not be a 'recognised course'. But I don't think there is enough to say this is a misrepresentation here. It isn't clear from paperwork or testimony what was discussed about the credentials of the course and a misrepresentation needs to be a false statement of fact which induces Mrs N to enter the contract. If the supplier has omitted to explain exactly how the course is recognised outside of the program I don't think this is enough to constitute a misrepresentation here.

I have considered what Mrs N has said in her submissions and from what I can see the main issue is that she strongly feels the supplier acted unethically because it sold her courses at a low point in her life and that it didn't show empathy for her specific circumstances. Mrs N explains that it took her some time to realise these courses were not for her. Once again I am very sorry to hear about the circumstances leading up to Mrs N signing on to various courses. However, when considering if MBNA has acted fairly in regard to her Section 75 claim I am looking at whether there is persuasive evidence of a breach of contract or misrepresentation rather than a wider assessment of the supplier's ethics. Here, because I don't think there is persuasive evidence of a breach or misrepresentation I am unable to fairly say MBNA has acted unreasonably in declining the claim here.

Chargeback

For completeness I have considered if MBNA was able to reasonably help Mrs N using chargeback. This is run by the card schemes and isn't guaranteed to recover funds – but can be good practice to use if there is a reasonable prospect of success.

From what I know MBNA didn't raise a chargeback here, but in the circumstances I don't consider that was unreasonable. I say this because it appears as if Mrs N was out of time to raise a chargeback because of when she appears to have got in touch with MBNA after first raising her dispute with the merchant (which is a requirement of the chargeback scheme). It appears once MBNA would have had sufficient information to consider raising a chargeback in respect of the service not being as expected/provided it was too late to raise one (because the service was put on hold more than 120 days before).

However, even if this were not the case, based on the information I have seen it is difficult to say a chargeback had a reasonable prospect of success in any event. The supplier appears to have robustly defended itself and I think it is likely to have done so had a chargeback been raised. A chargeback can only be raised for certain relevant reasons such as a service not being as described/provided. However, for similar reasons to those given in respect of the Section 75 claim it is difficult to say that a chargeback would likely have succeeded here under the limited reason codes available under the scheme.

Overall, I don't consider it reasonable to make MBNA do anything more here. Once again I am sorry to hear about Mrs N's circumstances and I remind MBNA that it should be positive and sympathetic in respect of any repayments Mrs N is required to make in relation to the amounts spent on her card.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 23 October 2023.

Mark Lancod
Ombudsman