

The complaint

Mr M is unhappy with how MBNA Limited handled a claim he made about a transaction on his credit card.

What happened

The background facts are well known to the parties so I won't repeat them in detail – instead I will summarise these and focus on reasons for my findings.

Mr M bought a business class flight from an airline ('the supplier') using his MBNA card. He says that:

- this was a mistake – he meant to buy an economy class ticket but the airline had put through the wrong fare; and
- when MBNA checked if he made the transaction he texted 'NO' but they still let the transaction go through.

MBNA did not refund Mr M – they said he authorised the transaction and there wasn't persuasive evidence of a breach of contract or misrepresentation by the supplier so it couldn't uphold a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, it acknowledged some poor customer service on its part and offered Mr M £50 compensation.

Our investigator felt that MBNA had acted fairly and did not uphold the complaint.

Mr M has asked the matter to be looked at by an ombudsman. In summary, he says:

- he accepts he made the payment to the supplier for flights but when he was told it was declined it doesn't then permit further attempts for payments to be allowed – it should not have gone through and he did not authorise any other payment to the supplier;
- he questions why there were no additional security checks like a passcode or call to verify the payment;
- he questions several things such as why the payment was declined, when it was made to the supplier, if a second attempt was made, and the security (including IP address) checks carried out by MBNA before making the payment;
- he has lost money (via a cancellation charge for the tickets) and airmiles as a result of this dispute – he is also being charged interest on the payment made to the supplier which is the subject of this dispute.

The matter has come to me for a final decision.

I issued a provisional decision on this matter which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I won't be commenting on every submission made by the parties here – I have chosen to focus on the matters I consider relevant to this complaint. I also note the business has sent a number of call recordings but in my judgement as ombudsman I don't consider I need to listen to all of these to come to a fair outcome in the particular circumstances here. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It is important to note that MBNA is not the supplier of flights – so I am looking at its role as a provider of financial services. Which includes its ability to look into disputes about card transactions, including raising a chargeback or considering a Section 75 claim.

Section 75

In certain situations Mr M can hold MBNA responsible for a 'like claim' he might have against the supplier for breach of contract or misrepresentation in respect of the services it provides (as financed by the credit card).

There are certain criteria which must be in place for a valid Section 75 claim. That appears to be the case here. So in deciding if MBNA acted fairly in its claim handling I have looked at whether Mr M had persuasive evidence that the supplier had breached its contract or misrepresented it.

I can see that Mr M has described what occurred when he bought the tickets in a message he sent to the supplier. He describes wanting to use his airmiles before they expired at midnight and had several tabs open with different options including the economy and business class fare. However, he says he closed one of the tabs down and inadvertently booked the more expensive business class seat instead of the economy ticket.

Mr M said that he thinks he actually booked the economy fare and was charged for the business class due to some error on the website rather than a mistake of his own. But the supplier appears to have looked into this and has confirmed there was no error with its website.

On balance I don't think this was an issue with the website. Particularly as in this situation it sounds that Mr M was under time pressure to make a booking to use his miles and had several tabs open at once. I also note the supplier had investigated and found no issue at its end with the system. I think it more likely than not this was human error.

Overall, I don't think there is persuasive evidence that the supplier breached its contract with Mr M or misrepresented it. So I don't think MBNA acted unfairly in not upholding a Section 75 claim.

Chargeback

MBNA also could consider chargeback to help recover Mr M's money. I have considered the chargeback scheme here (which I understand is Mastercard) when deciding if MBNA has acted fairly. It is a voluntary scheme which is not guaranteed to work – but it can be good practice to attempt one where there is a reasonable prospect of success.

It isn't entirely clear if MBNA considered a chargeback and chose not to raise one here or raised one and then discontinued it. But either way I don't think MBNA is mistaken for not taking the chargeback further. I say this because I don't think the chargeback had a reasonable prospect of success in any event.

The chargeback reason codes are quite limited and in this case there isn't a strong reason to use. I think something like 'service not provided' doesn't really apply here as the tickets were provided. Furthermore, I don't think a chargeback for an unauthorised transaction is likely to have succeeded for reasons I go into below.

I think that whatever reason code under the scheme MBNA had tried here it was likely to be defended by the supplier as it denies any wrongdoing – and from the evidence I have seen I am unable to fairly say that MBNA would have had a likely chance of recovering Mr M's money had they pushed things further. So I don't think MBNA made an error in the way it handled the chargeback.

Authorisation

Mr M has made lengthy submissions in regard to the initial text information he got from MBNA to say the payment was declined and asking him to confirm if it were he who made the transaction. He says he responded 'NO' so this should not have gone through.

Mr M has asked a lot of questions about how this could have been allowed to go and some of these questions relate to technical matters such as IP addresses and whether there was a second attempt at the transaction or not.

Ultimately I don't think I need to analyse the technical or fraud checking process behind the scenes at MBNA to decide what is fair and reasonable here. So I don't think I need to directly address Mr M's questions about this process or look into what he was told about it. To me the relevant consideration here is that MBNA made some checks which eventually (whatever the technical process in the background may be) let the transaction through. And whether that was ultimately a mistake.

My finding is that (when you strip away the nature of the checks or the use of the terminology used during the process) this was ultimately the correct decision (not negligent as Mr M puts it) because Mr M did make the transaction. In fact, MBNA not allowing the transaction through is likely to have caused Mr M a degree of inconvenience in most other situations. However, I consider it has become a greater issue here only because Mr M booked the wrong ticket. It appears Mr M was hoping the transaction would not go through (Mr M himself says he felt 'big relief' when he got MBNA's fraud prevention message) because he realised there was a mistake in the booking. When the security check came through asking if it was he whom made the transaction he answered 'NO' – which ultimately wasn't factually accurate. So I don't consider it fair and reasonable to rely on this as a way of saying MBNA has made an error in allowing the transaction through.

I think it is helpful to put to one side the booking error or the particular process of fraud prevention which MBNA chose to implement for the transaction here. Ultimately what this comes down to is whether MBNA failed to block a fraudulent/unauthorised transaction. However, here I am satisfied it let through a genuine transaction. So when looking at what is fair and reasonable I don't think it needs to refund Mr M.

Customer service

It appears that Mr M is not happy with aspects of MBNA's customer service particularly around apparent lack of communication at times.

I think Mr M answering 'NO' when asked if it was he whom made a transaction (which he actually made) didn't help the communication here, and probably contributed to the checking process taking longer than it should have. I also think this is a somewhat unusual situation in that Mr M was hoping a transaction he had authorised would then be declined for reasons unrelated to MBNA. Which I don't think would have been obvious to MBNA at the time and likely led to things taking longer.

However, I do accept MBNA's communication wasn't as good as it could have been. It appears Mr M wasn't called back at times - like when it promised to clarify the status of the payment, and he had several long call waits to try and speak with MBNA about what was happening with the transaction.

I don't agree with our investigator that the £50 MBNA offered was just for complaint handling. But overall, I do think it is a fair amount of compensation to reflect the unnecessary distress and inconvenience caused to Mr M here.

I am sorry to hear about what Mr M says about the money and airmiles he has lost in relation to the flight booking. However, in light of my findings above I don't consider MBNA has acted in such a way that means it needs to refund him for these costs as well.

My provisional decision

I direct MBNA Limited to pay Mr M £50 compensation for the distress and inconvenience it caused.

Neither party responded to my provisional findings.

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.

Neither party has given me cause to change my provisional findings here – so my final decision is the same.

Putting things right

MBNA should put things right as set out below for the reasons given in my provisional findings (as set out above).

My final decision

I direct MBNA Limited to pay Mr M £50 compensation for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 January 2024.

Mark Lancod
Ombudsman