

## **complaint**

Mrs A complains that MBNA Limited will not refund the money she paid, using her MBNA credit card, for furniture which was defective. She brings her complaint under section 75 of the Consumer Credit Act 1974.

## **background**

Mrs A bought four new dining chairs from a retailer. She paid a total of £300 using her MBNA credit card, but when the chairs were delivered they were defective. Mrs A complained to the retailer. Eventually, two of its representatives came to her home. They said that they would not replace the defective chairs, but would simply clean them and bring them back, and she would not notice the difference.

Mrs A told the retailer she had lost confidence in it and wanted a full refund. The retailer refused this, so she asked for a refund from MBNA. MBNA twice attempted a chargeback, but the retailer's bank refused this because the retailer said it had ordered replacement chairs which were ready for collection. MBNA also said that section 75 did not apply because the individual price of each chair was less than £100.

Our adjudicator did not recommend that this complaint should be upheld. She said that the retailer had agreed to replace the chairs in accordance with its terms and conditions. MBNA had attempted a chargeback to obtain a refund, but the retailer's bank had successfully defended this on the grounds that replacement chairs were available for collection. She also considered that this meant that a refund was not available under section 75.

Mrs A responded to say, in summary, that:

- she should not have to accept replacement chairs because of the retailer's terms and conditions, which she was not aware of when she bought the chairs;
- in view of what had been said to her by the retailer's representatives, she had no confidence that the chairs it said were waiting would be new; and
- her statutory rights meant that she was entitled to a refund as the chairs were defective.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

First of all, I must make it clear that this service does not have jurisdiction to decide whether or not Mrs A is entitled to a refund from the retailer. It may well be the case that she is entitled to this. However, we can only consider the conduct of MBNA and whether, in the events which have happened, it has acted reasonably in saying that MBNA is not able to provide or obtain a refund.

There are two ways a credit card company can assist a customer in these circumstances, which I will consider in turn.

### *Section 75*

Under section 75, where a consumer has a claim for breach of contract or misrepresentation against a provider of goods or services, they will often have an equal claim against the company which finances the transaction. However, section 75 is technical in its operation, and it is not every situation where goods are not delivered or are faulty that will make a credit card company liable to refund the cost of these goods.

In particular, section 75 does not apply so far as a claim relates to any single item to which the supplier has attached a cash price not exceeding £100. In this case, the total order price was £300. However, the retailer's invoice shows that each chair was individually priced (after discount) at £75. So because the order was made up of a number of items each priced at less than £100, section 75 does not apply.

### *Chargeback*

Chargebacks are a remedy which is provided by the card payment organisations – Visa and MasterCard. The remedies are more limited than those available under section 75.

Chargeback is not a legal entitlement, but this service expects a credit card company to attempt a chargeback in appropriate circumstances.

In this case MBNA made two attempts to chargeback Mrs A's payment. However, in each case this was refused by the retailer's bank on the grounds that the retailer had made new replacement chairs available for collection by Mrs A. I understand why Mrs A found this remedy unacceptable. However, I consider that MBNA took reasonable steps to obtain a refund and was not required to do more.

### **my final decision**

For the reasons I have set out above, my decision is that I do not uphold this complaint, and make no order against MBNA Limited.

Lennox Towers  
**ombudsman**