

## The complaint

Mrs A complains Creation Financial Services Limited (“Creation”) has failed to refund transactions she made on her credit card and subsequently disputed.

## What happened

Mrs A’s daughter (who I will call “D”) was interested in acting and modelling. In February 2020 she, along with Mrs A, researched agencies she could sign up to and came across a company I will call “G”. They filled out an online form and were contacted by G shortly after inviting them to an assessment at a studio in London. Mrs A was asked to pay a £50 deposit, which she did.

On 29 February 2020 Mrs A and D attended the assessment at G’s studio. Mrs A says D had a few photoshoots and then they were both asked to wait while G’s representatives discussed whether D had been successful. Mrs A says she was told D had been successful and was then taken into an unlit room where she was subjected to a hard sell by G’s representatives for 32 photos on a USB stick and a promotion service for D where they would, among other things, manage her for 12 months and obtain at least two jobs per week for her, and get her on the front page of a magazine.

Mrs A says she was initially asked to pay between £2,500 and £3,500, but after explaining that she could not afford this much, G accepted a payment of £500 on Mrs A’s Creation-backed credit card for the same package of services. Mrs A says she signed a document which she believed included what had been agreed verbally, by the dim light of a laptop screen. She says it was only later, on the way home, that she realised what she had signed didn’t reflect what had been promised verbally. She says she then went online and discovered G was involved in a scam.

I won’t go into great detail about the events which followed, and will summarise only briefly. Mrs A complained to G the following day and continued pursuing this complaint for some months without receiving any substantive reply from the company. She also complained to Creation, asking first for it to stop the £500 payment and then to reclaim the full £550 she had paid for her. She also contacted other organisations such as ActionFraud.

Creation didn’t agree to refund the money. It said that Mrs A had not signed a document saying G would help D with a modelling career. All the document said was that it would provide her with photos on a USB stick, which it had. It didn’t think there was enough evidence for them to attempt to reclaim the money back from G’s bank or agree to a claim under section 75 of the Consumer Credit Act 1974 (“CCA”).

Mrs A was unhappy with this response and referred her complaint to this service for an independent assessment. One of our investigators looked into the matter and thought the complaint should be upheld. She thought Mrs A met the criteria for a chargeback and Creation could have claimed the money back for her in this way had they pursued this robustly. She also thought the necessary technical criteria for a section 75 claim were in place, and furthermore that G had made misrepresentations to Mrs A which had induced her into making the payment and therefore meant the section 75 claim should have been

successful. The investigator recommended that Creation rework the credit card account as though the £550 in payments had not been made, adding compensatory interest if this resulted in a credit balance.

Creation disagreed with the investigator. It said that firstly, Mrs A had a responsibility to read what she was signing before she signed it. What she had signed said she was buying photos, nothing else. It went on to say that the emails sent by G before Mrs A and D's photoshoot were non-committal and didn't suggest they would be promising anything more than a photoshoot. Creation said it thought it was possible G had offered some kind of modelling package which involved more than just photos, but it noted that Mrs A said she had been quoted a price of between £2,500 and £3,500 for this and paid only £550. It said it thought it was more likely Mrs A hadn't been able to afford the modelling package and had opted just to buy the photos instead.

Creation asked for the case to be considered by an ombudsman, so the case has been passed to me to decide.

### **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.

The foundation of Mrs A's dispute over the payments totalling £550 that she made, is that she was misled by G about the nature of the product she was purchasing. She says she was told verbally it was a package of services which included managing her daughter and getting her paid work in the modelling industry. What she actually received was some photos on a USB stick and silence from G when she expressed her dissatisfaction with the situation.

I've carefully considered what responsibilities Creation may have had to Mrs A in respect of the disputed transactions.

Section 75 of the CCA allows consumers who have paid for goods or services using a credit card a certain degree of protection, so long as certain technical criteria are met. If the criteria are met then the consumer can bring a claim against their credit card company for any breach of contract or misrepresentation on the part of the supplier of the goods or services.

Creation, in its initial submissions to this service, suggested the technical criteria for a section 75 claim had not been met. Specifically, it said Mrs A had dealt with G but paid separate companies with her credit card. One of the technical criteria is the requirement for there to be what is known as a valid debtor-creditor-supplier agreement in place. What this means in practice, and put in very simple terms, is that Mrs A needs to have paid the company she has a *dispute with* on her credit card. Creation suggested this wasn't the case, but our investigator noted that G was a trading name and the company Mrs A had made her £500 payment to was the actual name of the registered company which traded as G. In other words, the company Mrs A paid was in fact G. Creation hasn't sought to challenge this conclusion, and I think our investigator was correct to make it. Ultimately I think the technical criteria are in place for a section 75 claim to be made, but there still needs to have been a misrepresentation or breach of contract for Mrs A to be able to hold Creation liable for what has happened.

A misrepresentation is a false statement of fact which causes a person to do something which is to their disadvantage. For example, it could cause them to sign a contract, or make a payment, which they wouldn't have otherwise. Our investigator sent a detailed assessment to both parties explaining why she thought a misrepresentation had probably taken place and Mrs A had been promised much more by G than had been included in writing on the

contract which had been signed. I think I could summarise her findings as follows:

- The scenario which had unfolded was a well-known scam which Action Fraud warns about on its website.
- There was ample evidence of other consumer complaints about G having verbally promised modelling packages and not provided them.
- Mrs A had given detailed testimony of what had happened, and her actions were consistent from a very early stage of someone who had been told things which they had discovered were untrue.
- Although it was true Mrs A had signed a contract which didn't refer to a modelling package, this document did refer to an "agency list" and in any event verbal representations made by G shouldn't be ignored in favour of the written contract, especially if the written contract had been signed under pressure.

I agree with all the points made by the investigator. Mrs A's testimony has been detailed and – apart from some minor details – consistent, and she seems to have a clear recollection of what she was told. I don't find this surprising, as she appears to have complained to both G and Creation within 24 hours of making the £500 payment, when things would have been fresh in her mind.

As our investigator noted, there are consumer warnings against operations which bear a resemblance to the one run by G. These warnings have been made by ActionFraud, national newspapers and consumer rights groups. The volume and type of complaints I was able to find online about G suggests to me that the company is likely to have operated in this way, representing that it would manage aspiring models and find them work in exchange for a fee, and then fail to do so.

I appreciate Creation's point that what Mrs A signed doesn't reflect what she says she was told, and that it is possible that she simply couldn't afford the modelling package and agreed only to buy the photos. But I think that places excessive weight on the written contract and too little on what is known about the general trading practices of companies like G, and Mrs A's detailed and consistent testimony that G made representations to her that it would manage her daughter and obtain modelling work for her. Mrs A has explained that G agreed to reduce their price when she explained how difficult her financial circumstances were at the time, so I think it's plausible the £550 paid could have been for more than photos.

The contract is of course important, but I accept Mrs A's account of events that she was put under pressure, and in such circumstances I don't necessarily agree that she should have been expected to notice the discrepancies between what she was told verbally, and what she was being asked to sign, until she was in an unpressured environment. As our investigator said, the contract did refer to an "agency list", next to which a box which said "Yes" was circled. Elsewhere on the document was stamped the words "agency list for self-promotion", but it isn't clear what either of these things mean and I wouldn't have expected Mrs A to have questioned it in the circumstances.

In the end I think it is more likely than not that G told Mrs A it would manage her daughter's modelling career for 12 months and obtain her regular paid work, and she signed up with the company on that basis. I don't think she would have signed up and paid had she believed she was receiving only photos. The question I now have to answer is whether this was a misrepresentation, or a breach of a verbal promise which had contractual force. The scam warnings to consumers, and G's actions after Mrs A complained (essentially, to not engage with her at all or explain that she had – for example – only purchased some photos), indicate

to me that it is likely G had no intention of managing Mrs A's daughter's modelling career or to obtain modelling work for her. This means that I think G's statements amount to misrepresentations, not contractual promises. This means Mrs A should be put in the position she would have been in, had the misrepresentations not been made.

As I conclude Mrs A made her payments to G on the basis of G's misrepresentations, I think Creation should have accepted Mrs A's section 75 claim rather than turned it down. So to put things right I will be directing Creation to put Mrs A in the position she'd been in, had it correctly accepted her claim. I will note here that Mrs A made her £50 deposit payment before any misrepresentations had been made, so ordinarily I could not say she should receive a refund of this. However, I can see G said in an email that it would refund the £50 deposit should Mrs A and her daughter attend the photoshoot, and it seems this money ended up being put towards the £550 price of the package Mrs A purchased. Had misrepresentations not been made I think Mrs A would have asked for – and been entitled to – a refund of the deposit. So I think this should be refunded too.

Our investigator also explored the possibility of a chargeback, which is another way Creation could have explored to obtain a refund for Mrs A. Because I have already found that Creation should have accepted Mrs A's section 75 claim, I don't need to make any findings about whether it should also have attempted a chargeback.

### **Putting things right**

Had G not made misrepresentations to Mrs A, she would not have the payments that she did. I think it is therefore fair that Creation rework her credit card account as though the £50 and £500 transactions in dispute had not been made. If this results in a credit balance having arisen on the account at any point, 8% simple interest\* per year should be added to this credit balance from the date it would have arisen to the date the account is reworked.

### **My final decision**

My final decision is that I uphold Mrs A's complaint and direct Creation Financial Services Limited to take the actions set out in the "putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 14 July 2021.

\*HM Revenue & Customs requires that tax is paid on this interest. Creation Financial Services Limited should give Mrs A a certificate showing how much tax it has taken off, if Mrs A asks for one.

Will Culley  
**Ombudsman**