

The complaint

Mr H is unhappy with the outcome of a claim he made to Capital One (Europe) plc 'Capital One' for goods he purchased using his credit card.

What happened

Mr H says he bought some phones from an online outlet ('the website') which turned out to be faulty. However, the supplier won't let him return these for a refund.

Mr H contacted Capital One to help him with this. It looked at the matter under Section 75 of the Consumer Credit Act 1974 ('Section 75'), but it would not refund him. In summary, it said there was not the correct 'debtor-creditor-supplier' relationship between the parties for there to be a valid Section 75 claim.

Our investigator took a look at the case and agreed there was not a valid Section 75 claim because the credit card payment did not go directly to the supplier of the goods but to the website which is a wholesale marketplace. They said this means Mr H cannot raise a Section 75 claim for breach of contract by the website. The investigator also looked into chargeback and agreed Capital One acted fairly by not raising one as there were not valid grounds to do so.

Mr H was not happy with the response. In summary he says:

- he has had a previous dispute against the website and Capital One looked at this under Section 75 so it should have done so here
- he does not think the website is just a payment processor – they have more responsibility than that as they have a website advertising all sorts of goods
- Capital One should have looked into the matter under chargeback, the phones were not as described, they were fake and had signal problems

The matter was passed to me to look into.

I issued a provisional decision on this case on 18 August 2021. In this I said:

Section 75

Section 75 allows Mr H to hold Capital One responsible for breach of contract or misrepresentation in respect of goods or services purchased using his credit card. However, there are certain technical requirements that have to be met for a Section 75 claim to be valid. This might be in relation to the cost of the goods or services, the parties to the transaction, or the way the payment was made.

It is not for me to determine the outcome of a Section 75 claim. That is something which Capital One has considered. However, in deciding what is fair and reasonable I can look at the actions of Capital One with regard to any relevant law (in this case Section 75).

In order to decide what is fair and reasonable I have considered the technical requirements that need to be satisfied in order for a Section 75 claim to be valid. These are set out in the Consumer Credit Act 1974. One of those requirements is for a 'debtor-creditor-supplier' agreement between the parties to the transaction.

One of the reasons for doing a provisional decision here is to clarify the position regarding the 'debtor-creditor-supplier' agreement.

I agree with Mr H that the website does not simply process payments or act as a digital wallet. The website is an online marketplace and Mr H paid it directly. I also agree that Mr H has a contract with the website. However, this contract is limited. The website terms and conditions (which I will have our investigator provide Mr H) are very clear that it acts only as a selling platform to facilitate transactions between buyers and third parties which have goods for sale. It says it is not the supplier of goods and services.

I have looked carefully at how the website operates and it does indeed appear to function as an online marketplace for third party sellers to advertise goods to registered members. It provides a dispute resolution service and loyalty scheme, but I am satisfied it doesn't actually supply the goods. So it follows that it isn't contractually responsible for the quality of those goods.

In this case Mr H is unhappy with the quality of the goods. And contractually it is the third party seller ('the supplier') but not the website which is responsible for that. However, although we have a debtor (Mr H) and a creditor (Capital One) the supplier didn't receive the credit card payment. Which means for the purposes of Section 75 Mr H doesn't have a claim against Capital One for a breach of contract by the supplier in respect of the quality of the goods. Therefore, I don't think it would be fair and reasonable to say it should have done more in respect of his Section 75 claim about the issues with the phones.

Chargeback

I have also done a provisional decision to clarify the position as to chargeback.

While chargeback is not a legal right, it is a means where a bank might be able to recover money for its customer. I would expect Capital One to have used the chargeback process where it was reasonable to do so. I have considered what it did in this case.

From what I understand from Mr H's signed dispute form the two transactions that relate to the four mobile phones he is unhappy about are for £809.27 on the 2/4/19 and £217.94 on the 30/3/19.

What Capital One did here in respect of chargeback isn't entirely clear. However, from what I can gather from the information I have:

- it raised a partial chargeback in respect of £290 of the £809.27 for a part of the order which Mr H says did not arrive at all. However the merchant appears to have defended this with proof of postage and receipt; and*
- it did not raise a chargeback for the remaining amounts as it says there was no valid reason code to do so*

From what I can see it appears that Capital One took reasonable steps to recover Mr H's money in relation to the goods which he says did not arrive. And Mr H does not appear to be disputing this. So I have turned to the central matter in contention which is whether Capital One was right in not raising a chargeback for the remaining amount.

Mr H's reason for disputing the remaining amount appears to be in relation to the quality of the phones. He indicated to Capital One at the time that he was unhappy with the battery life, signal quality and responsiveness of the touchscreen. On his dispute form he says the phones are 'bad quality' and 'looked good on the website'. I don't see where he originally told Capital One they were fake – but I note he has mentioned this to our service.

Capital One appear to be claiming there is no valid chargeback reason as Mr H referred to the phones being of poor quality but did not specifically say they were not as described or faulty. I don't think Capital One is reasonable in saying there wasn't a valid chargeback reason in this case. Poor quality can of course mean that goods are defective or not as described, and I think Capital One should have recognised this and considered raising a chargeback under the reason code 'Goods or Services Were Either Not as Described or Defective'.

I have considered what the scheme rules say about what Mr H needed to provide to allow Capital One to raise a chargeback. He needed to provide sufficient evidence in order for the parties to understand the nature of the dispute. The evidence also needed to show that he contacted the merchant in an attempt to resolve the dispute. However, what I have seen isn't entirely clear. I note that:

- the prices in the order details Mr H sent in for the four phones do not appear to add up to the transaction amounts he is disputing on the dispute form*
- the copy of the contact with the marketplace via its dispute resolution service isn't clearly in relation to the order for these phones (the order number is different to those numbers on the shipping details produced in relation to the 'not received' dispute) and also appears incomplete (with a lack of clarity as to why the dispute was closed and whether a partial refund was issued)*

So although there is a valid reason code for defective goods, and despite Capital One's apparent attempts to clarify some things there appears to be an overall lack of clarity about the nature of the dispute and the attempts to resolve it prior. The situation likely isn't helped as Mr H appears to have had several purchases and disputes in respect of the marketplace. Due to the lack of clarity I am not entirely persuaded that Capital One should have raised a chargeback at the time. But even if I accepted that they could have tried one (and it is often good practice to at least attempt one) I am not persuaded it would have likely succeeded based on the evidence I have seen and heard (I have also listened to calls Mr H had with Capital One to work out what he told them about the problems he was having with the goods).

Although the things Mr H is unhappy with might indicate hardware faults they are also things which might not necessarily be defects. For example some phones just have shorter battery life or weaker aerials or less responsive screen technology than others. Mr H provides very little detail about the extent of the problems he is having and does not support his claims with relevant adverts/point of sale claims, photographic/video or third party evidence. So I don't think the chargeback is particularly strong based on what I have seen.

I acknowledge that Mr H has indicated he had other disputes succeed against the marketplace. However, that isn't clear to me from what I have seen. But as they relate to separate transactions it doesn't necessarily mean this dispute would have succeeded too.

To summarise, I don't think Capital One has acted unfairly in declining Mr H's Section 75 claim. Nor do I think that it has likely caused him to lose out in respect of the way it handled the chargeback. And although he has indicated Capital One helped him get his money back in respect of other transactions I am looking at the individual circumstances in this case. So all things considered I don't think that Capital One should be asked to refund what Mr C has paid on his card for these transactions.

I asked the parties for a response. Mr H did not respond. Capital One confirmed that it had nothing further to add.

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 parties to this complaint have not added anything that persuades me to change the outcome of my provisional decision. Therefore, I am not going to uphold this complaint for the same reasons given in said provisional decision (as copied above).

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 October 2021.

Mark Lancod
Ombudsman