

The complaint

Mr P complains Creation Financial Services Limited (“Creation”) won’t refund a payment made on his credit card to a secondary ticket selling website (“Website”) for concert tickets.

What happened

In October 2017, Mr P bought four tickets for a concert in June 2018 using his credit card with Creation. In total, he paid £599.95.

Mr P says he wasn’t given information on the face value of the tickets (which he later found out were £60 each), the location of the seats and that he wasn’t provided information about whether there were any restrictions with the seating. Mr P says he also felt the Website were in breach of consumer regulation as they hadn’t made clear they were a secondary ticketing site.

Creation looked into Mr P’s concerns, but they didn’t think they could help. They thought there wasn’t a valid claim under Section 75 of the Consumer Credit Act 1974 (CCA) as they said the necessary debtor-creditor-supplier arrangement wasn’t in place. Creation also said they didn’t feel they had grounds to raise a chargeback claim because they didn’t have a reasonable prospect of success - they explained the Website was a platform used by individuals to sell tickets, so it was the seller who sets the price of the tickets.

Unhappy with Creation’s response, Mr P brought his complaint to our service. Our Investigator looked into his concerns. Ultimately, he didn’t think Creation had acted unfairly by declining Mr P’s request for a refund. He said Mr P had entered his card details on the Website when purchasing the tickets, therefore, he’d authorised the transaction. Our Investigator said he thought there was sufficient information on the Website to show it was a secondary ticketing site. And that the Website made clear how much Mr P would be charged in total for the tickets and provided information on the location of the tickets. So, he didn’t think there had been a misrepresentation or breach of contract by the Website. Overall, our Investigator didn’t think Creation needed to do anything else.

Mr P disagreed with our Investigator’s findings. In summary, he remained of the opinion that the Website didn’t have enough information to show they were a ticket reseller, he wasn’t provided with information about the specific seat location and the Website provided misleading information about the availability and popularity of the tickets. Mr P also said while he was provided with the tickets two days before the event took place, this didn’t give him enough time to resell them. So, the complaint has been passed to me.

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 note Mr P has some concerns about the Website and how it operates. But I must make clear that this complaint is about Creation, as Mr P’s credit card account provider. The Website isn’t a financial service provider and as it doesn’t fall within my remit, I’m unable to

look at a complaint against them directly. I can only consider whether Mr P authorised Creation to debit his account with the value of the payment, and whether Creation should have helped with the dispute with the Website in any other way. Creation can only be responsible here if there is either a breach of contract or misrepresentation which materially impacted Mr P's decisions. This is a different test to whether or not the Website concerned could be better or could have made things clearer.

Mr P says he made the transaction for these tickets, knew the amount he was paying and was willing to purchase the tickets at that price. But Mr P says the Website didn't provide any information on the true face value of the tickets – he later found out that the cost of the tickets were £60 each. Mr P doesn't argue he didn't go to the website and buy the tickets on his credit card. So, having considered what Mr P has said (including that he made this purchase and paid for the tickets) and the evidence of Creation, I'm satisfied the transaction was properly authorised and correctly applied to Mr P's credit card account with Creation.

could Creation challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute with a merchant, as Mr P does here, Creation (as the card issuer) can attempt a chargeback. Generally, we say it's fair for a card issuer to attempt a chargeback - or to challenge a payment - if there's a reasonable prospect of success, for example where goods aren't received, or it appears that the payment wasn't properly authorised by the cardholder.

Indeed, we're aware of cases, with some similar features to this one, where chargeback has been successful. But I don't think Creation could've challenged the payment on the basis Mr P didn't properly authorise the transaction, given the conclusion I've already set out.

I note Mr P complains he didn't pay face value for the tickets. Creation didn't raise a chargeback here because it didn't think this would have had a reasonable prospect of success – they said it's the seller who sets the price of the tickets. Having thought about this, I don't think Creation have done anything wrong. I say this because I don't think there's a reason code Creation could have used under the chargeback scheme rules to get Mr P's money back on the basis that he was being charged more than a ticket's face value. As I've explained, Mr P authorised the transaction and agreed to pay for the tickets. Bearing in mind Mr P authorised the transaction and received the tickets, Creation's decision that there wasn't a reasonable prospect of success in a chargeback is fair and reasonable in my opinion. So, I'm not persuaded they acted unfairly.

In addition to this, Mr P says the Website didn't make clear it was a secondary ticketing site and they misrepresented their status as a ticket reseller. Having looked into the Website and their terms and conditions, I'm not persuaded this information was misrepresented to Mr P. I say this because I think there are prominent messages on the Website which explain that they are a secondary ticketing site.

Creation are required to consider whether there is a reasonable prospect of success when considering whether to go through the chargeback process or not. Bearing in mind Mr P says he wanted to buy the tickets, authorised the transaction and got the tickets, Creation's decision that there wasn't a reasonable prospect of success in a chargeback is fair and reasonable in my opinion. So, I'm not persuaded Creation acted unfairly here.

how about Section 75 of the Consumer Credit Act 1974?

As the payment was made using a credit card, I have also taken into account how Section 75 applies to the transaction. In certain circumstances, Mr P has an equal right to claim

against Creation as he does against the supplier (the Website) if there's been a breach of contract or misrepresentation by the supplier (the Website) if certain conditions are met.

My role isn't to decide Creation's liability under Section 75. Instead, as statute requires me to, I need to decide what's fair and reasonable, taking into account any relevant law, such as the Consumer Credit Act 1974 (CCA). For a valid claim under Section 75 there must be a debtor-creditor-supplier arrangement in place. The Website's terms and conditions in this case say:

"1.2 Ticketing Exchange. [Website's name] provides a service that allows members who want to buy tickets ("Buyers") to find members who want to sell tickets ("Sellers"). [Website's name] does not take title to the underlying ticket and the actual transactions are between the Buyers and Sellers."

This satisfies me that the tickets aren't supplied by the Website. But that the Website provides a service. And for this they charge buyers a fee. In regard to the fee, the Website says they:

"...charge a service fee on top of the ticket price. This fee is displayed in the check-out process and covers the cost of maintaining the [Website's name] platform, guaranteeing tickets and providing customer service."

So, unlike Creation's response to Mr P's Section 75 claim, I think there is a debtor-creditor-supplier arrangement between Mr P who is the debtor, Creation who is the creditor and the Website who is the provider - although not for the direct provision of the tickets themselves. Instead, the Website provides a service. The service consists of two main things - the platform and the guarantee.

With this in mind, I think the Website is responsible for how ticket information (such as venue, date, time, and the asking price) is displayed to buyers. And I think, under the guarantee, they're responsible for providing replacement tickets or a refund if the seller doesn't fulfil their obligations around supplying the tickets. However, the Website are a secondary ticket selling website. This means the tickets are purchased through the Website from a third-party seller (who isn't representing the Website).

Another condition necessary for a valid claim under Section 75 is that the service provided by the Website must have a cash price of more than £100 but less than £30,000. In this case, I've seen a breakdown of the amount Mr P paid. And I can see he paid a total of £599.95 for the four tickets. Looking at the order confirmation provided by the Website, the total ticket cost came to £440. The Website then charged a booking and VAT fee (£152) and shipping fees (£8). The total of these fees comes to £160. So, I'm satisfied that the Website's fees for their services in this case was more than £100 but less than £30,000. This means I think Mr P could have a valid claim under Section 75.

So, I've established that the necessary arrangements exist for a claim under Section 75 about the service the Website provided, and that the cash price of that service is sufficient for Section 75 to apply. Next, I need to consider whether there's been a breach of contract or misrepresentation on the part of the Website.

For a successful claim Mr P would need to show a breach of contract or misrepresentation by the Website. Mr P has complained he didn't pay face value for the tickets. I appreciate Mr P's concerns; however, I'm not persuaded there is a misrepresentation here. I say this because Mr P knew the price he was paying for the tickets at the time and went through the purchase process to get them. I'm not persuaded he's been told anything untrue which materially persuaded him to buy the tickets he otherwise wouldn't have. Additionally, Mr P

received the tickets, but chose not to attend the event. The Website does provide a guarantee here so if he'd tried to get in and couldn't, he would not have lost out. With this in mind, I'm not persuaded there has been a breach of contract either. In any case, it's the seller which sets the price of the tickets, not the Website. This means the difference between the face value of each ticket, and what Mr P paid for each ticket, went to the seller, not the Website.

I understand Mr P chose not to go to the concert and that he was unable to resell the tickets due to the short time frame. While I understand Mr P's concerns, I don't think there's been a breach of contract here as Mr P still received the tickets.

Mr P argues that the Website didn't make clear it was a secondary ticketing site and that they misrepresented their status as a reseller and not a direct seller. Having looked into the Website and their terms and conditions, I'm not persuaded this information was misrepresented to Mr P. I say this because I think there are prominent messages on the Website which explain that they're a secondary ticketing site. Even though they had alerts letting customers know that tickets were selling out fast, I don't think this indicates they're the direct seller of the tickets as Mr P suggests.

Mr P says he also wasn't given specific seat details and restricted view information at the time he purchased the tickets. Even though Mr P may not have been given all of the information about the seats to be able to make an informed decision about the tickets, I don't think Mr P was necessarily told anything that was untrue. I've not seen any evidence which shows Mr P didn't get the tickets that he paid for and selected at the time. Mr P has also mentioned the tickets he received weren't in the location he ordered. Having looked at a seating plan of the venue alongside a copy of the tickets Mr P sent us, the location appears to be the same as what Mr P ordered – although I appreciate the location has a different name. With all of this in mind, I don't think the tickets have been misrepresented to Mr P. Nor do I think there's been a breach of contract.

was there anything else within the Consumer Credit Act 1974 that Creation should have considered?

Even though I've made the finding that I don't think there is a valid claim under Section 75, I think Section 56 of the CCA could be of particular relevance to this complaint.

In summary, Section 56 has the effect of making the Website the agent of Creation during the "antecedent negotiations" leading up to Mr P entering into a transaction with them. So, essentially, this means Creation are responsible for the acts or omissions of the Website and what was said or done before the transaction was entered in to and conducted by the Website, in other words, Creation have to stand behind the things the Website said, did, didn't say, or didn't do during the sales process.

For a valid claim under Section 56, there has to be a valid debtor-creditor-supplier arrangement in place - which is satisfied for reasons I've already explained. However, unlike Section 75, there are no monetary limits attached to Section 56. So, I can consider the impact of Section 56 and whether Creation ought to have considered this in Mr P's case.

So, I've gone on to think about whether the Website misrepresented the information, or the tickets Mr P purchased. As previously explained, from the evidence I have, I can see the total price is displayed on the final page before Mr P would have been asked to enter his card details. With this in mind, I think it's more likely than not Mr P would have been made aware of the total cost of the tickets – even though this cost may have been different to the face value of the tickets. Nor have I have seen any evidence which shows they

misrepresented the seat location. Having thought about this carefully, I'm not persuaded the Website misrepresented the tickets to Mr P.

Also, as I've previously explained, I think the Website and its terms and conditions made clear that they were a ticket reselling site. And I don't think this information was misrepresented to Mr P.

In summary, while I appreciate this will likely come as a disappointment to Mr P, I think he authorised Creation to debit his credit card account with the value of the transaction to the Website, so I think it was fair for them to do that. I also think that there is the appropriate relationship for a Section 75 claim, and I think it does meet the financial limits. So, I don't think it was right for Creation to not consider Mr P's Section 75 claim for the reasons they gave. Although, had Creation done so, and had they considered Mr P's claim under Section 56, I don't think they would have acted unfairly by declining Mr P's claim for reasons I've already explained. So, I don't think Creation need to do anything more.

My final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 January 2022.

Leanne McEvoy
Ombudsman