

The complaint

Mrs R is unhappy with the response of Creation Financial Services Limited ('Creation') in respect of a claim she made to it under Section 75 of the Consumer Credit Act 1974 ('Section 75').

What happened

In March 2019 Mrs R purchased a cruise with her partner ('Mr R'). However, because of the Covid-19 pandemic the cruise company ('the Supplier') cut the trip short and returned to port. Although it offered a package to put things right for customers it went into administration before it could issue refunds or other compensation. The package included a cash offer along with several incentives and discounts on future bookings.

Mrs R used her Creation credit card to part fund the cruise via a £2,000 deposit so she approached Creation for help. In summary, here is what has happened to date:

- Creation managed to recover the £2,000 deposit for the cruise through a successful chargeback
- Creation says the Supplier made a fair offer to refund £9,639.58 cash before it went into administration, so taking into account Section 75 and the already successful chargeback it was prepared to reimburse the balance of £7,639.58

Our investigator thought that Creation had made a fair offer. However, Mrs R did not agree. In summary, she said that the Supplier had not only offered cash as part of the compensation package and this alone does not properly reflect the value of the trip which she and Mr R missed out on.

I issued a provisional decision on this case on 9 May 2022. In this I said:

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

In this case I am considering whether Creation has acted fairly and reasonably in the way it handled Mrs R's request for help in getting her money back. Usually for a transaction such as this a finance provider is able to consider raising a chargeback and assessing the claim under Section 75.

I note that Creation already managed to recover Mrs R's deposit via chargeback. So the focus of my decision is on Section 75 – and whether Creation should fairly do more than it has already offered to.

Section 75

Section 75 allows Mrs R to hold Creation responsible for breach of contract or misrepresentation by the Supplier in respect of goods or services purchased using the credit afforded here. However, there are certain technical criteria that have to be met for a Section

75 claim to be valid. These criteria relate to the cost of the goods or services, the parties to the transaction, or the way the payment was made.

I am satisfied the criteria is in place in order for Section 75 to apply to this transaction. So, given Mrs R's issue, for me to find that a refund of any kind is due to her I'd need to be satisfied there has been a breach of contract by the Supplier.

In determining the Supplier's liability I would usually look at the full terms and conditions that apply to this contract. However, I note that neither party appears to have supplied these. I also note the Supplier is no longer trading and therefore the particular terms do not appear to be readily available. Despite this, in addition to looking at its terms and conditions to assess liability I have also had regard to relevant law, particularly the Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs').

For the PTRs to apply to a particular holiday booking certain criterion has to be met. I am satisfied this is the case here. Notably Mrs R's cruise is a combination of carriage and overnight accommodation meeting the requirements for the PTRs to apply to the travel contract.

The PTR's place liability for the performance of a package travel contract on the organiser (the Supplier here) and imply certain terms into the contract. Regulation 16 of the PTRs implies a term into Mrs R's contract with the Supplier that it must offer an appropriate price reduction for any period during which there is a lack of conformity unless the Supplier proves the lack of conformity is attributable to the traveller.

There is also a provision in Regulation 16 relating to further compensation for damages beyond the scope of the contract price. However, this does not apply in 'unavoidable and extraordinary circumstances'. I have considered this, along with the relevant guidance published by the Competition and Markets Authority. After doing so I consider that as the cruise was curtailed due to a pandemic it would likely preclude Mrs R claiming damages via the PTRs, so I am not considering any losses beyond the scope of the original contract price.

It is not in dispute by any party that the cruise was curtailed (and through no fault of Mrs R) and as a result the vessel returned to port early without visiting every destination in the original itinerary. I am satisfied the Supplier was not able to conform to the original agreement and Mrs R is due an appropriate price reduction via Regulation 16 of the PTRs. I believe that all parties are in agreement that Mrs R is due money back via Section 75 as a result of the Supplier's breach of contract and subsequent failure to remedy it – however, the matter in contention is how much is appropriate.

The Supplier offered a certain amount back as a cash refund – however, there isn't anything in the limited contractual paperwork I have to serve as a guide for how it calculated this. Nor is there anything to help me assess the significance of the additional extras it included in the compensation package (including their value and how that might have affected the cash amount offered). So I think it fair for me to consider things afresh rather than base my direction strictly on the Supplier's cash offer.

With that said, working out an exact method for an appropriate price reduction is not going to be possible. Difficulties are presented by the limited information I have from the Supplier which makes it more challenging to determine the level of non-conformity with the original agreement. I note that Mrs R has written to say that only 14 of the 37 advertised destinations were visited during the cruise (about 38%). However, I don't have anything from the Supplier confirming this. Further difficulties are also presented by the lack of certain documentation such as an official itinerary specifying what destinations were due to be visited and when this

would happen. Nor is there a breakdown of the value of specific parts of the itinerary that might have been missed.

Despite this I do have certain key information which I can use to help me determine a fair basis for a part refund:

Planned duration of trip – 120 days

Departure date – 6 January 2020

Notice of curtailment – 14 March 2020

Return to port (without stopping at further destinations) – 14 April 2020

By my calculation the Supplier provided 68 days of the planned cruise (56%) before curtailing the trip. On that basis my starting point is that Mrs R should fairly get back about half the cost of the cruise.

However, I am aware you could argue refunding half the cost is not sufficient if it is correct that only 38% of the planned destinations were visited during the trip. A cruise after all is not simply about the amount of time at sea – but also the destinations visited along the way.

Conversely I think you could argue that refunding half is too generous if you take into account that after the original plans for the trip were cut short Mrs R and Mr R were (albeit in less than ideal circumstances) still able to benefit from the services and catering onboard the ship for an additional month while it returned to port.

I have already indicated this is not a scientific exercise, but I have tried to think of a fair and reasonable outcome here considering all the variables at play. Overall, and considering the arguments either way I think that settling on 50% as a refund of the contract price is fair and reasonable to reflect the lack of conformity brought about by the Supplier's curtailment.

From what I can see the full contract price of the cruise is £25,561 - so 50% of this is £12,780.50. Mrs R has already had £2,000 back through chargeback which means that (with Section 75 in mind) Creation should fairly refund her £10,780.50. It should also pay her 8% simple yearly interest on the refund from the date it gave a final answer on the claim (which I believe is 6 October 2020) to the date of settlement.

My provisional decision

I uphold this complaint and direct Creation Financial Services Limited to pay Mrs R £10,780.50 plus 8% simple yearly interest calculated from 6 October 2020 until the date of settlement.

I asked the parties for their comments.

Mrs R responded to provide an extract from the cruise guidebook to show intended destinations and a spreadsheet she had put together to show destinations which the cruise visited. She says it shows they managed to visit 16 of an expected 37 destinations which totals 43% of those planned. She says they missed some of the bigger/better and more exciting destinations.

Creation did not provide further comment.

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 thank Mrs R for providing further details about the missed destinations on the cruise as a result of the curtailment. However, I do not consider this information changes the basis for my redress – I will explain why.

Despite not having official information from the supplier to confirm the exact impact of the curtailment on the itinerary, in my provisional findings I already knew that Mrs R had said they had not visited around 14 of the 37 planned destinations. I considered that if it were right it could be argued that a 50% refund was not enough. But I also noted other reasons that would offset this in any event.

I still have limited information from the supplier to show costings, planned timings, destinations and missed stops for the trip and while I do have further information from Mrs R I don't think what she has provided me is very different to what I have already thought about.

Mrs R has clarified they actually visited a couple more than 14 destinations and she has also tempered what they did receive by saying they missed some of the most attractive destinations. I think based on the information I have it is hard to quantify the value of particular destinations as this is largely subjective. However with this in mind I don't think Mrs R explaining they visited 16 rather than 14 stops is notable enough to warrant a change to my proposed redress (which in itself is a somewhat broad brush out of necessity).

Mrs R has pointed out that by her calculation she and Mr R missed out on 57% of the trip (based on destinations not seen). But my point still stands that I also need to consider:

- they received about 56% of the planned cruise (in days) before the trip was curtailed
- they received an additional month of service onboard the ship (albeit not in ideal circumstances) while it returned to port

All in all I don't think there is anything that makes me strongly think Mrs R should be entitled to less or more money back than a 50% partial refund of the cost of the trip. As I have already indicated this is not a scientific exercise. Furthermore Creation has not provided any further comment to persuade me that this would not be a fair and reasonable outcome.

Neither party has provided further information that makes me think it fair to depart from the findings in my provisional decision. In summary, for the reasons given here and in my provisional decision I am upholding this complaint and awarding Mrs R a partial refund of half the cost of the cruise (after a deduction for the money received so far via chargeback).

Putting things right

I consider it fair that Mrs R receive a partial refund as directed plus simple interest.

My final decision

I uphold this complaint and direct Creation Financial Services Limited to pay Mrs R £10,780.50 plus 8% simple yearly interest calculated from 6 October 2020 until the date of settlement.

If Creation considers it should deduct tax from the interest element of my award it should provide Mrs R with a certificate of tax deduction in order that she can claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 27 June 2022.

Mark Lancod
Ombudsman