

The complaint

Mr M complains that John Lewis Financial Services Limited won't refund a payment made on his credit card to a ticket site for tickets to see a singer.

What happened

In March 2020 tickets were purchased to see a singer in concert in July 2020 using Mr M's John Lewis Financial Services Limited credit card (JL for short). The total cost charged to his card was just over £200. Not long after purchasing the tickets the show was postponed and then postponed again due to the Pandemic. So he complained to the ticket seller asking for a refund. The ticket seller said that no refunds were due, but the show had been rescheduled. Mr M made clear that the dates were not convenient, and he wanted a refund. Mr M continued to pursue his refund, but the ticket seller stopped communicating. So Mr M took his dispute to JL.

JL said it wouldn't consider the matter. It said this was because it didn't think it could pursue a chargeback because it didn't have a reasonable prospect of success in its view. So it didn't think it could do any more for Mr M.

Mr M didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, they thought JL had acted unfairly by declining Mr M's request for a refund so asked it to refund him the cost of the tickets. JL having been chased repeatedly has chosen not to respond. So the complaint 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.

I should make very clear that this decision is not about the ticket seller, which isn't a financial services provider and so doesn't fall within my remit. I can see from Mr M's representations to the Investigator that Mr M is (understandably) focusing on the actions of the ticket seller. However whatever the issues there maybe with the ticket seller and just because Mr M feels he's lost out it doesn't necessarily follow that JL has treated Mr M unfairly.

As the card used here is part of a card network there are certain rules for disputes regarding card transactions. The Chargeback rules are under a voluntary scheme and consumers do not have a right to a chargeback being raised. It is the case though that this Service considers raising a chargeback to be good practice. JL can only be held responsible if it has failed in some way. And the question of whether or not JL has treated Mr M fairly is the only question I can decide upon in this decision. This is an important distinction which I hope I've made sufficiently clear.

could JL challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute about a transaction, as Mr M does here, JL (as the card issuer) can attempt to go through a chargeback process. Mr M

makes clear that the transaction was made with the ticket seller for that amount and that it appears on his statement correctly. So I don't think JL could've challenged the payment on the basis Mr M didn't properly authorise the transaction, given the conclusions on this issue that I've just set out.

JL is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. The Ticket seller would then receive that chargeback request and may agree to refund the payment or may contest the chargeback. If it contests, then JL should consider this and then if it still feels the chargeback is warranted then it can take the chargeback further and ultimately to the scheme provider (not JL) who will then make an independent determination on the matter. So JL isn't solely responsible for the decision whether to refund or not when going through the chargeback process. And it can fairly decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success.

JL says that there was no evidence to show that a refund was due and thus it didn't raise a chargeback. However I don't think this is enough. I've considered the card network guidance issued in response to the arrival of the pandemic. It is in the format of questions and answers:

"Question: The merchant has cancelled services and offered the cardholder a reasonable alternative for future service. The cardholder declines this reasonable alternative but the merchant refuses to process a refund. Does an issuer have chargeback rights?"

Answer: Yes. Reasonable alternatives for future services cannot be imposed on the cardholder in lieu of a refund, unless the merchant has a right to provide the cardholder with such reasonable alternatives based on the terms and conditions properly disclosed to the cardholder at the of the purchase, or based on applicable government legislation or regulations."

Before the ticket seller stopped communicating with Mr M it pointed to its website terms and conditions. But Mr M noted that those terms had been amended between purchase of the tickets and when this issue was addressed with the ticket seller. Mr M asked for the terms and conditions from the point of sale, but the ticket seller never provided them.

This service has access to technology which can see previous iterations of websites. By using this the Investigator established that the only terms and conditions apparently in effect at the point of purchase were dated January 2018. The only part of the terms which consider what happens if tickets are not wanted is the following term.

'Once purchased, your ticket is your responsibility. Tickets are non-refundable or transferable'

There is no comment on what happens with regard to rescheduling decisions taken by the ticket supplier or cancellation either. So when considering this in the light of the network guidance above it seems clear that the ticket seller doesn't have a right to a reasonable alternative under the agreed terms. And accordingly the chargeback should have been made and based on what is known the investigator explained that they thought JL should refund Mr M the cost of the ticket. This has been put to JL and it has been repeatedly chased for its consideration of these arguments. But it has not responded. Finality in such disputes is important for all parties and it is unfortunate that both JL and the ticket seller have not corresponded fully.

Clearly JL has treated Mr M unfairly by not raising a chargeback. I say this because the network guidance had been issued in May 2020 but JL confirmed to this service in July 2020 its position regarding not raising a chargeback. And considering the date of expected delivery of the service (that is when the singer was due to sing) it is clear the chargeback would have been within the time limits set out in the chargeback rules. So this complaint should succeed.

And as an aside I think this dispute would likely have been successful under the Consumer Credit Act as well, but I do not have to further delineate on this due to my already finding Mr M has been treated unfairly.

Putting things right

It's clear that Mr M has lost out on the opportunity of having a successful chargeback due to JL's failing. JL may argue it's unfair to decide on the likely outcome of a chargeback. But I don't think this makes a significant difference here because if I made an award purely on such a loss of opportunity on the basis of distress and inconvenience it would be for around the same amount as Mr M points to in terms of direct loss considering what happened anyway.

So I think the fairest solution is that JL must rework Mr M's credit card account by applying the refund for the transaction amount on the date it declined his claim. And where this reworking of his account leads to periods of positive balance interest at 8% simple should be paid to Mr M on those amounts for those periods.

My final decision

For the reasons set out above, I uphold the complaint against John Lewis Financial Services Limited and direct it to pay Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 August 2022.

Rod Glyn-Thomas
Ombudsman