

The complaint

Mr G is unhappy with how Creation Financial Services Limited ('Creation') responded to his claim for money back in relation to a booking made using his credit card.

What happened

Mr G says he purchased accommodation using a booking platform ('the agent') using his Creation credit card. He says that due to the Covid-19 pandemic the accommodation was cancelled by the provider and the agent has issued a refund. However, the refund was only for the amount paid on the credit card rather than the full price charged, the balance of which was paid for by vouchers.

Mr G says he complained to Creation about it in April 2020 but he is unhappy that it refused to refund him for the amount lost in vouchers. It says he doesn't have a valid claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') because the credit card payment went to the agent and not the supplier of the accommodation.

Mr G is also unhappy with the overall service he received from Creation, for example he has repeatedly had to chase for an answer and the responses have been unclear and unhelpful. He is also unhappy he was passed between the retailer who brands the card and Creation.

Our investigator upheld the complaint. In summary, he thought that the agent's terms and conditions entitled Mr G to a full refund (including any vouchers used) so with Section 75 in mind Creation should provide him the £250 worth of vouchers he is claiming or the cash equivalent. He also said it should pay Mr G £50 compensation for the level of customer service he received.

Creation did not agree. It questions why the agent wouldn't have automatically refunded Mr G the cost of the vouchers in accordance with its terms if Mr G's booking was cancelled by the supplier of the accommodation as he claims.

On 20 May 2022 I issued a provisional decision on this case. 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 Mr G's request for help in getting 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.

Chargeback only allows a customer to recover the money paid on their card. Mr G has had that money back but seeks a further refund for claimed losses in respect of vouchers he says went towards the balance of the transactions. So I turn to whether Creation should fairly pay Mr G for the amount he is claiming with its obligations under Section 75 in mind.

Section 75 can allow Mr G to hold Creation responsible for breach of contract or misrepresentation by a supplier in respect of goods or services purchased using the credit afforded here. However, there are certain criteria that have to be met for Section 75 to apply to a particular transaction. These criteria relate to the cost of the goods or services, the parties to the transaction, or the way the payment was made.

Unfortunately, I have very limited information about what happened here beyond what Mr G has told us. While I have taken this into account there is no official booking information provided that allows me to confirm the relevant parties to the contract, the services paid for and their price (alongside the relevant payment methods used). Therefore, I am unable to fairly conclude that Mr G has a valid Section 75 claim against Creation.

Furthermore, even if I were to accept that Mr G has a valid Section 75 claim I don't have enough information to persuade me the agent has failed to fulfil its obligations. From what Mr G says and the agent's terms and conditions it appears he is entitled to a full refund (and received a refund on his card) so it isn't clear to me why he wouldn't have received everything due. Mr G has not been able to provide me with copies of interactions with the agent to confirm that it hasn't refunded him in accordance with its terms and why that may be the case. It is also unclear what the nature of Mr G's actual loss is here. I have limited information about the voucher credit he is claiming. So it is difficult to conclude that the agent has breached its contract and caused a subsequent financial loss to Mr G in any event.

Creation has not been able to provide further information to date. And while Mr G has indicated he sent Creation more information it currently isn't clear what it received or that its actions have led to Mr G not reasonably having access to the information himself.

I have asked Mr G some questions to clarify things, and also requested some further evidence from him such as a booking confirmation and information from the agent about the status of any voucher refunds. Mr G has indicated that due to the passage of time he doesn't have all the relevant documentation. However, this doesn't fully account for why he has been unable to fully answer my questions or reasonably access electronic records such as emails or those held through the online account with the agent.

All things considered and based on the information I do have at the moment, with Section 75 in mind I can't fairly say Creation should refund Mr G for the £250 of vouchers he is claiming.

I have gone on to consider the customer service concerns Mr G has mentioned. Mr G is unhappy that he got passed from the retailer which brands the cards to Creation. I am unable to consider the actions of the retailer here as it is not the regulated financial business this complaint is set up against. So I have turned to what Creation has done.

From what I can see Creation explained why it was not refunding Mr G relatively promptly after his initial claim was raised. I can see an email it sent him in May 2020 about this. It seems to sufficiently explain its reasons behind the decision. So on the face of it the customer service in that regard looks reasonable.

Mr G says he was passed around and that he had to chase things up with Creation who were not always clear with him. This would no doubt be frustrating. However, one thing to note is that around this time there were unprecedented challenges for businesses like Creation as a result of the global pandemic. This would reasonably

explain why the communication would not always have been as timely or as tailored as it should be. Although Creation would be expected to assist Mr G through these challenges as best it can, from what I have seen I am not persuaded it acted in such a way as to warrant a payment of compensation here.

I asked the parties for a response.

Creation did not add anything further.

Mr G responded with further evidence including scanned receipts. After reviewing these I wrote to Mr G to say, in summary:

- I didn't think Section 75 applied due to the relevant financial limits;
- in any event it wasn't clear that the agent had breached its contract with the account holder; and
- it was not clear there was a financial loss as it appears that Mr G's claim is for the value of a likely expired coupon code.

Mr G responded to say, in summary:

- he believes that Section 75 does apply, and understands that as long as the overall cost is over £100 the amount paid by credit card is not relevant;
- he believes that consumer law requires the credit card company to provide a full refund (including vouchers) where the contract has been cancelled without the service being provided; and
- Creation's reasoning for not providing a full refund was nonsensical and unhelpful and cannot be excused by the pressures surrounding the pandemic.

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.

In order for Section 75 to apply there has to be certain criteria met which is laid down in the Consumer Credit Act 1974. One of those is a valid 'debtor-creditor-supplier' agreement. I have already explained to Mr G that I consider there to be a valid 'debtor-creditor-supplier' agreement here. However, this is between him, Creation and the agent which received the credit card payment. There is not a valid 'debtor-creditor-supplier' agreement for any potential Section 75 claim to cover the actions of the third-party supplier of the accommodation— only in so far as the agent makes itself contractually liable for this.

In order for Section 75 to apply Mr G's claim should also relate to goods or services with a cash price of more than £100 and not more than £30,000.

Although Mr G has made the point that the total cost of the accommodation he booked was over £100, as I have explained above any potential Section 75 claim is only in respect of the contract he has with the agent.

In this case the agent's terms and conditions make it clear that it does not contract with Mr G for accommodation. It acts as an intermediary and provides its own buyer services to him for a separately itemised fee. So I consider the relevant cash price in respect of any Section 75 claim against the agent is the fee which it charged for its own service.

The receipts show the agent charged Mr G a fee for its own service of less than £100 for each booking. Unfortunately, this presents a problem so far as any claim in relation to the

agent potentially breaching its own terms in not providing a full refund. Section 75 likely does not apply here, and Creation is not responsible for any 'like claim' of this kind.

However, whether the financial limits required for a valid Section 75 claim are met does not make a difference here in any event. For the claim to succeed I need to be satisfied that the agent has failed to act according to its buyer protection policies - causing Mr G a financial loss. Based on the limited evidence I have been presented with I am still not persuaded the agent has breached its contract with Mr G and caused a financial loss as a result. I will explain further.

The receipts provided by Mr G show the other payment method was 'coupon' - from what I can see from the agent's descriptions of its various methods to pay these are unique discount codes that can be used once and have an expiry date. They can apparently be reinstated by the agent if they are still valid and a third-party cancels accommodation. However, there is limited information to show that at the time of issuing the credit card refund the agent had not reinstated unexpired coupon codes onto the account and why that might be the case. Because the agent issued a full cash refund to the card it is unclear why it wouldn't have also agreed to process other transactions if Mr G was eligible. And as I have already said in my provisional decision I think Mr G would reasonably have access to this information through the account with the agent.

So there is overall a lack of persuasive evidence to show the agent didn't do what it said it was going to do in its policies. But even if this were not the case, I am not persuaded there is a clear financial loss here that Creation should fairly be responsible for paying. I know Mr G has referred to the requirement to refund 'vouchers' but I don't think a 'coupon' here is the same thing. The coupon appears to be a temporary/seasonal promotional discount code a customer can use once to save on a booking at the time. This is unlike a gift voucher, or similar persistent credit balance. It also appears that whether the coupon was reinstated or not there would have been limited opportunity to use it before expiry in any event. So I am not persuaded this could fairly be seen as a consequential loss which Creation should be compensating Mr G for in any event.

In conclusion, I am not persuaded that Section 75 applies here. But in any event I consider there a lack of persuasive evidence to show the agent breached its contract with Mr G causing him a financial loss. All things considered (and with Section 75 in mind) I do not think it fair and reasonable to direct Creation to refund Mr G for the amount he is claiming.

I have also considered again what Mr G has said about Creation's customer service. While I accept he was disappointed with Creation's response and the reasons given for its refusal to refund him I don't think this in itself is a reason to make an award of compensation. Overall, I consider the reasons given in my provisional decision for not awarding compensation remain fair and reasonable.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 August 2022.

Mark Lancod
Ombudsman