

The complaint

Mr H says John Lewis Financial Services Limited has treated him unfairly in relation to transactions on his credit card which paid for a package holiday abroad.

What happened

In May 2019 Mr H booked a package holiday with a company I'll call Firm G. He made two payments using his John Lewis Financial Services Limited credit card ('JLFS' for short). He paid an initial £400 in May 2019 and a further £6,973 in February 2020. The package was part of a larger holiday that Mr H had booked for himself and his wife. In March 2020 Firm G cancelled this holiday and offered a credit voucher. Mr H wanted a refund. So after much discussion and liaison with other parties Mr H took his claim to JLFS in December 2020.

JLFS looked into the matter and didn't refund Mr H this outstanding amount. But it did pay him £50 for the customer service it had provided in dealing with the matter. Mr H, still unsatisfied, brought his complaint to this service.

Our Investigator felt JLFS hadn't considered the Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs') properly and decided that JLFS should refund Mr H the £7,373 he paid. Also that it should make this refund at the time it declined his claim and rework his account paying 8% simple on any periods of positive balance that come about as a result of the rework of the account.

JLFS accepted this position. But Mr H feels that the interest should be calculated differently and that the £50 isn't enough. As Mr H remains unhappy, so this complaint comes to me for a decision.

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.

JLFS has accepted it needs to refund Mr H the cost of the holiday and to rework his credit card account from the time it declined his claim and pay 8% on any periods of positive balance from then until it settles the claim. As this is the case and both sides agree that the holiday amount is to be repaid then I see nothing to be gained by discussing or reanalysing on the agreed matters. I think this is fair and reasonable solution and will direct JLFS to do so. So now I'll only turn my attention to the issues still contended by Mr H.

When should the refund be attributed to the reworked account?

Mr H argues it should be attributed from 14 days from when Firm G cancelled the holiday because that's when the rules state suppliers should refund. The Investigator said from when JLFS declined his claim. The refund amount is significant and there is several months between the respective dates and hence there would potentially be significant amount of difference in the interest applicable.

Mr H has a claim against JLFS under S75 of the Consumer Credit Act 1974 which states:
“(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

I particularly note that it says *“he shall have a like claim”*. So it is clear this legal mechanism means that Mr H then can make a like claim to JLFS. And had it assessed his claim properly it would have agreed with his claim when it reached its conclusion and informed him of it, that is when it issued its decision on the matter.

S75 does not state that Mr H has the identical retrospective claim to that he has against the supplier. I think if that had been the intent of Parliament then it would have said so and would have drafted the legislation accordingly. And it would clearly be unfair on JLFS to have to redress matters from before when it had opportunity to consider Mr H's claim and decide upon it. So I'm not persuaded by Mr H's arguments on this. Accordingly it should refund from the point when it should have got the redress to the claim correct and told Mr H of this, namely from when it declined his claim (wrongly).

Calculation of interest

This service can award interest for when complainants have been deprived of their money unfairly. And our standard approach for many years has been to award this at a rate of 8% simple.

In Mr H's case this claim is in relation to his credit card account where JLFS have lent him the money (and he later pays it back). So it's unlike cash losses suffered by consumers which get 8% for the entire period of being deprived of their own money. Here he's only been deprived of extra lending, so he is only entitled to receive 8% simple on the reworking of his account for the periods where the reworking of the account lead to positive balances. Positive balances here would be his money rather than credit, and that is why he gets 8% on such as he's been deprived of his money when such positive balances occur.

Mr H opines that this is “extraordinary” and an “injustice” and that consumer groups and websites would be interested in this approach. Such groups have been well aware of this approach for a substantial amount of time. This approach has been considered by the Courts as well on occasions over the years. So I'm not persuaded by what Mr H says on this matter either.

£50 for customer service

Mr H thinks this should be higher. I disagree. And I say so because I've not seen any persuasive evidence of significant or substantial impact upon Mr H by what happened here in relation to the customer service received. So I see no persuasive reason to alter that position.

Putting things right

I direct JLFS to refund Mr H the £7,373 he paid. It should make this refund to his credit card account at the time it declined his claim by reworking his account and paying 8% simple on any periods of positive balance that come about as a result of the rework of the account. It should also explain its workings to Mr H when it confirms settlement to him in writing.

My final decision

For the reasons set out above, I uphold the complaint against John Lewis Financial Services Limited. And it should redress the matter as I've described above.

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

Rod Glyn-Thomas
Ombudsman