

The complaint

Mr H complains Advanced Payment Solutions Limited trading as Cashplus (“APS”) hasn’t assisted him in a dispute over a payment made for scuba diving lessons.

What happened

The complaint has its roots in a purchase of 5 scuba diving lessons for Mr H’s partner’s two children. These were paid for at a diving school (“S”), at a cost of £125 per child, using Mr H’s APS credit card. The two sets of lessons were billed as a single transaction of £250.

In a provisional decision I issued on this complaint on 9 September 2022, I went on to describe what had then happened as follows:

“The children had their first lesson at the diving school on 8 March 2020, after receiving some learning materials. Mr H didn’t think the session was well organised and was disappointed at how little pool-time the children received. He raised his concerns with the school on 15 March 2020 and again on 18 March 2020. In response to the latter email S replied that lessons were postponed due to the pandemic. Then, on 23 March 2020, the UK went into lockdown due to the Covid-19 pandemic and pools were closed. Mr H contacted S on 28 March 2020 to request a refund and, having not received a response, contacted APS to dispute the payment to S.

APS attempted what’s known as a “chargeback” to claim a refund for Mr H. Having received notice of the chargeback, S chose to contest it. APS sent the details of S’s response to Mr H for his comments. He sent these promptly, but it appeared APS didn’t receive his email and decided not to take the chargeback further.

Mr H had also asked APS to consider honouring a claim under section 75 of the Consumer Credit Act 1974 (“CCA”). However, it didn’t take this forward. Dissatisfied with APS’s response, Mr H referred the matter to this service for an independent assessment.”

One of our investigators had looked into the case and concluded that APS hadn’t handled matters well but that, even if they had, Mr H’s dispute over the lessons would have been unsuccessful. Mr H appealed our investigator’s findings and the case was passed to me to decide.

In my provisional decision I considered three issues – the chargeback process; a potential claim under section 75 of the CCA; and the level of customer service provided by APS throughout. I’ll summarise briefly what I said in my provisional decision about each below:

Chargeback

- A chargeback is a means of disputing a card payment via the dispute resolution system administered by the card scheme to which the card in question belongs. In Mr H’s case this was Mastercard.
- Chargebacks must adhere to rules set by the card scheme, which include rules about

what kind of disputes can be raised and the time limits in which disputes must be brought. The process is not guaranteed to succeed and can be contested by the other side to the dispute. There are various levels of escalation or appeal for disputes within the scheme.

- I'd normally expect a card issuer to attempt a chargeback if it had a reasonable prospect of succeeding. I wouldn't normally expect it to continue disputing a matter unless it was obvious the defence submitted by the merchant was wrong or otherwise inadequate.
- APS had raised a chargeback in Mr H's case but it had been defended by S, which had argued one lesson had been received, along with learning materials, and that the remaining lessons could be taken up as soon as pools reopened. APS asked Mr H for his comments on this, which he gave, but APS had somehow been able to lose his email and decided not to take the chargeback further.
- Although APS had made an error in losing the email, I didn't consider a chargeback would likely have been successful and I'd not have expected APS to pursue the matter further. I said this was because *"...the flexible nature of the packages of diving lessons meant that S was not tied to a specific series or set of dates by which it was bound to provide the lessons. So the fact that it was unable to deliver the lessons for a time due to pandemic restrictions would not necessarily mean that Mr H had a good argument that S had failed to provide the services paid for. It appears still to have been willing to provide the rest of the lessons. This wasn't convenient for Mr H as the lessons had been intended to prepare for an upcoming holiday, and in light of that I can understand why he wanted to cancel and receive a refund. But it doesn't mean he was entitled to one via a chargeback."*

Section 75

- Section 75 allows a consumer who has paid by credit card for goods or services to make a claim against their credit card provider for any breach of contract or misrepresentation by the supplier of the goods or services, subject to certain conditions being met.
- The law says it is Mr H, as the credit card owner, who needs to have a claim for breach of contract or misrepresentation against S. But it seemed to have been his partner who entered the contract and organised the payment, and it would be difficult for Mr H to make a claim for a breach of contract he was not a party to.
- Even if this wasn't correct however, and Mr H could theoretically make such a claim, it would run into the same difficulties as the chargeback. The contract with S was flexible and didn't specify particular dates, or a window of time in which the lessons were meant to have taken place. S had said, before the children had been signed up, that *"We are very flexible with the dates – you choose when you'd like to do the sessions, as they take place most weekends."* It was clear that S couldn't provide the remaining lessons for a considerable time due to the pandemic. The relevant consumer law says that where no specific time for contractual performance is specified, it's implied that performance will take place "within a reasonable time", which was a question of fact. I considered that the fact the lessons couldn't practically be provided due to the pandemic should be factored in to this and, taking it all into account, it wouldn't be reasonable to conclude that postponing the remaining lessons was a breach of contract by S.
- I therefore concluded that had APS considered a section 75 claim from Mr H (as he'd

requested), it wouldn't have been unreasonable of it to decline this.

Customer Service

- APS's customer service had been poor following Mr H's attempt to raise the dispute. Despite frequent requests and reminders from Mr H, it had never considered his dispute through the lens of section 75. It still hadn't appreciated what Mr H had been asking for even after he complained about the way it had handled matters.
- APS had admitted that its staff dealing with Mr H had lacked the knowledge to appreciate what he had been asking for, but this hadn't made a difference because Mr H didn't have a valid dispute in any event.
- While the *outcome* of the dispute hadn't been affected by APS's errors, I thought these had caused Mr H unnecessary annoyance and frustration. I concluded it should pay him £100 compensation in respect of this, and ensure it had not charged him a £20 fee it had told him it would add to his account if his dispute was unsuccessful.

I asked both parties to let me have any comments they wanted me to consider by 23 September 2022. Neither Mr H nor APS agreed with my provisional decision.

APS said they thought £100 compensation was too much to pay Mr H and they didn't understand why the complaint was being upheld at all. They proposed paying £50 instead.

Mr H said I had misunderstood some of the background. He explained that he had been the one who had made the booking with S for the children, had gone with them to the lesson and collected the training packs. He said his partner had however needed to sign some paperwork because she was the guardian of the children.

Mr H also reiterated his comments about what he considered to be APS's poor handling of the dispute and in particular the "lost" email and lacking communication. Mr H expressed some doubt that an email could be lost in this way and considered the company had not fulfilled its duties. Finally, Mr H noted that S had not told him about any re-opening or kept him updated and that they seemed to have avoided dealing with the issue. He questioned how he could have re-booked with them in the absence of any information about when they were re-opening.

The case has now been returned 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 thank both parties to the complaint for their responses to my provisional decision. I will address Mr H's points first.

I agree with Mr H that the service from APS was poor. It does seem less likely that an email could have been lost in the sense that a physical document could be lost. That's not to say however, that these things don't happen. It's possible for example, that an email could be overlooked by the person who was meant to deal with it, and then be deleted automatically from a central mailbox. But whatever the underlying reason, the fact is APS didn't act on the

email at the time and were unable to find it later.

As I said in my provisional decision, I don't think APS dealing with the email correctly would have led to a different outcome to the chargeback. It was not obviously a dispute which would succeed were it to have been escalated through the chargeback system, and therefore I would not have considered APS to have acted unfairly had they read the email and decided not to pursue matters further. However, I did think that APS's overall handling of the dispute caused Mr H unnecessary annoyance and frustration, and that handling included failing to consider the email.

I accept Mr H's explanation about it being him who had made the booking. But that doesn't change whether I think APS should have honoured a section 75 claim. My reasons are essentially the same as those I outlined in my provisional decision. Mr H has pointed to a lack of communication from the supplier, but there's no evidence to suggest S would have failed to provide the remaining lessons once pools had reopened, had he asked. It was apparent that Mr H had decided to cancel and ask for a refund very early in the pandemic. In the circumstances this was understandable, but it doesn't mean he's necessarily entitled to a refund.

Moving on to APS's comments, the reason I am partially upholding the complaint is due to the fact its customer service failings caused Mr H more frustration and annoyance than one might expect in day to day life. While it ultimately didn't get the answer to Mr H's dispute wrong, the surrounding customer service was poor and the impact of this should be recognised. I remain of the view that £100 compensation, and waiving any fees associated with handling the dispute, is fair in the circumstances. If APS wishes to learn more about how the Financial Ombudsman Service awards compensation of this type, it can visit: <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience>.

My final decision

For the reasons explained above, I uphold Mr H's complaint in part and direct Advanced Payment Solutions Limited trading as Cashplus to:

- Pay Mr H £100 compensation.
- Check if it has charged Mr H any fees in respect of the dispute over the payment to S, and ensure any such fees charged have been refunded to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 October 2022.

Will Culley
Ombudsman