

The complaint

Mrs M is unhappy that John Lewis Financial Services Limited ('JLF') would not refund her for a purchase she made using her credit card.

What happened

Mrs M bought a flight using her JLF credit card but it was cancelled because of the global Covid-19 pandemic.

Mrs M was only offered a credit voucher by the supplier so she contacted JLF to get a refund.

JLF did not refund Mrs M. In summary, it says that

- Mrs M did not provide it all the relevant documentation to raise a chargeback in time and a chargeback would fail in any event as she had accepted a credit voucher
- there is no claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') as Mrs M has accepted a voucher and because she booked through an agent there is no 'debtor-creditor-supplier' agreement for a claim in respect of the airline which supplied the flights

JLF did however pay Mrs M £50 for delays in getting back to her about the dispute.

Our investigator did not uphold the complaint. He said, in summary:

- by the time Mrs M returned the dispute forms to JLF the chargeback was out of time
- the booking was made through an agent and the supplier was a third-party airline which means the 'debtor-creditor-supplier' agreement was not in place for a Section 75 claim
- the £50 paid for the service failings was fair and reasonable

Mrs M asked for the matter to be looked at by an ombudsman.

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.

I am sorry to hear Mrs M had her flights cancelled as a result of the global pandemic. However, when looking at what JLF should fairly do I consider its obligations in respect of the specific card protections available – in this case these are chargeback and Section 75.

Chargeback

The chargeback scheme is one way which JLF might have been able to recover funds for Mrs M. However, it is limited by the particular scheme rules that apply. I have considered the relevant chargeback scheme rules and any additionally published guidance to decide if JLF has acted fairly here.

JLF says it did not raise a chargeback because Mrs M did not provide it with the relevant information it needed. It says that to date she has not done so and now it is too late for it to raise a chargeback. But from what I can see this isn't fair.

The relevant chargeback rule here relates to goods and services which have not been provided. The rule says that in order to raise the chargeback what is required is 'a description of the cardholder's complaint in sufficient detail to enable all the parties to understand the dispute'. From the information JLF has provided Mrs M appears to have returned a dispute form which clearly states that she has not received the service she paid for and confirms she tried to resolve the matter with the merchant first. Furthermore, the dispute form appears to be accompanied by several pages of email correspondence from the supplier indicating that the service was in fact not received and vouchers were offered as a resolution. I think from what Mrs M provided the nature of the dispute is sufficiently clear. I also note that right at the bottom of this email chain appears to be the booking confirmation.

I can see from its system notes JLF appear to have wanted some other information – but as I have already said – it had enough information to satisfy the chargeback rule here.

I also note the initial outbound flight was due to be provided on 13 May 2020, and in accordance with the relevant rule the chargeback had to be submitted within 120 calendar days. Mrs M returned her dispute details to JLF on 4 September 2020.

So I think that Mrs M had provided enough information in sufficient time for JLF to raise a chargeback for the full amount on her behalf. I also note that even if this were not the case, JLF has not sent in persuasive evidence that when it provided Mrs M the dispute documents she requested on 8 August 2020 that it sufficiently informed her of what she had to provide and the timeframe which she needed to do this in for a chargeback to be possible.

So all things considered I think JLF is responsible for the failure to raise a chargeback. So I need to think about the likely consequences of this error.

I have thought about whether the chargeback would have likely succeeded. I have taken note of why JLF said it wouldn't (regarding the acceptance of a voucher). But I don't think there is persuasive evidence Mrs M accepted a voucher – the email she sent to the booking agent indicates she was upset only a voucher was being offered and requested a full refund. I also note that the chargeback rules do not state the offer of a voucher prevents Mrs M from claiming a full refund. So all things considered I think that Mrs M had a strong reason for a successful chargeback here. I think had it been raised it would have been more likely to succeed than not. So considering JLF has deprived Mrs M of this opportunity to get her money back in this particular case it should fairly provide her with a full refund of the amount paid on the card including interest from the latest date that it could have raised the chargeback to the date of settlement.

Section 75

I will deal with this briefly as considering my findings above I think it is unnecessary to go into great detail.

Section 75 in certain circumstances will allow Mrs M to make a claim against JLF for any breach of contract of misrepresentation by a supplier of goods and services paid for using the credit card. However, certain technical criteria apply as to whether a Section 75 claim is valid.

In this case JLF say there is no valid 'debtor-creditor-supplier' agreement for a valid Section 75 claim because of the involvement of a travel agent that received the credit card payment. However, although I agree that there is no claim in respect of the actions of the airline directly I do think there is a claim in respect of the contractual obligations of the travel agent which supplied the tickets.

Briefly considering the terms and conditions of the travel agent I think it is arguable whether or not it has a contractual responsibility to refund in these circumstances. However, because of my findings on chargeback I don't consider it necessary to say more on this point.

Compensation

JLF acknowledge Mrs M had some issues sending further information to it. And that she had also complained about certain delays in relation to her complaint. From what I can see from the system notes she said a manager took too long to get back to her – and she was unhappy with how long it took to get an answer on her dispute. I understand that JLF has paid her £50 for this as a gesture of goodwill.

I can see there were some service failings here. It appears JLF did not give Mrs M a clear and timely answer to her dispute. I also don't understand why JLF was still requesting information from Mrs M about the chargeback dispute in October 2020 when it appeared to have already timed out.

I don't know exactly what happened here from a customer service point of view – some of the information I have is limited in relation to how long managers took to get back to her for example. But from what I can see I don't think the £50 compensation is enough when considering all the things I have mentioned above. So I am awarding Mrs M an additional £100 which would take the compensation for distress and inconvenience to £150 in total.

My provisional decision

I direct John Lewis Financial Services Limited to refund Mrs M the £930.21 she paid on her card plus simple 8% yearly interest from the 10 September 2020 to the date of settlement. It should also pay her an additional £100 in compensation for the distress and inconvenience caused.

I asked the parties for their comments. JLF had nothing further to add. Mrs M said she would ask that any payment is paid to her directly rather than onto her credit card.

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.

Neither party has added anything that gives me cause to alter my provisional findings as set out above. I still consider these to be fair and reasonable. I also think it fair that JLF pay the refund to Mrs M directly as she has requested.

Putting things right

JLF should put things right based on my direction set out below. It should also let Mrs M nominate her own bank account for the payment of the settlement.

My final decision

I direct John Lewis Financial Services Limited to refund Mrs M the £930.21 she paid on her card plus simple 8% yearly interest from 10 September 2020 to the date of settlement. It should also pay her an additional £100 in compensation for the distress and inconvenience caused.

If JLF considers it necessary to deduct tax from the interest award it should provide Mrs M with a certificate of tax deduction so she may claim a refund from HMRC if applicable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 30 December 2022.

Mark Lancod
Ombudsman