

The complaint

Miss M is unhappy how John Lewis Financial Services Limited (JLFS) handled her request for help to recover money following the cancellation of airline flights.

What happened

In January 2020, Miss M paid £1,091.57 for some flights to and from Thailand. She used a travel provider to book the flights, who I'll refer to as G. The outbound flight was scheduled for the end of March 2020, with the return flight two weeks later. Miss M used her JLFS Partnership card to make the payment.

Three days before she was due to fly, Miss M received confirmation from the airline that her flights had been cancelled because of the COVID-19 pandemic. Miss M tried to get a refund from the airline, but they referred her back to G. G referred her to the airline, and Miss M wasn't getting any success when she tried to contact either of them.

Because of that, in July 2020 she asked JLFS for help to recover the money. JLFS didn't raise a chargeback claim, and in March 2021 they sent Miss M a response to say they couldn't consider a claim under Section 75 (S75) of the Consumer Credit Act 1974 as there wasn't a valid debtor-creditor-supplier (DCS) relationship in place as she'd paid G to arrange the flights, but her contract was with the airline.

Unhappy with this, Miss M contacted our service, and a complaint was raised for her. She wasn't happy with JLFS's response to her complaint and asked our service to look into things for her. Our investigator did and said that JLFS had enough information to raise a chargeback when Miss M first contacted them in July 2020. She said the chargeback was now out of time to be raised, so JLFS should refund Miss M the total amount of £1,091.57. She said JLFS should rework Miss M's credit card account from the date they should have raised the dispute and if that results in a credit balance for Miss M, JLFS should pay 8% simple interest per year on that credit from the date it would have arisen to the date it ceased to exist.

JLFS didn't agree with this. They said they couldn't raise the chargeback when Miss M first got in touch with them, and they'd asked her to provide the relevant terms and conditions. They said they never received them, so couldn't take a chargeback claim any further.

As JLFS didn't agree, it's 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.

Having done so, I agree with the outcome reached by our investigator. I'll explain why.

There are different ways that a bank can assist customers who have had issues with goods or services not being provided. In some cases, a bank may be able to request a refund from

the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between cardholders and suppliers/merchants. They are dealt with under the relevant card scheme rules and in this case that's Mastercard. In certain circumstances the process provides a way for JLFS to ask for a payment Miss M made to be refunded. Those circumstances can include where services aren't supplied.

There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable chance of success.

When a chargeback is raised, the scheme allows a given period of time – usually around a month – for the supplier to reply to say whether or not they agree to the refund. And when a supplier does defend a chargeback, this can lead to further representations by the cardholder's bank. The process then allows for further representations to be made, if parties do not agree for the issue to be decided by the scheme in a process known as arbitration. Alternatively, or in addition, a bank can go on to consider whether there has been a breach of contract (or misrepresentation) under S75.

S75 says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either been a breach of contract or misrepresentation by the supplier of goods or services.

But for S75 to apply, there are certain criteria that need to be satisfied before looking at whether a breach of contract or misrepresentation has occurred. These include that there is a specific relationship between the parties, known as the debtor-creditor-supplier relationship and that the purchase meets a certain cash price.

It's important to note that neither a chargeback nor S75 are a guarantee that a consumer recover their funds. It's not uncommon for a bank to deal with a customer dispute by raising a chargeback first and then, if that is declined, to consider whether a valid claim exists under S75. Usually, it won't make much difference as to which route a bank follows, so long as the bank acts fairly and reasonably in assisting its customer to recover their funds.

In Miss M's case I don't think JLFS acted reasonably from the outset when they didn't raise a chargeback claim for her with the information she had provided to them. JLFS are bound by the scheme rules that apply. And each chargeback reason has a code attributed to it. In the Mastercard scheme rules I think there are a couple of chargeback reasons that could have been applied in this case, and I note that our investigator has mentioned the code for a credit not processed. I don't necessarily think that would have been the most appropriate chargeback code to use, but which code was applicable isn't material to my decision here that I don't think JLFS acted reasonably from the outset.

However, just for clarity, I'm more persuaded that, because Miss M's flights had been cancelled, the code 'Goods or Services Not Provided' would have been the most appropriate one for JLFS to pursue a chargeback against. The rules set out the supporting documents that would be needed from Miss M to allow a chargeback claim to be brought. In this case, it needed to be an email, letter, message, or Dispute Resolution Form that included a description of Miss M's complaint in enough detail to enable all parties to understand the dispute. It also required a *'reasonably specific description of the goods/services purchased'*.

When Miss M first raised her dispute with JLFS, she provided them with a completed dispute resolution form outlining what her claim was for and that her flights had been cancelled. So, I'm satisfied that was enough to meet the criteria for a chargeback claim to be at least raised, and JLFS should have done so at that point. In later correspondence with our service

JLFS have also provided the terms and conditions from G – so I think it's clear they had enough information to understand Miss M's reasons for the dispute.

Had JLFS acted as expected from the outset, I think the chargeback claim would have had a good chance of success, as it would have been difficult for G to provide a valid defence to the claim when the flights had clearly been cancelled, and not by Miss M.

Because I'm satisfied JLFS should have raised a chargeback claim, I haven't gone on to consider S75 in this decision.

As I'm satisfied JLFS should have pursued the chargeback claim with the information they had, I would normally now ask JLFS to look at raising the chargeback, provided it was still within the time limits specified by the rules. But in this case, it's now outside of those time limits. So, I think it's fair to ask JLFS to refund the total amount of £1,091.57 to Miss M. They should make this refund to her credit card at the time they declined her claim by reworking her account and paying 8% simple interest on any periods of positive balance that come about as a result of the rework of the account. JLFS should also explain their workings to Miss M when they confirm settlement to her in writing.

My final decision

For the reasons above, I'm upholding this complaint. John Lewis Financial Services Limited must:

- Refund Miss M the total amount of £1,091.57 for her cancelled flights.
- Pay Miss M 8% simple interest on any periods of positive balance that come about as a result of the reworking of the account, as outlined above.

*If John Lewis Financial Services Limited consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss M how much they've taken off. They should also give Miss M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 January 2023.

Kevin Parmenter
Ombudsman