

The complaint

Mrs D complains about John Lewis Financial Services Limited's response to her attempts to recover money she'd paid using her credit card for a holiday that didn't go ahead.

What happened

In December 2019 Mrs D made a holiday booking through a third party travel agent "T". She paid a deposit of £847.10 using her John Lewis credit card. The holiday comprised flights and a cruise, which T arranged with separate suppliers. The balance was due approximately three months before the holiday was due to start in June 2020. But shortly after Mrs D made her booking, the Covid 19 pandemic began to have an impact on daily life – including holiday arrangements such as Mrs D had planned.

When T contacted Mrs D in March 2020 to say that the balance was due, she was unwilling to pay due to the uncertainty. The supplier had already cancelled a number of scheduled cruises and Mrs D was concerned that her holiday would be affected. T wasn't willing to vary the arrangements and cancelled the booking, retaining Mrs D's deposit.

Mrs D sought to recover her money from John Lewis as her card provider. But John Lewis said it couldn't help. It didn't think raising a chargeback for the deposit would be successful, saying there was nothing to show a refund was due. The reason the holiday hadn't gone ahead was because Mrs D hadn't paid T the balance when due.

Mrs D also attempted to claim directly from John Lewis using the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75"). However, John Lewis said that in addition to the above, it had no liability for the alleged breach of contract. This was on the basis that an essential section 75 element – that the transaction was made under a debtor-creditor-supplier agreement – was missing due to the involvement of T, who was not the supplier of the cruise.

Although Mrs D was unhappy with John Lewis's response and raised a complaint, the card provider wasn't minded to change its stance. It acknowledged delays in reviewing Mrs D's claim and paid her £100 to compensate her for this. But Mrs D remained dissatisfied and referred her complaint to us.

Our investigator recommended that John Lewis reimburse the £847.10 Mrs D had paid as a deposit, with interest. He didn't agree with its view on section 75 liability and felt a claim based on the holiday service not going ahead should have been successful, whether under section 75 or chargeback. John Lewis didn't agree with this analysis and asked for a review.

My provisional decision

I recently issued a provisional decision to both parties setting out my thoughts on the key complaint points and how I thought matters might best be resolved. In summary, I said:

- the circumstances of the transaction met the requirements of section 75, in that they enabled Mrs D to make a claim

- John Lewis had responded to that claim (and the similar argument that would apply under chargeback) to say that the obligation to provide the holiday ended when Mrs D didn't pay the balance when due. That had the effect that T was entitled to retain Mrs D's deposit
- that position was supported by the contract terms and Association of British Travel Agents' ("ABTA") guidance relating to the pandemic
- in light of this I couldn't reasonably require John Lewis to refund Mrs D

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Response to my provisional decision

John Lewis didn't make any further comments in response to my provisional decision. But Mrs D did respond. She said, again in summary:

- she'd paid by credit card so that she had extra protection under section 75, but this had turned out not to be the case
- it wasn't fair or reasonable that T had been refunded in full when the flight was cancelled, but she hadn't received any money back
- John Lewis credited her account with £100 telling her this was in recognition of delays in dealing with the claim. She considered this an admission of guilt from the bank

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've thought about what Mrs D has said in response to my provisional decision. But I don't think she's said anything that offers me a persuasive reason to change the findings I set out there and which form part of this decision. In light of her comments, however, I think it's appropriate to make the following observations.

Section 75 does, in certain situations provide some protection when buying goods and services with credit. It enables a like claim to be brought against the credit provider, rather than only being able to claim against the supplier where no credit is used.

It's important to remember, however, that the creditor is entitled to defend that claim – section 75 doesn't provide a guarantee that a claim will be successful. Here, the claim was received, considered and defended by John Lewis. I'm satisfied that the basis of that defence was one John Lewis was entitled to make in the circumstances of this case.

I understand why Mrs D feels that it's not fair or reasonable that T gets to keep the money she paid despite having been refunded in full for the (rearranged) flight. That, though, is the nature of the contract she entered into with T. It's not for me to rewrite that arrangement; my role is to say whether I consider John Lewis to have acted fairly and reasonably in dealing with Mrs D's claim. While I appreciate Mrs D remains out of pocket, for the reasons I've previously explained, I consider that it has.

I see no reason to conclude that John Lewis's payment of £100 was made for purposes other than the explanation it gave to her. The bank said it was in recognition of delay. I accept that explanation.

I do realise Mrs D feels hard done by. She's lost a good deal of money and I can see why to her this feels unfair. But that doesn't mean it would be fair for me to transfer that loss to John Lewis. I can only require the bank to refund her if it can properly be said to be liable to do so. And for the reasons I've explained here and in my provisional decision, I'm not persuaded that this is the case.

My final decision

My final decision is that I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 6 March 2023.

Niall Taylor
Ombudsman