

Complaint

Ms I is unhappy that Capital One (Europe) plc didn't refund a payment she disputed.

Background

Ms I has a credit card account with Capital One. In October 2021, she used that account to make a payment on a popular website for booking hotel accommodation. She booked two nights in an apartment in London and paid £345.55.

After she made the booking, she read reviews about the provider of the accommodation that suggested they were scamming prospective guests out of money. She contacted the intermediary with which she'd booked the accommodation and Capital One. She wanted to cancel the payment before it was cleared, but unfortunately that wasn't possible. She then opted to cancel her booking via the intermediary.

Unfortunately, there was a very high cancellation charge associated with her booking meaning that she was only refunded 5% of the price of the accommodation. She went ahead with the cancellation and then later raised a complaint with Capital One. Capital One said that it wouldn't raise a chargeback on her behalf. The contract she'd agreed to when booking this accommodation included a term that set out how cancellations worked and the refund that would be payable. As far as Capital One was concerned, the merchant had adhered to the terms of the contract it had with Ms I. A chargeback would therefore have no realistic chance of success.

Ms I referred her complaint to this service. It was looked at by an Investigator who came to broadly the same view as Capital One. Ms I wasn't happy with the Investigator's view and so the complaint was passed to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued a provisional decision on 19 December 2022. I wrote:

Ms I paid for the accommodation using a credit card. Section 75 of the Consumer Credit Act 1974 sets out that, in certain circumstances, a credit provider that funds a payment to a merchant can be jointly and severally liable for any breach of contract or misrepresentation by that merchant. A misrepresentation is a false statement of fact made by one party to the other that induces or convinces that side to enter into the agreement. I'm satisfied that those circumstances are applicable to this case.

I accept that Ms I has received a refund that has been processed in line with the terms and conditions of her booking. However, her testimony from the time she raised the dispute shows that she wanted to cancel her booking because she'd found online reviews that suggested that she hadn't booked with a legitimate accommodation provider, but a scammer.

I don't know for sure what information was available online about the provider at the time Ms I made the payment. But her explanation is backed up by at least one review that can be found online at the time of writing. This review was from a prospective guest who found that all contact ceased the moment payment was made and that they were never able to stay at the accommodation in question. This is consistent with the version of events that Ms I has given. It's noteworthy that the accommodation provider is no longer listed on the website of the intermediary that processed her booking.

I think it's uncontroversial to say that, for a person to purport to offer accommodation for rent that doesn't exist or won't be made available, meets the definition of a misrepresentation as described above and so Capital One would be legally answerable for it.

I accept that there may be other valid reasons why the provider no longer has its listing on the website in question. Unfortunately, from the evidence I've seen, Capital One hasn't had any contact with the merchant to ascertain the underlying reality of the situation. Unless I see evidence that shows Capital One has raised queries with the merchant to satisfy itself that Ms I wasn't the victim of a scam, I'm minded to uphold her complaint for the reasons I've described above.

Ms I responded to say that she agreed with my provisional decision. Capital One didn't agree. In summary, it said:

- There's no evidence that there were multiple negative reviews about this provider. Only one review is available today. It's not possible to draw any conclusions about the practices of this accommodation provider from the contents of one anonymous review.
- There are many reasons why this provider might no longer be listed on the website. It's speculative to suggest that its removal must be because it was accepting bookings with no intention of honouring them.
- If the customer had followed through with her booking and the accommodation didn't exist, that would be a breach of contract. But since that didn't happen, there was no breach of contract by the provider in question.

I've considered Capital One's response carefully and I'm not persuaded to depart from the position I set out in my provisional decision.

I should be clear that I can't know with certainty what happened here. Where there is such uncertainty, I must reach a decision on the balance of probabilities. Ms I's explanation is that she found several reviews that suggested this accommodation provider was a scam. It was those reviews that motivated her to cancel the booking.

At the time of writing, I can only find one online review along the same lines. However, since this accommodation provider is no longer listed on the website that processed her booking, any reviews that were published there have since been deleted. Ms I recalls seeing them and that her decision to cancel was motivated by the realisation that she risked being a victim of a scam. Her testimony on this point has been consistent and it is backed up by the only review that is currently available. In other words, although the evidence supporting her complaint is not comprehensive or detailed, I'm nonetheless satisfied that the balance of that evidence does support it.

It is correct that there are several possible explanations as to why the accommodation

provider no longer offers bookings through that intermediary. I can't be sure that it was delisted because there were concerns about its activities. Nonetheless, Capital One hasn't gathered any evidence from the merchant about this provider that could've supported its position.

Finally, I accept that there doesn't appear to have been a breach of contract by the provider of the accommodation. But s75 gives Ms I a like claim against Capital One for either a breach of contract or a misrepresentation. For the reasons I've set out above, I'm persuaded that there was a misrepresentation here.

Final decision

For the reasons I've explained, I uphold this complaint. If Ms I accepts my decision, Capital One (Europe) plc should refund the payment to Ms I, less the refund she received from the merchant.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 17 February 2023.

James Kimmitt
Ombudsman