

## The complaint

Ms B has complained about the way Creation Financial Services Limited (Creation) handled her request for money back in relation to flights she'd paid for using her credit card.

## What happened

In February 2020 Ms B paid for return flights for her and her partner to Spain. She paid £358.98 for her flights (and baggage), and £223.98 for her partner's flights. The transactions were made separately. Outbound flights were on 28 August 2020.

Ms B says that due to Covid-19 she was going to be unable to use flights because of UK Government regulations about non-essential travel, as well as Spanish lockdown rules. So she tried to contact the flight company but was unable to get through. She says she wanted to ask whether she could move the flights to the following year or request a refund. She was unable to get through so decided to contact Creation to ask for help.

Ms B says she spoke to Creation a few times. She says Creation advised her to contact the supplier on a call she'd made to it to log the dispute on 11 August 2020. Ms B says she had difficulty reaching the supplier. Then, on the 24 August 2020 she had two further conversations with Creation. She says initially Creation told her to cancel the flight. But it called her back straight away and told not to cancel them. In Ms B's words, the advisor reassured her Creation "*would be able to take up my case with [the airline] and, fingers crossed, get 100% of my funds back*". Creation's notes, however, say "**ADVISED CUSTOMER NOT TO CANCEL FLIGHT GET IN CONTACT WITH THE AIRLINE AND CONTINUE WITH RAISED DISPUTE**".

The flights went ahead as planned, but Ms B didn't use them.

Ms B says she chased Creation for a response over the next few months. And I can see Creation wrote to Ms B in December 2020 to say a breach of contract would occur if the supplier cancelled the booking. It also said if Ms B cancelled the booking, and the terms said she was due a refund but the supplier refused, Creation would claim for it. It asked Ms B to provide details of the cancellation policy, and also asked her to check her travel insurance.

Ms B complained because she says she was misinformed. Ultimately, the flights went ahead so there was no breach of contract from that perspective. And Ms B says she lost out on being able to reschedule her flights or obtain a credit note as a result of Creation's advice.

Creation responded in February 2021 to say as the flight cancellations weren't instigated by the supplier it was unable to claim the transaction amounts back for her. It apologised if it had misinformed her on one of the calls. But it said none of its call handlers are in a position to be able to guarantee a claim can be made. It also acknowledged the claim had been ongoing for some time. But it said this was as a result of being busy since the start of Covid-19. But it did apologise and say it applied a credit to Ms B's credit card of £100 by way of an apology.

Ms B was unhappy for the same reasons. She thought Creation's advice had deprived her of the opportunity to approach the supplier for help. Creation didn't change its position. It said whether or not Ms B cancelled her flights she still wouldn't have received a refund.

Ms B asked for call recordings, but they weren't all available. So she decided to bring the complaint to the Financial Ombudsman to consider.

One of our investigators looked into things. She didn't think there was a valid chargeback code that Creation could have used because Ms B didn't cancel the flights, and the flights went ahead. And even if Ms B had cancelled the flights, she didn't think a valid chargeback could have been raised. She also thought about whether Ms B's claim ought to have succeeded under section 75 of the Consumer Credit Act 1974. She said the necessary relationship for a valid section 75 claim only existed for Ms B's purchase – i.e., not her partner's. But in any event, as the flights went ahead, there was no breach of contract or misrepresentation that would've led to a successful claim.

However, our investigator also thought about whether Ms B would've done anything different had she not been misadvised. And she thought that Ms B might've decided to reschedule her flights if she was told her claim wasn't guaranteed to succeed. Our investigator thought it likely Ms B's expectations hadn't been managed properly. But she also considered if Ms B did decide to reschedule the flights there could be a fee to pay. Our investigator thought Creation should pay Ms B a further £150 in recognition of the misinformation from Creation.

It looks like Ms B was willing to accept the outcome, but Creation didn't agree. It said it didn't guarantee Ms B's claim would succeed. And it also highlighted it had already compensated Ms B £100. We put Creation's response to Ms B but she was still unhappy and thought £100 wasn't sufficient. She also highlighted she tried to get help with the supplier but didn't get a response.

I issued a provisional decision that said:

*I first want to say I'm sorry to hear Ms B was impacted by Covid-19. And I want to thank her for taking the time to refer her complaint to the Financial Ombudsman.*

*I'm considering whether Creation has acted fairly and reasonably in the way it handled Ms B's request for getting her money back. In situations like this, Creation can consider raising a chargeback or assessing a claim under section 75.*

*Ms B has said she accepts what our investigator says about the technicalities of chargeback and section 75 and how that impacts her complaint. So rather than go over everything again in great detail, I will summarise what I think.*

*Section 75 makes Creation jointly liable for a breach of contract or misrepresentation by the supplier (under certain conditions). It doesn't seem to be in dispute the flights went ahead, and Ms B didn't cancel the booking. Seeing as the flights went ahead, I can't see there was a breach of contract. We've also not been told the supplier misrepresented anything. So I don't find there would be grounds for a successful section 75 claim even if Creation did consider it. There were also potential issues with the necessary relationships to exist for a valid claim to be considered. Overall, I don't think Creation acted unfairly by not pursuing the claim under section 75.*

*I've also thought about whether Creation could have done more under chargeback. The process is subject to rules made by the relevant card schemes. It's not a guaranteed way of getting a refund. There are time limits and chargeback 'reason codes' codes to consider. And I'd only expect chargebacks to be raised by the firm where there's a reasonable*

*prospect of success. The problem here, for similar reasons to what I've said above is that I don't think there was an appropriate chargeback reason code that would've applied here and that would've had a reasonable prospect of success. Ms B didn't cancel the services. The supplier didn't fail to provide the service. And Ms B wasn't contractually due a refund that hasn't been processed. So I don't think Creation acted unfairly by not pursuing the chargeback further.*

*However, the crux of the complaint really seems to be about the information Ms B was given when she spoke to Creation before the flights were due to depart. Unfortunately, Creation hasn't been able to give us a copy of the call recording. And the accounts of what was said are slightly conflicting. It doesn't seem to be in dispute that Creation initially advised Ms B to cancel the flights. Its notes say this, and Ms B agrees. But it's not clear what was spoken about on the subsequent call.*

*On the one hand, Ms B says she was reassured Creation would be able to take the case up with the airline and that, 'fingers crossed', she'd receive all her money back. Ms B has also provided a copy of her handwritten notes for the second call indicating she should pass the fly date and get the full amount back. But on the other hand, Creation's notes indicate it told Ms B to get in contact with the supplier and continue with her dispute.*

*For me, the key thing to consider is whether on the second call Creation told Ms B to continue trying to contact the supplier or whether it simply told her it she didn't need to do anything, and that Creation would take things on from there. Did Ms B lose out as a result of misinformation from Creation? Or did she lose out because she wasn't able to speak to the supplier?*

*Given the date of the flights hadn't passed by 24 August 2020 I don't think Creation would have been in any sort of position to have said whether or not a claim would likely succeed without knowing more about the situation. It didn't know whether the flights were going ahead. And it didn't know what the terms of cancellation said. So it would be surprising for Creation to have indicated the claim would even likely be successful. But I'm conscious the advisor she spoke to may have been a bit confused. They had to call Ms B back after initially telling her to cancel the flight.*

*I'm never going to know exactly what was said on the call. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*It doesn't seem to be in dispute that Creation didn't guarantee Ms B would get all her money back when she spoke to it on 24 August 2020. And it doesn't seem to be in dispute that Creation told Ms B not to cancel her flight. The call handler probably got some advice that cancelling the flights was not the correct way for Ms B to obtain a refund. It would seem unusual for the advisor to have told Ms B to not cancel the flights and simply wait to see what happened. What would happen if, as is the case, the flights went ahead? There'd be no grounds for a successful claim.*

*Given Creation's contemporaneous notes say it advised Ms B to speak to the supplier, while I know she'll be disappointed, I think this is the most likely thing to have happened. This would also be in line with the Covid-19 best practice guidelines that had been set out by the card scheme operator for card issuers in April 2020. The guidance says card issuers should advise cardholders to discuss and resolve disputes with merchants. So I find Creation's notes are most likely reflective of what was discussed. I of course can understand that Ms B was having great difficulty getting hold of the supplier. She's provided evidence of some attempts she made to speak to it. But I can't hold Creation responsible for that.*

*Further, even if I were to find that Ms B would likely have been able to reschedule her flights had it not been for Creation's misinformation then I'd have to consider she'd have been required to pay fees in relation to doing that. The terms and conditions I've seen (albeit from 2019) say fees will be charges from between £45 and £60 per passenger, per flight. So even if Ms B did decide to change flights, she would've been required to pay between £180 and £240 in fees.*

*Taking everything into account. I think Creation did initially misadvise Ms B. But I don't think the most likely thing to have happened next is that it told her to not do anything and that hopefully a claim would be successful. So, unlike our investigator, I'm not intending to direct it to pay further compensation.*

*I do, however, agree it could've handled the claim better. It took quite some time to deal with things, and Ms B had to chase it up for responses. And as I've set out above, it misadvised her too. Creation says it applied £100 to her account. And I broadly think this is fair in the circumstances. I'm not intending to direct it to do more.*

Creation accepted the provisional decision, but Ms B didn't. She said, in summary:

- She was disappointed that I'd chosen to disregard the recommendations of our investigator.
- She was surprised I'd decided on the balance of probability that Creation didn't act in the way she'd described. Her notes were a proper record of events and her recollection quite clear.
- She thought I was applying a level of hindsight in my analysis and that facts were more important.
- She has been failed by the organisation which exists to support customers.

### **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'm sorry to hear Ms B is disappointed with my provisional decision. It wasn't a straightforward case. And I sympathise with the situation. But I think it's important to note that Creation isn't the supplier here. And I can't hold Creation responsible for everything the supplier did. I need to think about how Creation handled things taking into account its specific obligations as a provider of financial services.

I'm required to remain impartial and resolve disputes quickly and with minimum formality. Sometimes, where there's a lack of evidence, or the evidence is conflicting I have to reach my decision on the balance of probability. To my mind, I thought Creation's offer of compensation was broadly fair for the way it handled the claim. If I were to uphold the complaint, I would have directed it to reimburse Ms B with the cost of the tickets, less the fees she'd have likely had to pay to change the flights, rather than direct it to pay further compensation for distress and inconvenience. But I'd have liked a bit more certainty to have decided that the loss was directly flowing from something it had said.

I can understand Ms B would have been disappointed the supplier didn't respond to her contact. And this is why I asked if she had evidence she'd done what was required under the contract to change the flights. Because if there was evidence the supplier had breached the contract in that way, then Creation would have been jointly liable. It doesn't look like Ms B did try to change the flights in line with the directions of the contract. But I'm sympathetic because it also looks like the supplier didn't do what it should have done in response to her asking for help. But I don't think that's enough to demonstrate there was a breach of contract

– which is what Creation would jointly be responsible for.

Ms B's evidence has been credible. And it's disappointing Creation was unable to supply the most relevant phone call. But unlike the courts, the Financial Ombudsman is an informal resolution service, and I'm unable to compel witnesses or take sworn evidence from the call handler. So I have to base my decision on what's available. Ms B herself didn't say she was told the refund would be guaranteed. Her notes don't explicitly say she should do nothing. Her initial notes from 11 August 2020 say she should contact the supplier first. And the notes of the 18 August 2020 don't specifically say there was no need to speak to the supplier and she'd definitely be refunded. I appreciate Ms B has said her recollection was quite clear and that I need to look at the facts. But I do also have to balance out what she's said with Creation's notes that specifically say it told her to contact the supplier.

Ms B may wish to contact the supplier direct with the evidence she's submitted to our service to ask for help, if she's not done so already. And of course, she's also free to pursue the complaint by other means, such as through the courts. However, while I know she'll be naturally disappointed, I don't find I have the grounds to direct Creation to reimburse her for losses.

### **My final decision**

My final decision is that Creation Financial Services Limited has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 24 March 2023.

Simon Wingfield

**Ombudsman**