DRN-4056473

The complaint

Mrs S complains about the way Capital One (Europe) Plc handled her request for a refund in respect of a holiday she booked for members of her family which didn't go ahead.

What happened

In February 2020 Mrs S booked a trip consisting of flights and accommodation for her son and his partner with a travel agent I'll call Y. She paid £788 using her Capital One credit card. The trip was due to take place in April 2020.

In early April 2020 Mrs S's son contacted Y to say his partner had been told to shield at home and asked it to contact him.

Mrs S said sometime after this she was told the flights had been cancelled by the respective airline. She contacted Y before the trip to explain this and asked it to help her get a refund.

In May 2020 Y wrote to Mrs S's son to explain that refunds were taking longer than usual due to the Covid-19 pandemic. It offered him a 'refund credit voucher' against the booking with an extra £100 towards any future holiday which it said would "allow additional time to make a decision about future travel arrangements and also allow us more time to receive your money back from the airlines and onward suppliers, should you decide on a cash refund".

Mrs S said when her son tried to make a booking with the voucher in 2021 he was unable to get hold of Y and this has remained the position since then.

Mrs S asked Capital One to step in and help in June 2022. Capital One said it couldn't help as it was too late to recover the funds via a process known as chargeback.

It also considered her claim under Section 75 Consumer Credit Act 1974 ("section 75"). But it didn't think there was a valid claim because it considered the holiday remained available for Mrs S to use.

Capital One credited Mrs S's account with £50 because it didn't think it had explained its reasons for declining her claim very well initially.

I issued a provisional decision in March 2023 setting out why I planned to uphold Mrs S's complaint. I've extracted the most relevant parts below, which now also form part of this final decision:

> *'There are two main ways a bank can help a customer to recover money paid to a supplier who hasn't provided what was promised. It can try to recover the money from the supplier through a process known as chargeback. Or it can assess whether its customer has a valid claim under Section 75 Consumer Credit Act 1974 (section 75).*
>
> *Chargeback*

In certain circumstances the chargeback process provides a way for a bank to ask for a payment Mrs S made to be refunded. While it is good practice for a bank to attempt a chargeback where the right exists and there is some prospect of success, the circumstances of a dispute means it won't always be appropriate for the bank to raise a chargeback. There are grounds or dispute conditions set by the relevant card scheme and if these are not met a chargeback is unlikely to succeed.

The relevant scheme rules in this case set out that a chargeback had to be raised within 120 days of the last expected date of delivery of the service – which in this case would have been when Mrs S expected the holiday to take place in 2020. Mrs S brought her complaint to Capital One in June 2022. If it had raised a chargeback at this point, it seems likely it would have been defended on the basis it had not met the necessary conditions of the card scheme in respect of time limits. So, it's unlikely it would have succeeded. I don't therefore find Capital One treated Mrs S unfairly by not pursuing this route.

Section 75

Section 75 provides that subject to certain criteria the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

One of these criteria is that the claim must relate to a transaction financed by a debtor-creditor-supplier ("DCS") agreement. Broadly speaking in this case this means Capital One must have financed a transaction between Mrs S and Y.

The investigator said Capital One didn't finance a transaction between Mrs S and Y, rather, it financed one between the travelling parties and Y. However, I see things differently. Mrs S said she made the booking with Y over the phone. She has provided the booking confirmation email as well as some post booking communications that Y sent to her. These communications were addressed specifically to Mrs S and sent to her email address. The paperwork also refers to 'your booking' for example when addressing Mrs S.

I've also looked at Y's terms and conditions. These explain that the person in whose name the booking is made acts on behalf of all other guests and it becomes his/her responsibility for all payments.

Thinking about all of this, I think Mrs S was party to a transaction with Y that was financed by Capital One. So, it appears there was a DCS agreement in this case.

Given Mrs S's complaint I therefore need to consider whether Y breached its contract with her.

Capital One said there was no breach of contract as the holiday was still available to take. It hasn't provided any evidence to support this however, so I've not given it much weight. And the evidence I have seen suggests otherwise.

Mrs S emailed Y on 9 April 2020, told it the flight had been cancelled and asked for its help to obtain a refund. Mrs S doesn't have the communication from the airline, but I've looked at some historical flight information online and it doesn't appear the airline Mrs S's family were flying with were flying to their destination in April 2020. On balance, it appears the flights were cancelled.

I've looked at Y's terms and conditions, to see whether the cancellation of the flights amounted to a breach of contract in this case. There is a section which deals with amendments to the booking by Y or the supplier of the travel services. It says:

> *"(Y) may make changes to your booking if the supplier/hotel asks us to do so, or in circumstances where it becomes a need. However most of the changes will be minor and we will advise you before your journey beyond our control we will provide you with alternative and we will not be liable to offer any commences. For any significant changes which are beyond our control".*

I found it difficult to make much sense of the term. But a reasonable interpretation of it would appear to be that in the event Y needed to make a change to the booking, that was not minor and in circumstances beyond its control, it would provide an alternative.

I've explained why I find the flights were most likely cancelled by the airline. So, it appears it had 'become a need' for Y to make a change to Mrs S's booking. Clearly cancellation of the flights was not a minor change. And Y had no control over the airline's decision to cancel the flights. So, in these circumstances it appears Y was obliged to provide an alternative.

An 'alternative' in this case might reasonably have been replacement flights or something else.

I've not seen evidence Y offered Mrs S new flights. I've also considered whether the refund credit voucher was an alternative. However, it's clear from the way Y communicated the offer of the voucher that it was intended as something that could be used while Mrs S decided if she wanted a refund. And as it turned out, it appears Mrs S's son was unable to use the voucher to make a new booking with Y anyway – despite contacting it on numerous occasions to redeem it.

So, I don't think it can be said that Y provided an 'alternative' in this case. It appears therefore that it likely breached its contract with Mrs S. As a result, it appears Mrs S as the booking party could have claimed for a refund of the amount she paid for the booking.

Thinking about everything I find that Capital One treated Mrs S unfairly by declining to meet her claim for a refund. I find it would be fair and reasonable in this case for it treat Mrs S as if it had met her claim and pay her £788 plus interest from when it declined the claim in June 2022 until the date of settlement.

Capital One identified that it failed to provide adequate reasons for declining Mrs S's claim when it first contacted her about it. It paid her £50 compensation for this. I don't find Capital One needs to pay Mrs S any more than this. It gave fuller reasons within a month (albeit ones I don't agree with) so it rectified its failing in that respect within a reasonable time.'

Mrs S agreed with my provisional decision.

Capital One said it had nothing to add.

The complaint was therefore passed back to me for a final decision.

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.

As neither Capital One nor Mrs S had any new comments or evidence to provide, I see no reason to change the findings I made in my provisional decision

So, for the reasons I explained in the extracts from my provisional decision above, I still find that Capital One treated Mrs S unfairly by declining to meet her claim for a refund. And I still find the fairest way of putting things right is to treat Mrs S as if it had met her claim for £788 and pay interest on this amount from when it declined to meet it.

My final decision

My final decision is that I uphold Mrs S's complaint. To put things right Capital One (Europe) Plc must pay Mrs S £788 plus interest of 8% simple per annum from 23 June 2022 until the date of settlement*.

*If Capital One (Europe) Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S a tax deduction certificate if she asks/ask 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 Mrs S to accept or reject my decision before 28 April 2023.

Michael Ball
Ombudsman