

The complaint

Mrs L complains that JAJA FINANCE LTD (“JAJA”) didn’t do enough to help her to recover money she paid using her credit card for services that she was unable to use due to the Covid-19 pandemic.

What happened

Mrs L had planned to fly abroad for a family holiday in April 2020. She wanted to visit a particular group of tourist attractions at her destination and, in common with other members of her group, bought passes using her JAJA credit card. Her three passes were supplied by a third party, “T”, and could be used at any time during the 12 months following purchase. The passes were valid for 13 days after first use, which needed to be on or before 31 December 2020.

After Mrs L bought the passes her planned holiday was caught by restrictions imposed due to the Covid-19 pandemic. The holiday was changed to May 2021 and the tourist attraction “U” told Mrs L it would extend the starting date of the passes to cover the revised dates. Unfortunately, the pandemic caused further travel restrictions that meant the new arrangements were also cancelled. By that stage T had ceased trading, though some of its trading arrangements had been taken on by another company “A”.

Mrs L couldn’t get a refund from T or U, and A said it hadn’t taken on any of T’s liabilities. So she turned to JAJA to see if she could recover her money through the bank. JAJA responded to Mrs L to say that it had considered whether she had a valid claim under section 75 of the Consumer Credit Act 1974 (“section 75”). This has the effect that in certain circumstances, a credit provider can be liable for a misrepresentation or breach of contract claim that the borrower might have against the supplier of goods or services.

JAJA contacted A, who reiterated that it wasn’t liable for T’s prior bookings. In response to Mrs L’s request JAJA declined her claim. It took the position that T had fulfilled its obligations by providing the passes and so there was no breach of contract. Mrs L was unhappy with JAJA’s stance and complained to it. She mentioned that other members of her group had been refunded, including a family member who had also paid using a JAJA credit card. However, JAJA maintained its position and so Mrs L referred her complaint to us.

Our investigator didn’t think JAJA had dealt with Mrs L’s claim unfairly. She acknowledged that Mrs L had been unable to use the passes due to the holiday cancellation, but she didn’t think this gave rise to a successful section 75 claim. The investigator noted the attractions were open for business in May 2021, and that T had provided the contracted service of providing the passes.

Mrs L still thinks she’s been treated unfairly and has asked for this review.

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought it should be resolved. I’ve reproduced my provisional decision below, and it forms part of this final decision.

My provisional decision

Because Mrs L paid by credit card there are two possible ways in which JAJA might be able to assist her to recover the money. One of those is through a section 75 claim against JAJA. The other is through the card scheme's chargeback process. Here, Mrs L made her claim via section 75. Based on the correspondence between her and JAJA, she appears to have done so following a conversation with a JAJA representative.

I don't think JAJA acted unreasonably in defending the section 75 claim. I can see the potential difficulties in such a claim being successful, given the separate contractual obligations that were created between Mrs L, T and U. But I don't think it's necessary for me to go into detail on that issue. I say this because in relation to the way JAJA handled matters overall, there is sufficient evidence to persuade me that it is appropriate that it reimburses Mrs L. I'll explain why.

I've already mentioned the alternative methods by which JAJA might have looked to deal with Mrs L's request. This is of particular relevance in this case, because the chargeback process provided the mechanism by which Mrs L's relative obtained her refund. A central aspect of Mrs L's complaint was the apparent discrepancy in the two outcomes, given that the purchases were made in the same way. So I intend to focus here on whether JAJA's acted fairly towards Mrs L by considering her request only in the context of section 75 and not chargeback.

Having asked JAJA about this, it says it only looked at section 75 because that was what Mrs L had specified in her correspondence. Noting that correspondence followed a conversation between JAJA and Mrs L, there is the possibility that JAJA ought to have mentioned both mechanisms in its initial dealings with her. I don't think Mrs L should be expected to know all methods by which JAJA could deal with her reimbursement request. But I would expect JAJA to know these, given its role as a card issuer. And clearly it did know this, because it raised a chargeback claim on behalf of Mrs L's relative.

There's no contractual or current regulatory obligation on JAJA to raise a chargeback when asked. But I have to take into account what I consider to be good practice. And we've long said that good practice would be for a card issuer to raise a chargeback where a right exists¹. It should take care when doing so to ensure all necessary information is submitted.

And it should satisfy itself that any defence submitted accords with the grounds set out in the card scheme rules. However, I don't think it's for the card issuer to assume the claim will be defended, or how the merchant might frame its response.

Here, Mrs L's claim under chargeback is in all material respects the same as her relative's claim. The information JAJA has provided to me about the other claim and its actions in raising it suggest to me there were appropriate grounds to raise a chargeback on Mrs L's behalf. And the fact the other claim successfully recovered the money paid means I've no real reason to think Mrs L's claim would have resulted in a different outcome.

That being the case, I'm minded to find that JAJA's decision only to deal with Mrs L's request as a section 75 claim meant it hasn't treated her fairly. Further, it has resulted in a loss to her that she wouldn't have incurred if JAJA had considered a chargeback. JAJA's handling of Mrs L's claim fell short of what I would consider to be a reasonable standard, taking into account what in my view represents good practice. Because of that shortcoming, Mrs L

¹ See, for example, case studies on our website and our publications: Ombudsman News Issue 3 (March 2001); Ombudsman News Issue 78 (July/Aug 2009)

wasn't able to recover her money via chargeback when it appears she had a reasonable prospect of doing so.

It follows that I currently hold the view that the fair way to resolve this complaint is for JAJA to pay Mrs L compensation equivalent to the money she lost, along with a modest amount in compensation to reflect the distress and inconvenience she experienced due to JAJA's handling of her request. Noting Mrs L paid just over £800 for the passes, I consider it appropriate to round this up and require JAJA to pay her £900 in total.

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.

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

Both JAJA and Mrs L accepted my findings and proposed resolution. With this in mind, I see no reason to depart from what I said in my provisional decision. I'm satisfied it's a fair and reasonable way to resolve this individual complaint.

My final decision

My final decision is that to settle this complaint, JAJA FINANCE LTD must pay Mrs L £900.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 27 July 2023.

Niall Taylor
Ombudsman