

## **The complaint**

Mr P complains that Capital One (Europe) plc (“Capital One”) treated him unfairly in relation to a purchase he made using his Capital One credit card.

## **What happened**

Mr P bought a package holiday from a supplier who I will refer to as “D”. The package included travel and a stay in a hotel on a half board basis. The total cost was £189. Mr P used his Capital One credit card to pay D.

On arrival at the hotel Mr P was dissatisfied with the state of the bed in his room. Mr P complained to the hotel and was moved to a new room. Mr P remained dissatisfied he complained that the shower in his new room could only provide water that was either too hot or too cold. Mr P complained again to the hotel. The water temperature issue was not resolved. However, either Mr P or the hotel contacted D. D responded that the water pressure in some rooms could be variable, but neither it nor the hotel was aware of the problems with water temperature that Mr P complained about, but it would investigate them. In recognition of Mr P’s dissatisfaction, D offered Mr P a £25 voucher to use on a future trip with it. Mr P declined this offer as he never intends to travel with D again. In any event, initially Mr P wanted a full refund.

Mr P complained to Capital One. The reason Mr P complained to Capital One was because due to the type of credit he used he may have the protection of the Consumer Credit Act 1974, specifically the protection given under Section 75 of that Act. The general effect of Section 75 is that if Mr P has a claim for misrepresentation or breach of contract against the supplier he can also bring a like claim against Capital One provided certain conditions are met. Mr P considers that the state of the bed in the first room and the functioning of the shower in the second room are breaches of contract. Moreover Mr P considers he can hold Capital One responsible for these breaches under Section 75.

Capital One indicated that it had two possible potential routes to recover Mr P’s money for him. These routes were either a claim against itself under Section 75 and/or a process known as chargeback.

Capital One looked into Mr P’s claim against it under Section 75. It noted that Mr P did not have any photographs to support his claim about the state of the bed and it indicated that weakened Mr P’s case. Further, it did not think a 100% refund was appropriate given that Mr P had continued to stay at the hotel. Moreover, not only that, but the holiday also consisted of transport and half board, and he had used those elements of the holiday too. That said, in the circumstances, it did agree a refund was appropriate. In the first instance it thought a refund of 10% of the total price was appropriate. But on reflection since D had offered a refund worth £25 Capital One decided to offer Mr P the same amount as a refund.

Chargeback is a process that is offered by the card scheme operator in this case Mastercard. This is a way in which payment settlement disputes are resolved between card issuers and merchants. And it can be a route for a consumer to get a refund albeit the consumer is not a party to the process. Chargebacks are dealt with under the relevant card scheme rules. Capital One told Mr P that his complaint would not qualify for a refund under the card scheme rules.

Mr P declined Capital One's offer as he still wanted a refund of the total amount he'd paid for the holiday £189. Moreover, Mr P thought that a member of Capital One's staff had been rude to him on the phone.

Dissatisfied, Mr P complained to our service.

One of our investigators looked into Mr P's complaint. Our investigator did not recommend that Mr P's complaint be upheld.

Capital One accepted our investigator's recommendation, Mr P did not. In response to the recommendation Mr P's parent wrote to us on behalf of Mr P. Mr P's parent is not his representative in this complaint. But on this one occasion, with Mr P's permission she articulated Mr P's response to the recommendation. In particular, Mr P's parent set out Mr P's reasons for rejecting the recommendation, I've summarised these below.

- Mr P thinks that every complaint point he had by itself would justify Mr P withholding payment or asking for a full refund.
- Mr P objected to the suggestion that he was not entitled to a refund because he had continued to stay at the hotel even after he expressed his dissatisfaction with the services provided. In any event Mr P would have been unable to cope with getting himself home unassisted.
- D had acted reluctantly and even then, it had not given the full refund it should have done. Rather it had made a "*derisory*" offer.
- Mr P is entitled to a 100% refund but if the "*Card issuer refund guarantee*" rules do not permit this Mr P will accept 50%.
- Capital One had acted unfairly because it had "sided" with D.

Mr P asked that an ombudsman review his complaint.

### **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time. I think that both Section 75 and the Consumer Rights Act 2015 ("the CRA") are relevant. The CRA applies to contracts made between consumers and traders as in this case. The CRA makes it clear that, provided certain conditions are met, if services are not delivered with reasonable skill and care this is a breach of contract. The CRA also provides remedies for such breaches.

Both parties are correct in their view that Mr P has the protection of Section 75. Moreover, they both agree, that there was at least one breach of contract. It is not clear if Capital One accepts that the condition of the bed in the first room was as Mr P says it was and was a breach of contract. I say this because it queried the lack of photos and appeared to indicate

without them it did not have the evidence it needed to assess this point. However, Capital One does appear to accept that the shower was not working as it should have done and this is a breach of contract.

As to the situation with the bed in the first room. I am satisfied that Mr P was unhappy with the state of the bed however, that is not enough by itself for me to say there was a breach of contract. I say this because without any further information to show exactly what the bed looked like when he came into the room, I'm not satisfied that there was any breach of contract in relation to this complaint point.

But I can still look at whether Mr P has been offered appropriate redress for the breach of contract in relation to the shower.

Mr P wants a full refund, Capital One has offered Mr P a refund of 10% of the purchase price. The CRA provides for remedies where, as in this complaint, some services have not been delivered with reasonable skill and care. However, nothing in the CRA provides for a remedy of a 100% refund in these circumstances. Moreover, I cannot see that it would be right to say that a full refund should be made - that would wrongly imply that no service at all had been received. And even a 50% refund would imply, again wrongly that Mr P did not get 50% of what he paid for. That said deciding the redress here is not an exact science.

Further, it's difficult here to be precise about the exact value of the service that wasn't provided. And in many ways it's more to do with the resultant inconvenience rather than simply the monetary value.

Capital One has already made an offer to pay £25 to settle the complaint and I think this offer is fair in all the circumstances. I do not, therefore, consider it appropriate to require it to do any more than that.

I've looked at whether Capital One ought to have considered raising a chargeback. But there are some circumstances such as here where I don't think this would have been appropriate. It's likely that under the relevant chargeback rules Mr P would not have been able to show enough evidence to support the chargeback reason, which would likely have been "*Goods or Services Were Either Not as Described or Defective*" and even if he did clear this hurdle this would not have been the end of it. The fact that he was offered and given a new room and a voucher would most likely have been a bar to the chargeback succeeding in any event.

It is regrettable that Mr P found Capital One to be rude on at least one occasion. But nothing I've got of file indicates to me that Capital One did not act professionally. So I don't uphold this part of Mr P's complaint.

I've thought about what Mr P said about Capital One siding with D. But based on the information I've got, Capital One did its own investigation. It ultimately agreed with D who actually went further than Capital One wanted to go at first but that does not mean it just rubber-stamped D's approach. It follows I don't uphold this part of Mr P's complaint.

It's clear Mr P remains unhappy with D. But I have no power to look at a complaint about D.

### **My final decision**

My final decision is that Capital One (Europe) plc should pay Mr P £25 as it has already offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 October 2023.

Joyce Gordon  
**Ombudsman**