

The complaint

Mr R complains about a claim he made to Capital One (Europe) plc ('CO').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mr R bought a high value watch ('the item') from a retailer's website (the 'supplier') and says he returned it but the retailer refused to refund him.

Mr R made a claim to CO which investigated the matter under chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, it did not uphold the claim.

Mr R was unhappy with the claim outcome and his complaint about this reached this service which our investigator did not uphold.

Mr R has asked for this matter to be considered by an ombudsman. I issued a provisional decision which said:

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

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I am sorry to hear about Mr R's issue with the item he paid for. However, it is worth noting here that CO is not the supplier of the goods. So when looking at what is fair I consider its role as a provider of financial services – and what it could have done to help him with the information that was reasonably available to it at the time. As Mr R used his credit card to pay for the goods in dispute I consider the protections of chargeback and Section 75 to be particularly relevant here.

Chargeback

Chargeback is governed by the card schemes. In this case I understand the relevant card scheme is MasterCard so I have considered its rules.

A chargeback can be raised in certain circumstances as long as there is an applicable chargeback rule, and the requirements of that rule are met. Here I note that the most relevant rule to Mr R's dispute would be 'credit not processed' as he is claiming a credit from the supplier for returning goods. However, under this rule CO were not able to raise a chargeback as it was out of time. The scheme rules say it must be raised within 120 days of when the goods were said to have been returned. Mr R says he returned the goods in January 2022 but raised his claim with CO in June 2022. It follows that it was out of time.

In summary, I don't consider CO acted unfairly in not raising a chargeback because it was out of time. However, for completeness I consider a chargeback would have been unlikely to succeed in any event due to the issues I have discussed in relation to Section 75 below.

Section 75

Section 75 can in certain circumstances mean Mr R can hold CO responsible for a breach of contract or misrepresentation by the supplier in respect of the purchase of goods financed by his credit card.

There are certain requirements for a Section 75 claim to be valid relating to matters such as the price of the goods and the parties to the agreement. I consider the requirements are met here so I have gone on to consider whether there was persuasive evidence of a breach of contract or misrepresentation by the supplier available to CO when it considered the claim.

Mr R says he returned the item by post but CO says he failed to take it into store as per the supplier's policy for returning high value goods – which is stated on its website. I note here that there has been a lot of focus on the supplier's terms and conditions and whether the requirement to return the goods in store was made clear enough to Mr R, as the return slip does not explicitly state this and instead provides various options to return the goods with a link to the supplier's full returns policy.

I am not persuaded that an argument over the clarity of this term is fundamental here. Ultimately, if the supplier had received the item back it would still be obliged to refund Mr R under its refund policy which forms part of the contract Mr R agreed. It says that if Mr R changes his mind and returns the goods in good condition within 30 days it will issue him with a full refund.

The key issue here for me is whether the supplier accepts that it received the item back and whether there is any persuasive evidence to indicate otherwise. In its response to Mr R and CO the supplier was not explicit about whether the parcel simply failed to arrive, or if it arrived and the item was not inside in the package. However, ultimately from the information it had I consider it was fair for CO to conclude that the supplier was disputing that it had received the item back. After all, if the supplier had received this back, the obligation (subject to it being in good condition) would be to refund Mr R regardless of the method of return.

With this in mind I don't think CO was acting unreasonably in not agreeing to refund Mr R here. I say this because if the supplier has not received the item back it was under no obligation to refund Mr R under its contractual returns policy. Here, I don't think CO had sufficiently persuasive evidence to conclude that the supplier had breached its contract with Mr R. I say this for the following reasons:

- although Mr R had provided CO a postage receipt from January 2022 – the tracking information available to CO appears not to show the item was actually delivered to the supplier;*
- the likely whereabouts of the item was more difficult to investigate for CO because Mr R had apparently waited several months from the date he said he posted the item to get in touch with the supplier and then CO about it;*
- there are a number of reasons the item might not have been received including loss in transit – CO is not able to compel evidence or witnesses and would be more limited than a court or authorities to investigate;*
- if the item had been lost in transit due to the actions of a third party this would not necessarily amount to a breach of contract by the supplier also noting that Mr R would (regardless of the suppliers terms of service or options it provides for returns)*

be expected to take reasonable care to mitigate any potential loss by returning a high value item by the most appropriate means such as an in store return or appropriately insured courier (it appears to have been clear to Mr R the service he selected was a standard pre-paid postal service for items of low [under £20] declared value).

It is worth underlining here that I am not saying what is responsible for the apparent failure of the item to arrive back with the supplier. Ultimately, my role is to look at whether CO acted fairly in considering the claim. And for the reasons I have given here I don't think it was acting unfairly in not concluding there was persuasive evidence of a breach of contract by the supplier here.

For completeness I want to comment on the overall claim handling by CO. I note that CO's handling of the claim did go on for quite some time – which was not ideal. However, I can see from the contact notes that CO was liaising with both Mr R and the supplier during this time – and there were times where each party delayed to get back to it. Overall, I don't think the time taken by CO in the circumstances here warrants compensation.

My decision will likely disappoint Mr R. But my role is to look at matters informally. Mr R does not have to accept my decision and may choose to pursue the matter by alternative means such as court if he wishes (receiving appropriate advice in the process as he sees fit).

My provisional decision

I don't uphold this complaint.

The parties did not respond to my 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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 September 2024.

Mark Lancod
Ombudsman