

## **The complaint**

Mr D complains that Capital One (Europe) plc rejected his claim under section 75 Consumer Credit Act 1974 ("s.75") in respect of the purchase of flight tickets.

## **What happened**

Mr D booked flights with a travel agent ('the Supplier') on 9 December 2023. His planned trip was from 17 January returning on 15 February. The tickets cost £599 and he paid £100 with his Capital One credit card. The balance was funded by a bank transfer. Mr D then explored the entry requirements for his destination country and decided to cancel the trip.

He informed the Supplier on 6 January 2024 of his change of plans and asked for a refund. At the time of purchase Mr D had exchanged WhatsApp messages with the Supplier and in one of these he had asked: "is it a refundable Ticket?". The answer was "Yes".

However, when he made his claim the Supplier said that the airline would only refund £400. The Supplier also offered a £100 credit voucher. Mr D did not consider this reasonable and so did not accept this offer. He contacted Capital One and it considered his claim. It concluded that the Supplier's terms and conditions, which were available on its website, did not support his claim. While dealing with his claim it erroneously stated that he had received a £400 refund and it misspelled his name. Capital One also said that it could only recover £100 if it made a chargeback and so it had not done so.

Mr D made a complaint and Capital One apologised for the error with his name and its incorrect assumption that he had received £400, but it didn't change its stance on the s.75 claim.

Mr D brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. Mr D didn't agree and set out his reasons.

## **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.

Having considered all the evidence supplied by both parties I do not consider this complaint should be upheld. I will explain why.

There were two separate routes that Capital One could have taken to recover some or all of Mr D's money. One was by making a chargeback and the other was a claim under s.75. These are not the same and each has its own set of rules.

Chargeback allows for a refund to be made of money paid with a credit or debit card in certain scenarios, such as when goods have been paid for and not received. A consumer cannot insist on their card company attempting a chargeback, but I would expect it to attempt one, as a matter of good practice, if there was a reasonable prospect of succeeding and to do so would be compliant with the rules of the card scheme to which the card

belongs.

However, under the chargeback rules the only sum which could have been recovered was the amount paid by credit card and so the maximum Capital One could have recovered for Mr D is £100. I also believe the supplier would have challenged the chargeback and I consider that it would have failed. So, I do not consider Capital One did anything wrong in choosing not to make a chargeback.

S. 75 gives a legal right for the account holder (the “debtor”) to claim against their credit card issuer in respect of breaches of contract or misrepresentations by a supplier of goods or services, so long as certain conditions have been met.

Liability under s. 75 isn’t based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by the supplier, for which s. 75 imposes on the lender a “like claim” to that which the borrower enjoys against the supplier. If the lender is notified of a valid s. 75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

I have not seen any evidence of a breach of contract, but the basis of the claim is that the Supplier was guilty of actionable misrepresentation. It is not enough that a false statement of fact has been made but I have to consider whether it persuaded/induced Mr D to enter into a contract he otherwise would not have entered into.

The claim hinges on a question raised by Mr D as to whether the ticket was refundable and to which a one word answer was given, “yes”.

The terms and conditions which Mr D subsequently received showed that the tickets were not necessarily fully refundable. I note that the Supplier’s website also indicates that a full refund cannot be guaranteed.

Mr D did not ask if the tickets which covered four flights were fully refundable. But I can see that this is what he presumed the Supplier would take from his question. They were in fact refundable subject to certain rules. I have noted that the airline does not refund the ticketing service and landing charges elements of tickets. This might explain why it only offered £400 to Mr D.

Mr D did ask the Supplier why the airline was withholding part of his requested refund and it did not provide an answer. That is regrettable, but I am not considering the actions of the Supplier since it is not within my powers. I have to consider whether it was fair or reasonable of Capital One to take the decision it did.

So I cannot safely conclude that the answer by the Supplier amounted to an actionable misrepresentation. Mr D was offered a refund. I appreciate he was expecting a full refund, but that is not what he was told. If the issue of the tickets being refundable was important to Mr D I would have expected him to have sought further clarification. A short question on WhatsApp does not indicate that it was of such importance that it determined whether he made the purchase or not.

Overall, I do not consider Capital One was wrong to reject his s.75 claim.

I note that it made an error with his name in several emails and it also assumed he had received the £400 refund offered by the Supplier. These were regrettable errors for which Capital One has apologised. I do not think it needs to do anything else.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr d to accept or reject my decision before 25 March 2025.

Ivor Graham  
**Ombudsman**