DRN-5229666

## The complaint

Mr H complains about a claim he made to Zopa Bank Limited (Zopa) in respect of some of the terms of a holiday he booked having been changed before he departed.

## What happened

In April 2023, Mr H booked a cruise through a merchant (who I'll call B). Mr H paid a £580 deposit using his Zopa credit card for the holiday which was to take place in March 2024. The total cost of the holiday was £6,620 and this cost included fare, air fare and on-board spending money.

Mr H, before and at the time of booking, reached out to B through email and phone to ensure that he could book premium economy flights, and he was charged for these flights at the time of booking.

In September 2023, Mr H received an email from B stating the outbound flight for the holiday had been confirmed and as inflight entertainment and premium economy flights were not available with the carrier it had made arrangements with, Mr H would be refunded the additional cost of the premium economy flight and given £75 on board spending money for each person on the booking affected.

Mr H contacted B right away to make a complaint. He said the option to travel on a premium economy flight was a significant factor in his decision to book the holiday package. B offered to move Mr H on to another cruise of equal or greater value as his request to fly premium economy could not be accommodated on the holiday he had booked.

Mr H then took his complaint to Zopa and raised a claim under Section 75 of the Consumer Credit Act 1974 (Section 75). Zopa reviewed the claim and declined the claim, stating it thought the resolution provided by B was fair.

Mr H brought his complaint to us and our investigator did not uphold the complaint. The investigator said he didn't think a chargeback claim would have been successful. He said he didn't think there were any breach contract issues under Section 75 and considered whether there had been a misrepresentation. The investigator explained that he didn't think a guarantee of a premium economy flight had been given, that the relevant regulations allowed for variations that don't substantially affect the performance of the package and that B had offered reasonable alternatives, so Zopa hadn't done anything wrong in declining the claim.

Mr H disagreed for a number of reasons. He was unhappy that our investigator had considered chargeback when his claim was a Section 75 one only. He said the terms of what he had been promised had been changed, and that there had been a breach of contract. Mr H requested an ombudsman consider the complaint, so the complaint was passed to me to decide.

I issued a provisional decision in which I outlined my findings. I found that there was enough information to determine there had been a breach of contract. However, I did not make a finding that Zopa needed to do anything to put things right for Mr H as I found that B had

done enough to remedy the situation. I invited both parties to provide me with any comments before reaching a final decision.

Zopa did not have any further information to add. Mr H responded to tell us that he had booked the holiday with the explicit condition that he would have a premium economy flight, and he would not have proceeded had this not been available. He added that he paid for a service that was not delivered and questioned the effectiveness of Section 75.

**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 re-visited the relevant legislation, I am satisfied that in these particular circumstances there was a breach of contract, and that the applicable legislation allows for a refund of all payments made to be returned to Mr H. I will explain this in more detail below.

I explained in my provisional decision that Section 75 of the CCA allows – in certain circumstances - for a creditor (Zopa) to be held jointly and severally liable for any claim by the debtor (Mr H) of breach of contract or misrepresentation made by a supplier of goods and/or services (B). In this particular claim, Zopa needed to explore whether there had been a breach of contract that it should be held liable for.

I further outlined that having listened to the telephone call Mr H made to B in which he booked the holiday and having reviewed the booking confirmation and terms and conditions, I am satisfied that premium economy flights were a term of the booking. So, I find that in changing this, part of the package that B had agreed has not been met.

In considering whether a remedy is appropriate for the breach of contract, I am satisfied that this was a package holiday arranged through B, and under the relevant legislation[1] B is contractually liable to Mr H for performance of the travel services.

The legislation provides for alteration of other package travel contract terms under section 11. Section 11(2) indicates that an organiser must not unilaterally change the terms of a package travel contract before the start of the package unless (1) the contract allows the organiser to make such changes, (2) the change is insignificant, and (3) the organiser informs the traveller of the change in a clear, comprehensible and prominent manner on a durable medium.

I find that in the circumstances of this particular case, the change was not insignificant. It is clear from all his interactions with B that the class of flight Mr H had was an important condition of his making a booking with B, and I do not doubt that had he been unable to book these flights, he would not have proceeded with the booking. For Mr H, premium economy flights not having been made available through the carrier B chose to contract with for this particular holiday experience, represents a significant change. Having thought carefully about this, I find that B was therefore not entitled to change the terms of the package and as it has done so, the further provisions in the relevant legislation[2] apply.

This legislation allows for the traveller (Mr H) to accept the proposed changes or terminate the contract without paying a termination fee. If the traveller terminates the contract, they may accept a substitute package. Further, if the traveller terminates the contract and does

[1] The Package Travel and Linked Travel Arrangements Regulations 2018 – Part 4, Regulation 15(1-2)

[2] The Package Travel and Linked Travel Arrangements Regulations 2018 – Part 3, Regulation 11(4-8)

not accept a substitute package – as Mr H has done – the organiser must refund all payments made by the traveller without undue delay and in any event not later than 14 days after the contract is terminated.

It follows then that as per the relevant legislation, Mr H was due to be refunded the deposit of £580 that he paid no later than 14 days after he terminated the contracted by cancelling the holiday on 1 December 2023. As Zopa is jointly and severally liable for the breach of contract, I find that it should make good both the lost deposit and the failure to provide the remedy within the time frame recommended by the legislation.

**My final decision**

My final decision is that I uphold Mr H's complaint. To settle it, I direct Zopa Bank Limited to take the following steps:

1. pay Mr H £580

2. pay interest on the amount at an annual rate of 8% simple*, calculated from 15 December 2023 (being the date that is 14 days after Mr H terminated the contract) until the date it pays this settlement

* Zopa may deduct income tax from this element of my award, if it considers it should do so. But if Mr H makes a request, it should give Mr H the necessary paperwork for him to reclaim the tax from HMRC if he's entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 January 2025.

Vanisha Patel
**Ombudsman**