

The complaint

Mr F complains that Creation Financial Services Limited (Creation) has treated him unfairly in relation to its obligations with regard to a payment he made using his credit card.

What happened

Between 17 and 25 November 2024, Mr F and his family stayed at a hotel, who I'll call W, in Florida. When Mr F was checking out of the hotel after his stay had concluded, he was provided with an itemised bill which included resort fees (\$45 per night) and parking charges (\$36 per night). Both of these fees had additional associated sales tax charges. The total amount for these charges was \$405.

Mr F disputed these charges whilst he was at the hotel, but the staff effectively said that he would have to pay, or the police would be contacted. Mr F therefore settled the bill under duress. When he returned to the UK, Mr F raised his concerns with the hotel and with Creation as the final bill had been paid with his Creation credit card on 25 November 2024. Mr F said he would not dispute the resort fees if they included parking but as this was charged separately, and he used none of the facilities/services offered within the price of the resort fee, it was unfair to have to pay it.

Mr F paid the hotel bill with a combination of hotel reward scheme points and payment via credit card. In resolution to the issue, W credited Mr F's account with 40,000 points. Mr F has said he did not accept that as a resolution, but that W took this action unilaterally. Mr F states the points amount to around \$220 and so he was seeking the remaining \$185 from Creation under Section 75 of the Consumer Credit Act 1974 (Section 75).

Creation reviewed the dispute and originally said that as the payment had been authorised, it could not assist. After further emails and telephone calls between Mr F and Creation, Mr F raised a complaint. Creation then issued a final response letter in which it said 40,000 points had been accepted from W as a resolution to the concerns, and it could not establish there had been a breach of contract or misrepresentation under Section 75.

Mr F brought his complaint to our service. He was unhappy that he had not been reimbursed the disputed fees under Section 75 or a chargeback dispute. He was also unhappy with the service received from Creation including inaccurate statements and deleting emails he had sent to it.

Our investigator reviewed the complaint and said he didn't think Creation had handled the claim unfairly. Our investigator said a chargeback has low prospects of success in the circumstances, so he didn't find it to be unfair of Creation to not have raised one. In addition, he said he couldn't agree the contract had been breached or there was a misrepresentation that meant the claim should succeed under Section 75. The investigator reviewed the service provided by Creation and said the claim had been dealt with in a reasonable time frame, the emails had not in fact been deleted and he couldn't find errors in service that meant Creation needed to take action to put things right.

Mr F was unhappy with this outcome and asked for an Ombudsman to review the complaint.

So, it has now been passed to me to decide.

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.

I would like to start by saying that I have provided a brief summary of the events that occurred above. I intend no discourtesy by this and can assure both parties that I have taken all the information provided into consideration when reaching a decision on this complaint.

In this decision, I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point, it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. Our rules allow me to do this, and this reflects the nature of our service as a free and informal alternative to the courts.

I also think it's worth clarifying that I'm deciding whether Creation acted fairly in assisting Mr F with his dispute against W. I'm not making a finding on the underlying dispute Mr F has with W. Creation did not apply the charges that Mr F is attempting to recover, so when considering what's fair and reasonable, I'm only considering whether Creation acted in line with its obligations as a provider of financial services.

Chargeback

Chargeback is a voluntary scheme under which settlement disputes are resolved between card issuers and merchants, under the relevant card scheme. A card issuer will review the claim against the possible reasons for a chargeback and look at whether it would be able to make a successful claim for the customer. Card issuers do not have to submit claims and usually will only do so, if it is likely to be successful. We don't expect them to raise a claim if there is little prospect of success.

The chargeback rules provide different reason codes that the finance provider can choose from when deciding whether to raise a chargeback dispute for a customer. In this case, there doesn't appear to be a chargeback reason that would be a natural fit for the situation Mr F is describing. Having considered the various chargeback reasons and looked at them against Mr F's circumstances, I do not find that a chargeback dispute would have had reasonable prospects of success. I appreciate Mr F felt these charges were not made clear, but I find the merchant would likely have defended any dispute made and where the 40,000 points had been awarded, even if a dispute had been pursued, it would not have succeeded. So, I don't find Creation did anything wrong in failing to raise a chargeback dispute.

Section 75

Section 75 allows – in certain circumstances - for a creditor (Creation) to be jointly and severally liable for any claim by the debtor (Mr F) of breach of contract or misrepresentation made by a supplier of goods and/or services (W).

I will start by considering whether a misrepresentation was made which was false, and induced Mr F in to entering the contract, causing him to suffer a loss.

As far as I understand it, Mr F originally made the booking online and received email confirmation. He then contacted W by email and telephone to address the specifics of his room requirements. As a result, the original booking made was cancelled, and a new booking was made over the telephone.

It appears Mr F is saying that at no point over his discourse with W did it mention the application of a resort fee at the end of his stay. Having reviewed the booking confirmation that Mr F originally received from the hotel, I can see a link to W's FAQ page is included. This FAQ page says the following:

"How much does the mandatory Resort Service Package cost and what does it include?"

Daily \$50 resort service package fee (+ tax) includes daily benefits for two guests:

- *In-room wireless internet. (Value \$14.99)*
- *Loyalty Program guests receive enhanced speed in-room wireless internet and daily access to the Balinese Relaxation Areas at Mandara Spa. (Value \$20)*
- *Daily Swan Paddleboat rentals. (Value \$25)*
- *Daily certified instructor led fitness classes. (Value \$25)*
- *Nightly movies and S'mores on the beach. (Value \$20)*

Value Add:

- *\$30 off Spa Services of \$230 or more during each night of your visit. Excludes Hair & Nail services.
* with each eligible stay."*

I accept that Mr W did not receive this information again when he was speaking to W by email or telephone whilst arranging the most appropriate room for him. However, I don't think that makes a difference here. The website states a mandatory resort fee is charged, and the FAQ's link was emailed to the customer which contained the same information. I therefore don't find there was misrepresentation by omission. Even if I accept there was, I don't find that it was so grave that it induced Mr F to enter the contract under false terms. The services charged for were available to use for the duration of the stay and therefore I do not find the contract was misrepresented in any way.

I will now move on to consider whether there was a breach of contract. We have already established what the charges were for. The only situation in which we could establish a breach of contract here is if the services charged for were not available for use. With regard to the parking charges, we know Mr F had a rental car and parked it at the hotel. With regard to the resort fee, Mr F had the services listed above available to him for the duration of the stay, whether he chose to use them or not. So, I don't find the contract was breached and therefore conclude that Creation did not treat Mr F unfairly by declining his claim.

I appreciate this might be disappointing to Mr F and I can appreciate why he has raised concerns about these charges. It is not for this service to comment on the practice of attaching resort fees to bills after a stay has concluded. We are only able to consider whether there was a valid claim that Creation should be held liable for, and I cannot conclude that there was one here.

I understand Mr F is also unhappy with the service received from Creation. Creation liaised with Mr F about his claim, provided an explanation of why he was receiving correspondence stating his emails had been deleted, and provided an answer to his claim within a reasonable time frame. Mr F points out inaccuracies in information provided to him by Creation, however the information supplied was based on information that W had provided it

with, so it was reasonable for Creation to rely on this when providing Mr F with an answer. I therefore do not find that Creation needs to take any action to put things right for Mr F.

Lastly, I'm conscious Mr F has asked to discuss the dispute with me prior to issuing this decision. He has not provided a reason for this request. I can reassure Mr F without the need to speak directly with him that my review is based on the evidence and arguments submitted by the parties, along with relevant law, regulations and codes of practice. I have listened to the phone calls Mr F has had with our service, and don't find that a further conversation is required for me to be able to reach a fair and reasonable decision on this complaint.

My final decision

My final decision is that I do not uphold Mr F's complaint against Creation Financial Services Limited.

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

Vanisha Patel
Ombudsman