

complaint

Mr S complains that Capital One (Europe) plc will not refund to him the money that he paid for a boiler. His complaint is made against Capital One under section 75 of the Consumer Credit Act 1974.

background

Mr S used his Capital One credit card to pay £2,970 for a new boiler for his son in August 2014. His son did not receive the £1,100 voucher under an incentive scheme that he had been told he would receive so Mr S complained to the supplier, and then to Capital One under section 75. He was not satisfied with its response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. He concluded that there was not a debtor-creditor-supplier relationship so Capital One was not liable to Mr S under section 75. He did not consider that Capital One should compensate Mr S because it did not reply to his letter.

Mr S has asked for his complaint to be considered by an ombudsman. He says, in summary, that he paid the supplier in person on his credit card machine so he does not accept that he paid through a third party and that he bought the boiler and then gifted it to his son. He says that the letter sent to him by Capital One could not be considered as its final response as he was invited in that letter to send additional information for consideration - which he did – and that Capital One did not respond to that information which caused him to suffer distress and inconvenience.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier.

In Mr S's case, he is the debtor because he has used his Capital One credit card to pay for the boiler, Capital One is the creditor because it has provided credit to Mr S and the supplier is the supplier of the boiler. Although Mr S made his payment in the presence of the supplier using a machine provided by the supplier, the company which received his payment was a payment services provider and not the supplier. The invoice and the other contractual documents are in the name of Mr S's son (and not Mr S's name) and the e-mails relating to the boiler are sent between Mr S's son and the supplier. I therefore consider that the boiler was supplied to Mr S's son (and not to Mr S). As such, I consider that there is no direct relationship between Capital One and the supplier so the debtor-creditor-supplier relationship required for a claim under section 75 is not present in this transaction. I therefore do not consider that it would be fair or reasonable for me to require Capital One to refund the cost of the boiler to Mr S.

Mr S complained to Capital One at the beginning of November 2014 and it replied within two weeks. However, its reply did not inform Mr S of his right to refer his complaint to this service. Mr S sent a further letter to Capital One to which he did not receive a reply but

Capital One says that it did not receive that letter. Capital One has provided a copy of an undated letter that it says was sent to Mr S and which did inform him of his right to refer his complaint to this service but it has not been able to provide a copy of that letter or to confirm the date that it was sent. I therefore find it to be more likely than not that Capital One has not properly complied with the required process for responding to a complaint. That is likely to have caused Mr S some distress and inconvenience. I consider that it would be fair and reasonable for Capital One to pay him £50 compensation for that distress and inconvenience.

my final decision

For these reasons, my decision is that I uphold Mr S's complaint in part. In full and final settlement of it, I order Capital One (Europe) plc to pay £50 compensation to Mr S.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 10 August 2015.

Jarrold Hastings
ombudsman