

complaint

Mr L complains that Creation Financial Services Limited ("Creation") have rejected a claim he's made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

background

Mr L paid for a villa using a credit card provided by Creation. He complained to them about the quality of the accommodation as he said section 75 gave him a like claim against them as against the provider of the villa.

Creation offered to refund 25% of the accommodation cost but Mr L was disappointed with their response and therefore referred his complaint to this service.

Whilst his complaint was under review here, Creation raised a further issue. They said that in order for a section 75 claim to succeed there needed to be a relevant relationship between the debtor (Mr L); the creditor (Creation) and the supplier (the landlord). But they noted that Mr L had made payments to the holiday rental company (I'll call them "H") and they said this broke the necessary chain and meant they had no relationship with the supplier and therefore no liability for the claim.

Our adjudicator agreed that this relationship broke the debtor, creditor, supplier chain and that Mr L's claim could therefore not succeed.

But Mr L disagreed. He said the landlord had sent him a payment request and he wondered what the point of section 75 was if it didn't give him protection.

my findings

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

I know it will disappoint Mr L but I agree with the adjudicator's view of this complaint and I'm not upholding it. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint but I don't have to reach the same view as, for example, a court might reach if Mr L made a claim through them for breach of contract or misrepresentation.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances,

the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

One of those circumstances is that there must be a valid debtor, creditor, supplier relationship. So if I was satisfied that the contract Mr L had with the supplier had been breached because the accommodation wasn't satisfactory, and if I was satisfied that there was a valid debtor, creditor, supplier relationship, then I'd ask Creation to take some action to remedy the situation.

But here Creation argues that it hasn't got a relationship with the supplier of the accommodation and I agree. The payment was made to the holiday rental company, H, and not to the supplier.

I can understand Mr L's frustration that this means he cannot raise a claim through his credit card provider. I'll try to explain why as I understand Section 75 is a little technical. It was established as it was understood that the legal right a consumer has against a merchant may not be enough protection for them. So section 75 established a liability on the provider of credit as it was believed they would have more leverage over the merchant to resolve the issue and would, in any case, be less inhibited by the expense of suing the merchant.

But here if Creation needed to sue the merchant it would find itself in difficulties as it doesn't have a trading relationship with him. It has a relationship with H instead.

So whilst I understand Mr L's concerns I'm afraid it would not be fair to ask Creation to take responsibility. I believe that Creation have been prepared to stand by their original offer of compensation and I think, in the circumstances, that's a reasonable resolution. But I'm afraid I won't be asking them to take any other action.

my final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 February 2020.

Phil McMahon
ombudsman