

complaint

Mr M complains that Creation Financial Services Limited won't refund a payment made on his credit card to a travel booking website for flights for his daughter.

background

In February 2018 Mr M bought a two-legged flight to the UK from abroad for his daughter using a Creation credit card through a travel booking website ("the Website"). Mr M's daughter didn't check in at the airport abroad for the first leg of the flight and so didn't fly. But she was able to arrive at the intermediate airport for the second leg flight on her ticket. But on arrival was told her seat on the flight to the UK had been cancelled. A new seat on the same flight was then purchased in business class as there were no like-for-like seats available. This was at significantly increased cost to her original seat.

Mr M complained to the travel booking website, but it felt it had done nothing wrong and pointed to the terms and conditions which it said allowed the second leg flight ticket to be cancelled due to Mr M's daughter not flying on the first leg flight.

Mr M asked Creation to help under Section 75 of the Consumer Credit Act 1974. But it said it didn't think the appropriate relationship was in place for Creation to be held liable. And even if the appropriate relationship did exist, it felt it wasn't responsible because there wasn't a breach of contract or a material misrepresentation in what had happened.

Mr M didn't think this was fair, so he brought the complaint to our service. Our investigator looked into the matter. The Investigator felt that the appropriate relationship was in place but overall, he didn't think Creation had acted unfairly by declining Mr M's request for a refund. Creation didn't have any arguments to add once it had sight of the Investigator's assessment. Mr M didn't agree. So the complaint has been passed to me to decide.

my findings

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

This complaint is about Creation, as Mr M's credit card account provider. It's not about the Website, which isn't a financial service provider and so doesn't fall within my remit. I'm only considering whether Creation should have helped with the dispute with the Website in any other way.

There are two areas where Creation could help Mr M with this issue. Namely under Section 75 of Consumer Credit Act 1974 and under the Chargeback process.

Section 75

The transaction was made using Mr M's Creation's credit card. Under section 75, in certain circumstances, he has an equal right to claim against Creation as he does against the supplier if there's been a breach of contract or misrepresentation by the supplier.

For a valid claim under Section 75 there must be certain conditions met including an appropriate relationship between the parties in respect of the transaction financed by the credit card. This is known as a debtor-creditor-supplier arrangement. And to understand how

this applies it is important to appreciate the contractual relationships between the various parties.

Mr M paid the website using the credit provided by Creation. The website provides the service of sourcing and arranging flight tickets. So in respect of this transaction Mr M is the debtor, Creation the creditor and the website is the supplier..

Mr M booked the tickets with the website and is named on the booking confirmation as the purchaser. So it appears he has a contract with it in respect of the arranging of the flights. I have also looked at the website's terms and conditions and these confirm the nature of the contractual relationship with Mr M.

So overall I am satisfied that Mr M is able to make a claim against Creation under Section 75 for breach of contract or misrepresentation by the website in the supply of the service of sourcing and arranging of the flights if such breach or misrepresentation is made out.

However, Mr M did not contract with the airline in respect of this transaction. So I don't think he can hold Creation responsible via Section 75 for the actions of the airline and its contractual relationship with those who book and take the flight. I also note that in this case Mr M was not the passenger on the flight so it would appear the relevant terms of the airline's contract here would be in respect of the passenger (his daughter).

Another condition necessary for a valid claim under Section 75 is that the service provided by the Website must be within the financial limits set out in the Act. I've considered what Mr M paid the website for its service and I think this case meets the required financial limits to have a claim under Section 75.

But I'm not persuaded that there was breach or misrepresentation here. The website was tasked with sourcing and arranging the flights and that's what it did. There is no argument that the flights weren't sourced and arranged as agreed. And I'm not persuaded there was a misrepresentation either. The website's terms and conditions make clear that if you don't check in to the first flight "*your tickets on your subsequent flights will be cancelled*". And that is what happened. So I don't think Mr M was misrepresented into entering this contract unfairly. So I don't think Creation has done anything wrong here in how it has handled Mr M's claim to it under section 75.

Mr M in his arguments has said the seat was sold on after being cancelled to someone else without him being informed or anyone else being informed that was going to happen. But I've not seen any part of the website's contract saying that he or anyone would be informed. And ultimately the airline is responsible for what it does regarding the provision of the flight not the website. So I don't think there is a breach there which Creation can be held responsible for.

Mr M says his daughter was told the flight was full before a much more expensive seat became available. But Creation nor the website are responsible for what the staff in the airport or the airline staff say. And the decision to purchase the more expensive seat doesn't stem from any breach or misrepresentation. So I don't think it would be fair for Creation to have to cover that cost.

It is also argued that Mr M should be refunded the cost of the seat because it was resold to someone else. But the seat had been cancelled in line with the agreed terms and conditions. So I see no persuasive reason for Creation to cover any such cost as there was no breach

or misrepresentation here by the website. I've considered the other important facets of this purchase and I'm not persuaded that the contract was breached by the Website or that the contract was misrepresented to Mr M during the sales process.

could Creation challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute with a merchant, as Mr M does here, Creation (as the card issuer) can attempt a chargeback. Generally we say it's fair for a card issuer to attempt a chargeback - or to challenge a payment - if there's a reasonable prospect of success, for example where goods aren't received, or it appears that the payment wasn't properly authorised by the cardholder.

There is no dispute that Mr M purchased the tickets and it is clear that the transaction was properly authorised by Mr M. The chargeback scheme is a voluntary scheme and has certain rules including time limits for chargebacks to be attempted. Mr M first brought the issue to Creation in March 2019. The flight in question was in September 2018. The chargeback scheme requires chargebacks to be made within certain described time limits. I can see that when Mr M approached Creation the relevant time limits had already elapsed from the events complained about. So any chargeback would have been out of time. So I don't think Creation treated Mr M unfairly by not trying a chargeback.

In summary Creation didn't raise a chargeback but I don't think Mr M lost out because of this. I think that there is the appropriate relationship for a Section 75 claim regarding the website, but I do not think such a claim should be successful. I say this because I think there was no breach or misrepresentation of the contract by the website. So I don't think I can fairly require Creation to pay any refund to Mr M.

my final decision

For the reasons set out above, I do not uphold the complaint against Creation Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 22 April 2021.

Rod Glyn-Thomas
Ombudsman