

complaint

Ms D complains that NewDay Ltd (trading as Aqua) ("Aqua") won't refund the cost of air tickets she bought (using her Aqua credit card), which she says were mis-sold to her. She brings her complaint under section 75 of the Consumer Credit Act 1974.

background

In April 2017, Ms D went online to buy air tickets from the UK to a town in a South American country. She says she thought she was buying tickets from a South American airline which involved one flight from the UK to the capital of the country, and then a second flight from there to the town she wanted to visit.

However after she had paid for the tickets, she found she was on the site of a travel agent, which I'll call "T", and the tickets she had paid T for were with an American airline and involved flying to her destination via the USA. This would have meant applying for transit visas for the USA. So she asked T to cancel the tickets.

T said the airline's terms and conditions made it clear the tickets were non-cancellable, so it couldn't help her. Ms D explained to Aqua what had happened, and asked it to refund what she had paid. She said the tickets she received weren't what she had booked, and it was a fraudulent transaction.

Aqua submitted a chargeback request to T's bank asking it to return the payment that Ms D had made. However T defended this request on the basis that it was a valid purchase. As Ms D was on holiday, she didn't respond within the required time for doing so. Aqua ran out of time to pursue the chargeback further and said it couldn't do anything more.

It said that a section 75 claim wouldn't have been appropriate in this case because T was only acting as the agent of the airline and there didn't seem to have been any breach of contract.

Our investigator didn't recommend that this complaint should be upheld. He said that Aqua acted properly in charging back the payment when it was contacted by Ms D. However T defended this request, and then Aqua ran out of time to take the chargeback further as Ms D hadn't responded within the required time.

The investigator also thought a claim under section 75 wouldn't have succeeded because the debtor/creditor/supplier ("d/c/s") chain necessary for a claim under section 75 wasn't present in this case. The tickets were supplied by the airline, which had no d/c/s relationship with Aqua. T, who Aqua paid, was only acting as agent for the airline.

my findings

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

Like the investigator, I think Aqua acted reasonably in initiating the chargeback. However when T defended this, and the time limit for responding passed, it couldn't take this any further.

Section 75 is technical in its operation, and it's not every use of a credit card to buy goods or services that will give rise to a claim under section 75. In particular there needs to be a d/c/s chain involving (in this case) the debtor (Ms D), the creditor (Aqua) and the supplier (the airline which supplied the tickets).

However Ms D had no involvement with the airline. She dealt with, and paid, T. But T wasn't the supplier – it was only an agent. So in respect of the contract for the tickets, the necessary d/c/s chain wasn't present.

I've also considered whether T could be said to be guilty of any misrepresentation in the way it arranged the contract for the tickets so as to give rise to a claim under section 75.

From what Ms D has said, she didn't realise that she was on T's website when she was buying the tickets. And she thought she was buying tickets for a two stage journey to her destination, rather than a three stage journey travelling via the USA.

It's clear that what Ms D bought wasn't what she wanted. She says that the flights changed between her booking them and the end of the transaction after she had paid.

I understand that this is what Ms D believes happened. However I've seen no independent evidence to suggest that this happened on the website without Ms D being told, or as a result of any misrepresentation by T. So I'm not persuaded there was any misrepresentation by T for which I can hold Aqua responsible under section 75.

In these circumstances, I can't reasonably require Aqua to do anything more.

my final decision

My decision is that I don't uphold this complaint, and make no order against NewDay Ltd (trading as Aqua).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 13 July 2018.

Lennox Towers
ombudsman