

complaint

Miss E complains that National Westminster Bank Plc rejected her claim under Section 75 Consumer Credit Act in respect of an unsatisfactory holiday.

background

Miss E booked an overseas holiday for her and her family with an online travel agent I will call G. She had to pay the airline for hold baggage at the airport which she believed was included in the holiday cost and when the family arrived at the holiday destination they were told the hotel had been overbooked and they were moved to a sister hotel. Miss E has listed a number of faults with the replacement hotel.

She complained during the holiday and says she was told to take it up with the tour operator on her return. It offered her £178.60 compensation in full and final settlement. She rejected this and made a chargeback claim and a section 75 claim. The bank rejected this as it believed the required debtor-creditor-supplier (DCS) link had been broken. It said that the holiday was provided by the tour operator and not G. It had acted as an intermediary. G said: *"For clarity, we sell products on behalf of our suppliers and not vice versa. They feed our site by automated systems which may not be up to date due to cached information."*

Miss E brought her complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He agreed with the bank that the DCS link had been broken. He said the payment passed to the third party booking website. He didn't consider G was the supplier as it acted as an intermediary taking the payment and processing the booking. The money was then passed onto the travel operator as it was providing the holiday accommodation.

He also looked at whether there was an associate relationship between the G and the hotel, but he was unable to identify such a relationship. Miss E didn't agree and said she believed G was the supplier. Payment was made to it via the website and processed by G. She said it advertised the accommodation and flights and it had an associated relationship with hoteliers and airlines.

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 has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

The key to whether Miss E has a valid claim lies in identifying the role of G. I have looked at the contract and its website. These identify it as an organiser rather than a supplier of the holiday. It says that once a customer makes a booking it will contact the supplier to see if the chosen holiday is available at the price quoted. It adds that the content of the website represents the holidays offered by the suppliers.

I am satisfied that the role of G is as an intermediary in organising the holiday and taking payment which it passes on to the supplier. That means the DCS link is broken. I would add that there is no evidence of an associated relationship between the tour operator and G as defined in the legislation. I appreciate this may well appear to be a technicality, but as the law is currently drafted Miss E does not have section 75 claim against the bank. Therefore, while I have every sympathy with Miss E, I cannot uphold her complaint.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 11 August 2019.

Ivor Graham
ombudsman