

complaint

Mrs G complains that AIB Group (UK) plc, trading as First Trust Bank, will not pay compensation to her for a flight that was delayed. Her complaint is made against First Trust Bank under section 75 of the Consumer Credit Act 1974.

background

Mrs G paid £2,401.92 for some flights using her First Trust Bank credit card. She says that the flight in August 2009 was delayed by more than seven hours. The airline has stopped trading and, in 2014, Mrs G asked for £2,000 compensation for the delayed flight under section 75 and EC Regulation 261/2004. She was not satisfied with First Trust Bank's response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. He concluded that the flights were available to, and used by, Mrs G - albeit the departure was later than she expected. He noted that, due to the length of time passed since the flight took place, he was unable to view the airline's terms and conditions and that he had been unable to determine the reasons for the flight delay. He said that EC Regulation 261/2004 relates to compensatory payments and would not be considered under section 75.

Mrs G has asked for her complaint to be considered by an ombudsman. She says, in summary, that her sister, who was on the same flight, has received compensation from her credit card provider for the delayed flight and that she is being discriminated against by First Trust Bank.

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. To be able to uphold Mrs G's complaint about First Trust Bank under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the airline.

Regulation EC 261/2004 prescribes what airlines must provide their passengers in the event that a flight is delayed or cancelled. This service considers that such rights are not implied into the contract between the airline and the consumer so any failure to observe the directive is not a breach of contract but a breach of a statutory duty by the airline. As there has not been a breach of contract by the airline, I consider that Mrs G's claim against First Trust Bank under section 75 cannot be successful.

In any event, the Civil Aviation Authority has issued guidance on the compensation that would be payable in the event of a flight delay. The guidance says:

"You should be aware that you may not actually be entitled to compensation if your flight was delayed due to what is known as extraordinary circumstances which are outside the airline's control. This is when the flight would have been delayed, even if the airline had taken all reasonable measures to avoid the flight being delayed. For example, if there were poor weather conditions or a strike at the airport".

I have not been provided with evidence to show the reasons for the delay to Mrs G's flight and, given that the delays occurred in August 2009, I do not consider it to be likely that evidence to show the cause of the delay will be readily available. There is therefore no evidence to show whether or not the delay was caused by extraordinary circumstances and therefore whether any compensation would be payable to Mrs G under the EC Regulation.

Mrs G's sister's credit card company has paid compensation to her on a without prejudice basis and has not admitted to any liability under section 75. In any event, this service considers each claim on its individual merits. For the reasons set out above, I consider that Mrs G's claim against First Trust Bank under section 75 should not succeed. I am not persuaded that there is any evidence to show that First Trust Bank had discriminated against Mrs G in any way. I do not consider that it would be fair or reasonable in these circumstances for me to require First Trust Bank to pay any compensation to Mrs G.

my final decision

For these reasons, my decision is that I do not uphold Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs G to accept or reject my decision before 7 April 2015.

Jarrold Hastings
ombudsman