

The complaint

Mr H complains about the way Creation Financial Services Limited ('Creation') handled his claim for a refund for flight tickets he paid for using his Creation credit card.

What happened

- Mr H bought return flight tickets for him and his wife in January 2020 from an Airline I shall call G. He was due to fly on 29 April 2020 and return on 3 May 2020. The cost of the tickets was £812.68.
- Mr H redeemed a credit voucher he'd received from G to the value of £304 to pay for part of the cost of the tickets, leaving him with the remaining sum of £508.68 to pay which he did using his Creation credit card.
- G cancelled all of the flights before Mr and Mrs H were due to depart.
- Mr H said at the time the flights were cancelled, G's website explained it would offer vouchers instead of cash refunds. He said this wasn't suitable, so he asked Creation to consider its liability under section 75 Consumer Credit Act ('section 75').
- Creation recovered the money Mr H paid using his Creation credit card via the chargeback process. But it said it could not refund the value of the voucher Mr H redeemed to pay for the flights. It said the cancellation of the flights was not a breach of contract because travel was not guaranteed in the contract. So, it said it wasn't liable to Mr H for the amount of the voucher under section 75.
- Creation offered to pay Mr H compensation of £15 for what it said was a failure to keep Mr H updated about his claim while it looked at it.
- Our investigator thought Creation should have met Mr H's claim under section 75. She said G had failed to provide the service Mr H paid for so he should receive a refund of the full value of the ticket he paid for.
- Creation disagreed with the investigator. It said the voucher Mr H used to pay for the flights was not redeemable for cash, so it wasn't liable to him for the value of it.

What I've decided – and why

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

- Under the relevant chargeback card scheme rules, Creation couldn't claim back sums Mr H didn't pay for with his Creation credit card. So, it couldn't have claimed

the value of the voucher from G via chargeback.

- Mr H's contract for carriage with G was a general promise to fly him to the agreed destinations. Indeed, Article 11.2 of the contract set out that '*subject to changes for reasons beyond the control of the carrier*', flight schedules printed on a ticket formed '*an integral part of the contract of carriage*'.
- Mr H received tickets from G which included flight schedules. And I've not seen evidence the flights were cancelled for reasons beyond the control of G (for example, it's not clear whether it was impossible because of Covid-19 restrictions for the flights to take off or whether G simply made a commercial decision not to operate them). So, G's failure to operate to those schedules by cancelling the flights was most likely a breach of an 'integral part of the contract'. And in any event, it was a breach of the general promise to fly Mr H and his partner to the agreed destination.
- Mr H therefore looks to have had a valid claim for breach of contract, which he could hold Creation liable for under section 75. I take this into account when considering if Creation treated Mr H fairly.
- From what I've been provided and asked to consider, Mr H's loss as a result of this breach of contract was the cash price of the tickets – consisting of the payments he made using his Creation credit card and the voucher he is no longer able to benefit from.
- The voucher contained a term that it couldn't be '*bartered or sold*'. But I don't read this mean it had no cash value. The term appeared in a section relating to transferability of the voucher and I think this description was used in the context that the voucher can't be transferred to anyone else, whether by gift or by sale – or it becomes invalid. It's also clear from what I've seen that the voucher was provided because G cancelled a previous flight that Mr H had bought from it.
- I'm satisfied Mr H has made reasonable attempts to claim the remaining sums not recovered via chargeback from G, but without success. He has shown us evidence of his attempts to claim via G's website and calls he's tried to make to it. So, I'm satisfied on balance Mr H has not had a refund from G for the value of the voucher.
- Overall, I find that Creation treated Mr H unfairly by refusing to meet the remaining value of his claim.
- G appears unwilling to refund Mr H or provide a new voucher to the value of £304 and Creation is of course not able to issue a new voucher to him. In the circumstances (and taking Creation's liability to Mr H under section 75 into account), a fair alternative to put things right here is that Creation should pay the value of the voucher to him to compensate for his loss.
- Creation should add interest to this amount of 8% simple per year from the date it declined to meet his claim.
- Creation offered to pay Mr H compensation of £15 for what it considered to be its service failings. Creation did take a while to look at Mr H's claim and didn't keep him updated about it. Taking everything into account however, including the operational challenges no doubt faced by Creation during what were unprecedented times, and the fact it was G that caused the problem in the first place by failing to refund Mr H, I

think this is fair compensation in this case for any distress or inconvenience that might have been caused.

My final decision

My final decision is that I uphold Mr H's complaint. To put things right Creation Financial Services Limited must:

- Pay Mr H £304 plus interest at 8% simple per year from 26 August 2020 until the date of settlement.*
- Pay Mr H compensation of £15 for distress and inconvenience (if it hasn't done this already)

* If Creation Financial Services Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 April 2022.

Michael Ball
Ombudsman