

The complaint

Miss D complains that Capital One (Europe) plc (“Capital One”) treated her unfairly when she approached it for assistance in obtaining a refund for a hotel booking she’d paid for with her credit card.

What happened

Miss D used her Capital One credit card to make a booking for a hotel for 28 April to 1 May 2023. A payment of £349.57 was charged to the credit card on 23 February 2023, which was the same day she made the booking. Miss D says she had intended to book a hotel in Dublin but had accidentally booked a hotel with the same name in Frankfurt, Germany.

On realising her mistake within an hour, Miss D says she contacted the company she booked through (“GR”) to cancel, but the cancellation notice said the booking was non-refundable. Miss D says she contacted GR again and was advised she could get a refund if she contacted the hotel. She attempted to do so but says she never received a reply.

Miss D contacted Capital One initially on 23 February 2023 to try to get the money back or cancel the transaction. She was very disappointed with the service she received when she did so. She says she was told she needed to wait until after the dates of her booking to claim a refund, but when she got back in touch after this she was simply told Capital One couldn’t help because the booking had been non-refundable. Miss D says she was passed around departments, which she found very frustrating, and that Capital One refused to take into account the fact GR had told her she could get a refund if she contacted the hotel.

During this process, Miss D attempted to appeal Capital One’s decisions not to provide a refund, and made several complaints about these decisions and the customer service she had received. It’s not necessary to narrate everything that happened, however Capital One rejected the majority of Miss D’s complaint. In particular, it stood by its decisions not to refund Miss D, for the following reasons:

- It was not a fraudulent transaction.
- It was unable to raise a valid dispute/chargeback in relation to the booking because it had been non-refundable.
- Miss D didn’t have a valid claim against it under section 75 of the Consumer Credit Act 1974 (“CCA”) for essentially the same reason – she had mistakenly booked the wrong hotel and the booking was non-refundable.

Capital One did however accept that at times its customer service had fallen short – specifically:

- It had failed to call her back as agreed on one occasion.
- It had transferred her call to the wrong team on one occasion.

In total, Capital One credited Miss D with a total of £75 compensation in relation to these issues.

Dissatisfied with these responses, Miss D contacted the Financial Ombudsman Service, initially on 18 September 2023 and then with further information over the following weeks, seeking an independent assessment of her complaint.

One of our investigators looked into the matter. She wrote to both parties with the following key findings:

- While it was understandable that Miss D had booked the wrong hotel by mistake, the booking had been non-refundable and this information was presented on GR's booking page as well as on the cancellation invoice Miss D had received after she cancelled.
- Due to the non-refundable nature of the booking, Capital One did not have rights to attempt a chargeback against the payment.
- There was no evidence of a breach of contract or misrepresentation which would allow Miss D to make a claim against Capital One under section 75 of the CCA.
- The amount of compensation Capital One had already provided in respect of its customer service failings was fair and reasonable.

Miss D was unhappy with our investigator's findings. She insisted she had been told by GR verbally that she could get a refund and felt too much attention was being paid to the refund policy stated on the cancellation notice. She also considered the compensation paid by Capital One was insufficient in the circumstances. Ultimately, no agreement could be reached, and so the case has been passed to me to decide.

Our investigator has recently clarified that Capital One has offered Miss D an additional £50 compensation in relation to the customer service it provided, bringing the total to £125. She wrote to both parties to say that she felt this was fair.

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.

When a consumer buys goods or services using a credit card, and something then goes wrong with the purchase, they can approach their card issuer for assistance. The card issuer may be able to help in obtaining a refund of any card payments made via a chargeback, or it may need to honour a claim under section 75 of the CCA.

Before I go into these avenues in more detail, I think it's important to provide some analysis of Miss D's particular scenario.

It's not disputed that Miss D accidentally booked the wrong hotel. There are no statutory cancellation rights for accommodation services, meaning Miss D was left to rely on the terms of the booking she'd made. The cancellation confirmation states the booking was non-refundable. Miss D says she was not told this prior to making the booking. The following words appear on GR's website during the booking process for this hotel:

"This rate is non-refundable and cannot be changed or cancelled – if you do choose to change or cancel this booking you will not be refunded any of the payment."

It is also made clear during the booking process that by clicking on the “Complete Reservation” button, a person agrees that their card will be charged immediately.

I have thought of the possibility that the website might have changed between Miss D making her booking, and now, and that it may not have made these things clear in the past. However, on the balance of probabilities I think it’s more likely than not that the same or similar messaging would have appeared at the time she made her booking.

Given Miss D had no statutory right to cancel, and was not contractually entitled to a refund if she cancelled, any refund she received would be dependent entirely on the discretion or goodwill of either GR or the hotel. The fact she was charged and not refunded doesn’t mean that the charge was somehow fraudulent or unlawful as she has suggested. Nor does the fact that Miss D has been unable to obtain a response from the hotel mean that the hotel doesn’t exist or is perpetrating a scam. The hotel appears to be a genuine establishment, albeit with mixed reviews.

Miss D says she had a key conversation with GR after she cancelled, in which a refund was discussed. Miss D has said that GR either suggested she could contact the hotel herself to get a refund, and/or that GR said that it would issue her a refund after it contacted the hotel, but then phoned her back to say the reservation had been non-refundable.

It’s not possible to know specifically what was said on this phone call or phone calls. But from Miss D’s description, it doesn’t sound like GR or the hotel had agreed to make an exception to the cancellation policy and issue a refund. It sounds like GR advised Miss D that she could ask for a refund, but that doesn’t imply that a refund was guaranteed. And there is nothing in writing to support any assurances that may have been made.

Overall, I think this is a case where Miss D made an unfortunate error in booking a non-refundable room at the wrong hotel. She was not entitled legally to any refund, and I don’t think it’s likely any refund was promised to her by GR or the hotel.

I’ve needed to bear in mind this analysis when considering whether Capital One ought to have taken further action to assist Miss D via the chargeback process, or under section 75 of the CCA.

Chargeback

A chargeback (sometimes called a “dispute”) is a process for disputing a payment made on a card. The process is mediated by the card scheme whose logo appears on the card in question (Mastercard in this case), and the card scheme makes the rules covering things such as what sorts of scenarios are eligible for a chargeback, the kind of evidence required, and how long a person has to submit one.

Chargebacks are not guaranteed to be successful, and a consumer is not able to demand that their card issuer attempt one. As a matter of good practice however, I’d expect a card issuer presented with a customer looking to dispute a transaction made on a card, to attempt a chargeback where to do so would be compliant with the card scheme rules and have a reasonable chance of succeeding. I’d also expect the card issuer not to overlook the other main avenue available to it – section 75 of the CCA.

A chargeback can be resisted or opposed by the party which originally received the payment, if they don’t think the claim for a refund is valid. If neither side will back down, then ultimately the card scheme itself can be asked to rule on the dispute in a process called arbitration.

The scenario Miss D described to Capital One is a type of scenario in which a chargeback can be attempted – where a service has been cancelled and either a refund was due under the terms of the booking, or a refund was promised by the merchant. However, I don't think Miss D would have been able to evidence adequately that she had been promised a refund, or that she was entitled to a refund under the booking terms. This is for the reasons I've already explained in my general analysis above.

Because of this, I don't think a chargeback would have had a reasonable chance of succeeding and I'm unable to find that Capital One acted unfairly or unreasonably in refusing to take one forward for Miss D.

Section 75 of the CCA

Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of the goods or services, subject to certain technical conditions being met.

There's been a suggestion in this case that the fact Miss D booked the hotel through an intermediary (GR) means the necessary technical conditions are not in place for her to be able to make any claim at all against Capital One. Whether or not that is correct, I don't think Miss D has any claim in respect of breach of contract or misrepresentation. GR (or the hotel) would have been in breach of contract if – for example – the booking was refundable on cancellation and they had failed to refund Miss D when she cancelled. But I've already concluded the booking was non-refundable, so a failure to refund Miss D is not a breach of contract.

While it hasn't really been argued that GR or the hotel made any misrepresentations to Miss D prior to her making the booking, for the sake of completeness I will say that I've not seen any evidence that misrepresentations were made to Miss D before she made the booking – her concerns have been very much focused on what happened *after*.

Given I'm unable to find that Miss D had a claim against GR or the hotel in respect of a breach of contract or misrepresentation, it follows that I don't think Capital One acted unfairly or unreasonably in declining to honour a claim from her under section 75 of the CCA.

Customer Service

There was a great deal of contact between Miss D and Capital One over her requests for a refund. Capital One has accepted that its customer service fell short on occasions over this period. It's paid £75 compensation to Miss D in respect of this, and has now offered another £50 to bring the total to £125.

Taking a broad view of the customer service provided by Capital One, considering the amount of contact between it and Miss D, I think the service it provided was satisfactory overall. That said, I think it could have given Miss D clearer answers on the question of the chargeback from an earlier stage, and I can see there were a couple of occasions where a call back wasn't made when promised, and there was a degree of being passed around to different teams.

While I think a large amount of Miss D's anger and frustration at Capital One is related to its refusal to refund her (which I think was the correct decision), I think the occasions where Capital One's customer service fell short caused some additional avoidable frustration and annoyance. I think the total offer now on the table, which comes to £125 with the additional £50 Capital One has offered, is fair and reasonable in all the circumstances.

My final decision

For the reasons explained above, I uphold Miss D's complaint in part and direct Capital One (Europe) plc to honour the offer it has already made – specifically it must:

- Pay Miss D the £50 compensation it has offered on top of the £75 already paid. If it has already paid this additional £50 compensation as well, it does not need to pay it a second time.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 7 August 2024.

Will Culley
Ombudsman