

The complaint

Mr M complains that Creation Financial Services Limited won't refund him his money for a package holiday.

What happened

In February 2020 Mr M used his Creation credit card to part pay for a package holiday for his family to Greece. Due to the pandemic the package supplier gave him a credit note for this holiday as for obvious reasons Mr M and family couldn't travel. In 2022 Mr M, having used the credit from the package supplier (along with some further payment) to pay for a new holiday went with his family to Mexico.

Mr M says that there was a lot that went wrong with the holiday including the beach being covered in a well-known seaweed, the beach facilities being not up to scratch and various issues with the catering, additional services and unsafe facilities. Creation say he was offered £110 in resort which he accepted. Mr M wasn't able to get satisfaction on his complaint with the package supplier so he complained to Creation.

Creation considered his dispute with the supplier under both the chargeback process and under a claim under section 75 of the Consumer Credit Act 1974 ("S75" and "CCA" respectively). It concluded that it didn't have to do anything further for Mr M. Feeling that Creation position to be unfair, Mr M sent his complaint to this service.

Our investigator looked into the matter. Overall, she felt that Creation had fairly treated Mr M. Mr M didn't agree. So the complaint has been passed to me to decide.

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.

I should make very clear that this decision is not about the package supplier which isn't a financial services provider and doesn't fall within my remit regarding either chargeback or Section 75. Whatever the issues there maybe with the package supplier here, and just because Mr M says he has lost out, it doesn't necessarily follow that Creation has treated Mr M unfairly or that it should refund him the full amount. And this decision is solely about how Creation treated Mr M. I hope this point is clear.

I should also note that Mr M has raised a large number of issues in this dispute. I've considered them all. However I've chosen to address those arguments which he's raised which I see as key to this dispute and key to reaching a fair outcome on this matter.

chargeback

There's no dispute that Mr M's Creation card was used here in these transactions. So I don't think Creation did anything wrong by charging them to his account when it did.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr M does here, Creation (as the card issuer) can attempt to go through a chargeback process. Chargeback is a voluntary process which is decided simply on the facts of the dispute within the rules of the card scheme (not managed by Creation). I don't think Creation could've challenged the payment on the basis Mr M didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

This service considers it good practice to raise chargebacks where firms feel that the chargeback has a reasonable prospect of success. Chargeback only allows a maximum of the amount of the transaction made to be recovered if the dispute is successful. Here the relevant transaction is for sixty-four pence. Clearly Mr M has asked for a full refund of the holiday which is over three thousand pounds. I'm not persuaded that Mr M is particularly vexed by the prospect of recovering the 64p transaction, he wants a full refund.

Creation didn't consider Mr M had significantly lost out under chargeback so it considered (latterly) its position under S75 where, if successful, Mr M could recover all funds paid and any consequential losses on top. Bearing in mind the rules of chargeback and the maximum he could recover under the chargeback scheme would be 64p, I'm not persuaded that Mr M has been treated unfairly by Creation considering his dispute under S75 and not taking his chargeback further.

The CCA

The CCA introduced a regime of connected lender liability under S75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier"). S75 says:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

So the test is here, did Creation consider Mr M's S75 claim to it fairly, or in other words is there a breach of contract or material misrepresentation made out here against the holiday company that Creation should fairly be held responsible for. It is of note that breach of contract and misrepresentation is all that Creation can be accountable for. It isn't responsible for the customer service Mr M received on the holiday. Nor is it responsible for the holiday not meeting Mr M's expectations, as is clearly the case.

I should start by noting that Mr M accepts he and family used the flights booked and stayed at the accommodation as planned. Bearing in mind that Mr M hasn't commented significantly on the flights in his complaint and that he accepts he and three family members travelled on these flights (over a considerable distance and as such would make up a significant proportion of the overall cost) it would be clearly unfair on Creation for Mr M to get a full refund as he requests. This is because clearly he and his family had the benefit of those flights.

I've considered the terms and conditions of the package supplier and the advertised holiday which Mr M has provided. I note that when entering the contract to purchase the holiday consumers are obliged to accept such terms and conditions including *"when you book any products or services from us, you will do so subject to these Website Terms and Conditions, our Booking Terms and Conditions and such further terms and conditions as may be applied by the hotel or cruise ship where you will be staying (together, the "Conditions of Contract")."*

I've also considered the accommodation's terms and conditions and note that these contain the ability to change their terms and conditions as it deems necessary. Those terms and conditions also note that the accommodation make every effort to ensure there are no errors in the information it provides about the services available, but the information provided is for information only. It also notes it is not liable for information provided by other websites about it or its services or amenities. So it's clear that Mr M agreed to these terms and that the accommodation has the contractual right to amend its services and facilities as it wishes to.

Mr M has made significant arguments about the seaweed being in the sea and on the beach of the hotel and has provided pictures thereof. And I can well appreciate Mr M's disappointment at the substantial amounts of the seaweed. But clearly the supplier and thus Creation are not responsible for the seaweed's appearance. And as it doesn't constitute a significant change to the package sold there is no obligation under either The Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs' for short) or indeed the contracts in place for the supplier to inform Mr M of this issue.

Mr M says "*The organiser must provide clear and accurate information about the package holiday, including destination details, accommodation standards, transport arrangements, and any potential risks or restrictions.*" This is a very broad summation of the PTR's which isn't actually an accurate quote of the PTR's or the actual responsibilities of organisers (such as the supplier here). The information actually required to be provided to travellers under the PTR's is the information provided in Schedule One of the PTR's. I note that seaweed and related issues with the sea and beach are not covered by Schedule One. So the supplier had no obligation to flag this issue to Mr M under the PTR's. So I'm not persuaded Mr M has lost out due to Creation concluding that there is no breach of contract in this regard to the actual terms and conditions nor the implied terms under the PTR's.

Mr M points to members of those travelling incurring sickness issues, including himself. I'm sorry to hear this. But I've not seen any persuasive evidence the origins of this illness, although it appears Mr M seems to suggest this was caused by the food at the accommodation. But I note that gastroenteritis (which is the condition he points to with a diagnosis) can be caused by a bacterial or viral condition caused by such things as norovirus or bacterial food poisoning. I've not seen any persuasive evidence Mr M provided to Creation to show it was from food poisoning. So I don't think Creation has treated him unfairly for not compensating him for this or the missed excursion. I appreciate Mr M points to online reviews about other people being sick, nevertheless these don't demonstrate that the food provided to Mr M's party was infected or that Creation should do anymore on this issue. Mr M should remember, just like a legal claim against the supplier, he has to support his claim with persuasive argument or evidence from the time. And then Creation has to consider such a claim fairly.

Mr M raises the issues of lifts not working at times, dangerous lift interiors, lack of towels and the closure of restaurants at times. And I appreciate why these issues would be disappointing to Mr M and his family. But there is no guarantees within the contract he agreed with the supplier of these services and indeed the terms make clear that the services provided can be changed or withdrawn. So the terms Mr M agreed to mean that these issues do not constitute breaches of contract or indeed misrepresentation. And it is only those failings that Creation can be held liable for.

I note that Creation points to the fact in its correspondence to Mr M by email in 2023 that Mr M had chosen to go on holiday during 2022 when the pandemic was still a substantial issue worldwide. I can also see that Mexico had a substantial spike of covid during June and July 2022. It is unclear whether the accommodation Mr M stayed at was covid free or indeed swamped with covid during Mr M's stay or indeed somewhere in between those extremes.

I'm not persuaded that this issue makes a significant difference overall to Mr M's claim, and it seems Creation may have over relied on it in its consideration of the matter. I think the terms and conditions are more persuasive. However it could be that staffing issues contributed to some services not being as the accommodation would have liked (or indeed Mr M). But for the aforementioned reasons the terms agreed did give the accommodation the option of varying the services and facilities provided. And Mr M agreed them.

Mr M points to having to move rooms during his stay. He notes that this was done as there was to be maintenance carried out nearby. Although an inconvenience it would seem that there were good reasons for such a move and staying in the original room would have been worse than moving to the new room. Otherwise the accommodation wouldn't have done this. So I'm not persuaded this issue is sufficient for Creation to have to do more here.

Creation also points to Mr M accepting an offer whilst on site. From what I can see this was a gesture of goodwill for the disappointment Mr M suffered as a result of torn clothing. I don't think there is a persuasive reason to say Creation's stance on it being a fair resolution to this issue in the circumstances was wrong.

I appreciate Mr M is disappointed in the handling of his S75 claim by Creation. And I note a number of comments it has made which Mr M points to as being either irrelevant or indicative of it not considering the matter as well as it could have. However to uphold his complaint about Creation not only does it have to have failed him in its consideration of the claim, but he also has to have lost out as a result of that failing by Creation. And for the reasons above, largely around the terms and conditions agreed and the actual regulations in the PTR's, I'm not persuaded that the Supplier has treated him unfairly here. Accordingly, and even though Creation hasn't considered these matters particularly well, I'm satisfied had it done so it would still have not done any more than it has in relation to his S75 claim for the reasons I've given. Accordingly Mr M wouldn't have been successful with his claim in any event and thus Creation has nothing further to do.

I should add that although Mr M is clearly invested in this matter and clearly feels the package supplier are at significant fault, he hasn't persuasively demonstrated why Creation's position on the holiday itself is unfair bearing in mind the terms and conditions he agreed. And it has to be remembered this dispute and this decision is about how Creation treated Mr M only. Just because the holiday wasn't in line with his expectations that doesn't necessarily make it fair for Creation to bear the cost of this holiday or any part of it over and above the £110 already offered by the accommodation suppliers.

I do appreciate that this isn't the decision Mr M wants to read. And that it leaves him disappointed. But that doesn't make it necessarily fair for Creation to cover this disappointment regarding his holiday through refunding him either as a result of how it considered chargeback or S75. And although Creation hasn't considered the matter particularly well I'm not persuaded that Mr M has lost out as a result of this. I'm not persuaded a breach of contract or misrepresentation has been made out here due to the terms and conditions in place and the PTRs in force. And accordingly Mr M's complaint about Creation is unsuccessful.

My final decision

For the reasons set out above, I do not uphold the complaint against Creation Financial Services Limited. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 September 2024.

Rod Glyn-Thomas
Ombudsman