

The complaint

Miss E complains about the outcome of a claim she made to Capital One (Europe) plc (“Capital One”) in respect of a purchase she made using her credit card.

What happened

In August 2023 Miss E bought a holiday from a supplier I’ll call J to travel in September 2023. She paid £1,072 with her Capital One credit card.

On 28 August 2023 Miss E broke her collarbone and on 1 September her doctor declared her unfit to fly.

Miss E said she spoke to J to see what her options were but was told her only option was to try and sell the holiday by 4 September 2023. Miss E said it would have cost £300 to change the names on the booking so she didn’t think this was a viable option.

Miss E approached Capital One for help. It said that Miss E did not have a valid claim under s.75 Consumer Credit Act 1974 and it was unlikely a chargeback would succeed. So, it said it couldn’t help.

When Miss E complained about its decision it said this was because J had not cancelled the holiday and was not contractually obliged to provide her with a refund in the circumstances. Capital One credited Miss E’s account with £30 because it didn’t think it had given enough detail in its initial response to her approach for help

Our investigator looked into the case and said Capital One didn’t need to do anything. She didn’t think J had breached its contract with Miss E so didn’t think Capital One had treated her unfairly by declining to meet her s.75 claim. And she didn’t think Miss E would have succeeded with a chargeback as she didn’t meet the conditions required under the relevant card scheme rules.

Miss E disagreed with the investigator and asked an ombudsman to review her complaint.

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 am sorry to hear that Miss E was unable to go on holiday after breaking her collarbone. However, it is important to note that Capital One is not the supplier of the holiday. So, in order to decide if it has acted fairly, I need to consider its role as a provider of financial services only. I note that Miss E used her credit card to pay for the holiday. And with this in mind I consider the rules of chargeback and s.75 to be particularly relevant as to how Capital One could reasonably have assisted Miss E. It is these I have focused on when determining what is fair and reasonable.

Chargeback

In certain circumstances the chargeback process provides a way for a bank to ask for a payment Miss E made to be refunded. Where applicable, the bank raises a dispute with the supplier and effectively asks for the payment to be returned to the customer. While it is good practice for a bank to attempt a chargeback where the right exists and there is some prospect of success, the circumstances of a dispute means it won't always be appropriate for the bank to raise a chargeback. There are grounds or dispute conditions set by the relevant card scheme and if these are not met a chargeback is unlikely to succeed.

Capital One didn't raise a chargeback because it didn't consider one would have succeeded. I don't find this was an unreasonable decision. The reason Miss E couldn't go on the holiday was due to her being unable to make use of it and not because J couldn't provide the holiday. I've also not seen anything that suggests Miss E was entitled to refund from J in such circumstances given the timing of matters. So, Miss E's dispute didn't fit with any of the card scheme dispute rules for where services are cancelled or where a refund is due but not paid.

S.75

S.75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

I've looked at an archived version of J's terms and conditions which most likely applied to Miss E's booking. These set out that where a holiday is cancelled less than 14 days before the date of travel J was entitled to keep 100% of the price paid for the holiday. And there was nothing which entitled Miss E to a refund in the event she couldn't travel due to medical reasons either. As the investigator explained, this kind of situation is often covered by travel insurance.

So, overall it appears unlikely that J was in breach of contract to Miss E by refusing to provide her with a refund. I don't find therefore that Capital One treated Miss E unfairly by declining to meet her claim under s.75.

I do sympathise with the situation which Miss E found herself in and I hope she had a speedy recovery. But I can only reasonably require Capital One to meet her claim in this case if it was liable under s.75 or if it didn't pursue a chargeback in circumstances where one would most likely have succeeded. And unfortunately for Miss E, I don't think either these apply here.

Capital One recognised that its initial communication with Miss E lacked detail as to why it was declining her claim and it credited her account with £30 for any distress or inconvenience this caused. I think this was fair compensation for that particular omission and I don't require Capital One to pay any more.

My final decision

For the reasons I've explained, I do not require Capital One to do anything in respect of Miss E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 26 July 2024.

Michael Ball
Ombudsman