

complaint

Mr M complains that AIB Group (UK) p.l.c. (trading as First Trust Bank) won't refund to him the £1,520.13 that he's claimed for some flights. His complaint is made against First Trust Bank under section 75 of the Consumer Credit Act 1974.

background

Mr M was on holiday overseas in August 2015 when he was involved in a motorcycle accident. He wanted to return home earlier than scheduled as a result. So he used his First Trust Bank credit card to pay for his and his wife's flights to be changed and for a flight for his son. He says that he went to the airport for the flights with the medical documentation that he'd been told he needed but that he missed the flight due to the airline's delays. He complained to First Trust Bank under section 75 and asked it to refund the £779.17 that he'd paid in July 2015 for the original flights, the £515.83 that he'd paid to change his and his wife's flights and the £225.13 that he'd paid for his son's flight. He wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She didn't think that there'd been either a misrepresentation or a breach of contract as the flight was available to Mr M but it was missed due to the delays. She appreciated that Mr M got to the airport earlier than the required check-in time but she said that there was no evidence to confirm when he got there. And she hadn't seen enough evidence to suggest that the airline was responsible for any delays he experienced.

Mr M has asked for his complaint to be considered by an ombudsman. He says, in summary, that he feels that the airline's breach of contract can be sufficiently evidenced:

- it was required to perform precisely all terms of the contract in order to discharge its obligations – and he refers to some case law which he says supports what he says;
- the correctness and truthfulness of the competing witnesses testimonies is the primary evidence available – and must be assessed; and
- he can provide witness evidence from his wife, his son, the medical staff who accompanied him to the airport and the apartment complex manager who acted as an interpreter with the airline's check-in staff to show: the recorded time of his discharge from the hospital; the journey time by ambulance from the hospital to the airport; and that they arrived at the airport at least two and a half hours before the departure time.

my findings

I've considered all the available evidence and arguments to decide what's 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's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr M's complaint about First Trust Bank under section 75, I must be satisfied that there's been a breach of contract or misrepresentation by the airline.

I sympathise with Mr M both for the injuries that he incurred in the motorcycle accident and for the inconvenience and losses that he suffered when he wasn't able to take the flight that

he'd booked. And I can understand the frustration that he must feel. But I'm not persuaded that there's enough evidence to show that the airline has breached its contract with him.

I accept that Mr M arrived at the airport before the required check-in time. But I'm not persuaded that there's enough evidence to show that the airline caused Mr M to miss the flight – or that any of its actions (or inactions) were enough to constitute a breach of contract. The flight was available to Mr M and flew as scheduled – but he hadn't been fully cleared for the flight before it was closed.

So I find that it wouldn't be fair or reasonable in these circumstances for me to require First Trust Bank to refund any money to Mr M under section 75 – or to take any other action in response to his complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 July 2017.

Jarrold Hastings
ombudsman