

## **The complaint**

Mr S is unhappy with how Capital One (Europe) plc (“Capital One”) dealt with his disputed transaction claim.

## **What happened**

Mr S booked a package holiday with an online merchant. The hotel he chose was one that he and his wife had stayed at before. Mr S paid for the holiday using his Capital One credit card.

Mr S initially booked a Superior Sea View room. He later upgraded the room directly with the hotel, upgrading to a Superior Sea View Deluxe room. He also requested a room with a bath. Mr S agreed with the hotel that he would pay for the upgrade on arrival.

Mr S later emailed the hotel and said he wanted to change back to the type of room he had initially booked.

When Mr S arrived at the hotel, he discovered that the request for the upgrade hadn't been cancelled. Mr S was shown other rooms that were available and ultimately accepted a room with a sea view but no bath. Mr S was charged a supplement of 575 Euros for the sea view.

On returning from holiday Mr S complained to the merchant. He said he'd been charged extra for a sea view when he shouldn't have been because his initial booking was for a room with a sea view. He was also unhappy that the room didn't have a bath. The merchant acknowledged that there had been an administration error. It refunded 500 Euros and gave Mr S a voucher for £300 to use towards his next holiday.

Mr S was unhappy with the response. He raised a disputed transaction claim with Capital One.

Capital One considered the claim under section 75 of the Consumer Credit Act 1974. It concluded that there hadn't been a breach of contract because the bath was something that Mr S had requested directly with the hotel after the booking had been made with the merchant.

Mr S remained unhappy and brought his complaint to this service. He wants compensation for the service he received from the hotel.

## **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'm sorry to hear that Mr S and his wife didn't have the holiday experience they were hoping for. However, I don't think Capital One decided the section 75 claim unfairly. I'll explain why.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In

order to uphold Mr S's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation by the merchant, and that Capital One's response to the claim under section 75 wasn't fair or reasonable.

Mr S entered into a contract with the merchant for the provision of flights and accommodation. Based on the information I've seen, Mr S booked a Superior Sea View room.

Mr S (or his wife) subsequently contacted the hotel directly and upgraded the room to a Superior Sea View Deluxe room and requested a bath. The hotel confirmed the upgrade.

Following this, Mr S's wife emailed the hotel and asked to cancel the upgrade and revert to the room which was initially booked. I haven't seen a reply from the hotel. On arrival at the hotel Mr S discovered that the upgrade hadn't been cancelled. Mr S was shown some rooms and accepted a room with a sea view, but it had no bath and he had to pay extra for the room. Mr S says he doesn't think he should have been charged extra because he booked a sea view room when he booked with the merchant.

The relevant legislation says that goods need to be of satisfactory quality and as described. If this wasn't the case, then a breach of contract can be said to have occurred. A misrepresentation is an untrue statement of fact which induces a consumer to enter into an agreement. For a claim under section 75 to be successful, it must be shown that the merchant either breached the contract or made a misrepresentation.

The issue here is whether the merchant breached the contract by failing to book the room requested by Mr S. However, I haven't seen any evidence to suggest that the merchant failed to book the room. The situation was made more complicated when Mr S changed the room type directly with the hotel post booking. But this doesn't mean that the merchant can be held responsible for what the hotel did subsequently.

The invoice from the hotel shows that Mr S paid 575 Euros for a sea view room. Mr S has questioned why he was charged extra for a sea view room when his original booking with the merchant was for a sea view room. I understand the point Mr S makes here but I don't think the merchant can be held responsible. The hotel's position is that the room ultimately given to Mr S was an upgraded room and this is why the extra charge was applied. I understand that Mr S doesn't agree that the room he was given was an upgraded room. But I can't be certain, based on the information that I have, of whether the room was an upgraded room or not. However, I can see that the merchant refunded 500 Euros and gave Mr S a voucher for £300, I don't think the merchant was obliged to do this, but as it has been done, I've considered whether this was a fair resolution to Mr S's complaint. And on balance, I think it was.

In terms of the decision by Capital One to reject the section 75 claim, I haven't seen any evidence that there's been a breach of contract or a misrepresentation by the merchant here, so I don't think there's any basis for a successful section 75 claim. I appreciate that Mr S's room didn't have the bath that he requested. But this request was made to the hotel, not as part of the booking with the merchant. So I can't hold the merchant responsible for this.

Taking all the information into account, I don't think Capital One acted unfairly when it declined the claim under section 75.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 November 2023.

Emma Davy  
**Ombudsman**