

The complaint

Mr R complains that Capital One (Europe) plc hasn't done enough to assist him in recovering money he paid using his credit card for a flight booking that he cancelled.

What happened

In early November 2022 Mr R booked a flight with an airline "F" using the services of a third party online travel company "E". He paid E a little over £700. This comprised the flight ticket, travel insurance and a one-off fee to reduce the costs associated with additional services such as ticket changes, cancellation charges, and special meals.

Shortly before Mr R was due to travel he contacted E to amend his booking as he was unable to make the flight. He says he was quoted a significantly higher price for alternative dates, and – having found cheaper flights for a couple of months later – he sought to cancel his booking. He asked E for a refund, but this wasn't forthcoming.

Mr R approached Capital One for assistance in recovering his money, referencing the additional services he'd paid for believing they would cover this situation. But after asking Mr R for further information about the booking, Capital One told Mr R it couldn't help. Mr R was unhappy with this, and with the fact that Capital One had continued to call him and seek payment in relation to the transaction. Capital One said it was appropriate to do this, and didn't uphold Mr R's complaint. He referred matters to us.

Our investigator didn't think she could uphold Mr R's complaint. She noted the reasons Capital One had given for not pursuing a chargeback claim, and considered it had been reasonable for the bank to take that decision. The investigator noted that, as Mr R had paid by credit card, there was a possibility that Mr R might have been able to raise a claim under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75"). However, she wasn't persuaded E had a liability to refund Mr R; this was the responsibility of F, or alternatively, his travel insurer.

Mr R maintains that he has a legal right to cancel and receive a refund. He further believes he should be able to have a refund under the additional services package he bought along with his tickets.

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 don't doubt Mr R's strength of feeling. That comes across clearly in his correspondence with E, with Capital One, and in response to our investigator's assessment. But having considered all that's been said and provided, I'm afraid I'm going to again disappoint Mr R when I say I'm satisfied Capital One has responded fairly and reasonably to his claim. I'll explain why.

Mr R booked flights through E, rather than a package travel contract. That means that it's the

airline (or airlines) that are responsible for performance of the flights, and (as E's terms and conditions note) the provision of any refund in the event of Mr R cancelling the flights. One of the key questions in considering the dispute, then, is whether Mr R was contractually entitled to a refund on cancelling. I can see that in the course of Mr R's claim Capital One asked him for details about the flight arrangements and cancellation terms. Although he provided some information, such as screenshots of his booking, this wasn't enough to establish he was entitled to a refund. So I can see why Capital One didn't progress his claim.

Another way Mr R might have been entitled to get his money back is where the law provides for this to happen in the event of cancellation. He has mentioned consumer law in his submissions. I've already mentioned that Mr R didn't book a package travel contract. So the cancellation provisions of the Package Travel and Linked Travel Arrangements Regulations 2018 don't apply to his booking.

Unfortunately, nor do the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCR"), which can sometimes provide for a standard cancellation period. That's primarily because the right to cancel afforded under Part 3 of the CCR doesn't apply to passenger transport services. It's worth noting that even if this right to cancel did apply to Mr R's transaction, the CCR provides for a 14-day period from entry into the contract. Mr R cancelled outside this timeframe.

With this in mind, I can't see a basis on which Mr R has demonstrated he has a contractual or statutory right to receive a full refund on cancellation. The additional services he purchased do reference charges for changes or cancellation, and I'm conscious of Mr R's belief that this should entitle him to a refund. I don't think that's the correct reading. From what I can see, the payment Mr R made for the additional services didn't mean he would become entitled to a refund; simply that he wouldn't need to pay E any additional charges for changing or cancelling his flights. It didn't provide a guarantee that alternative flights would be provided at the same cost.

I note Mr R's transaction included a sum relating to travel insurance. As our investigator mentioned, it is open to Mr R to see whether the policy he purchased entitles him to make a claim. I don't know the full circumstances that led to Mr R having to cancel, so it's not for me to speculate on this point. All I can add is that whether or not the policy covers those circumstances, it wouldn't give rise to a successful claim against Capital One as it wouldn't be covered under section 75. The cost of the policy doesn't fall within the financial limits that apply to section 75.

Given that I've concluded Capital One hasn't acted unfairly in its handling of Mr R's claim, it follows that the bank was entitled to expect Mr R to make payments in line with his credit agreement. Where he didn't do so, it's not unreasonable for Capital One to seek payment or to alert him to the arrears developing on his account. While as I've said, I appreciate Mr R's strength of feeling and that he feels hard done by, that doesn't mean he could withhold payment without any consequence.

I should make clear that my findings don't mean Mr R isn't under any circumstances entitled to a refund. It may be that he has a claim against F (or any other airline involved) if his agreements with them provide for this in the event of him cancelling. He might wish to look further into this possibility. However, my role isn't to consider that aspect. Rather, it's to consider what, if any, obligation Capital One has to reimburse or compensate him. For the reasons I've set out here, I've concluded it has none.

My final decision

My final decision is that I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 November 2023.

Niall Taylor
Ombudsman