DRN-4048872

The complaint

Mr T says Capital One (Europe) Plc has treated him unfairly in relation to a transaction on his credit card which paid for removal and associated services.

What happened

In May 2022 Mr T used his Capital One credit card ('CO' for short) to make payment to a removals service (which I'll call 'Firm P') for £1320.88 for moving chattels from one address to another address. This moving service was provided (although there were issues with that service which are dealt with separately to this decision). Mr T says he had a contract with Firm P which he agreed in June 2021 where he says he was told the cost would be around £980 for this service. Mr T says that he accepted a new price in May 2022 under protest and that Firm P should refund him the difference between the two quoted costs. Firm P didn't refund him.

Mr T wasn't happy. So he complained to CO as he'd paid around £1320 to Firm P with his CO credit card. CO considered what happened. After much back and forth CO said to Mr T it wouldn't refund him. Mr T wasn't happy with CO's position, so he brought his complaint to this service.

Our Investigator felt CO didn't have to do anymore. And Mr T remains unhappy and so this complaint comes to me for a decision.

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.

Mr T used his CO credit card to pay for this moving service. This meant that if certain criteria were met, CO could have certain responsibilities to Mr T which arise from the relevant law, specifically, Section 75 of the Consumer Credit Act 1974 ('the CCA'). In summary, in certain circumstances, Section 75 has the effect of allowing Mr T to hold CO liable for breaches of contract, or misrepresentations made in relation to the agreement made. In essence CO can be held responsible for a 'like claim' as that which Mr T would have against Firm P.

Mr T's CO credit card is also part of a card scheme. And this scheme has rules which includes giving CO a route for card transactions to be disputed with Merchants such as Firm P, namely through the Chargeback process. This isn't a right for consumers, and it is possible that chargeback could be ultimately unsuccessful without CO having done anything wrong in pursuing it.

I should also add at this juncture that this decision is solely about CO and whether it did what it should have and whether it treated Mr T fairly. This decision isn't about Firm P, which isn't within this Service's remit for complaints about Chargeback and S75. I appreciate Mr T is unhappy with Firm P. But that doesn't necessarily mean that CO has treated him unfairly. I hope this crucial distinction is sufficiently clear.

Lastly I should add that Mr T has made a large number of arguments here and pursued those arguments passionately and to great depth. This service's remit is to bring fairness, impartiality, clarity, informality and finality to such disputes. Accordingly although I've considered the entirety of the evidence and arguments here, I shall only address the arguments in this decision which I consider to be key to my fulfilling my role here.

could CO challenge the transaction through a Chargeback?

Mr T has been clear that he paid Firm P for this service and doesn't dispute that he paid around £1320, when it was charged, or whether it was applied correctly to his account. So I don't think CO could've challenged the payment on the basis Mr T didn't properly authorise the transaction, given what I've just set out.

CO is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the Chargeback process or not. If it does go through the process, then it must do so properly. And it can fairly decide to not proceed at any stage if it doesn't think there is any longer a reasonable prospect of success.

CO didn't raise a chargeback here. However I don't think Mr T lost out because of this. The card scheme here sets out a number of reasons for disputes between purchasers and merchants in the rules of the scheme, including straightforward matters such as the transaction was double charged or that services or goods weren't provided. I've considered the chargeback reasons here and Mr T's complaint doesn't sit squarely with any of them. It is clear that Mr T made the transaction and a service was provided broadly in line with what was agreed. So bearing in mind the nature of the chargeback reasons and the position which Mr T has described Firm P taking here, I don't think Firm P would have accepted the chargeback had it been raised. And I'm not persuaded on balance such a chargeback would have been ultimately successful had it gone through the process fully, because I'm not persuaded Firm P breached the contract Mr T had with it for the reasons I'll go on to explain later in this decision. So all in all and on balance, I'm not persuaded Mr T has lost out here because I think even if CO had raised a chargeback in this situation knowing what it knew I'm not persuaded it would have been successful had it gone through the process to conclusion.

Section 75

For CO to be held accountable under a 'like claim' under s75 it has to be shown that certain criteria were met and that Firm P either breached the contract or materially misrepresented something to Mr T which was untrue and that led to loss.

Here there are two quotes regarding this removal service that Mr T points towards in his arguments but there are key differences between them and also the terms of the contract here are relevant. However I note Mr T points to certain terms to support his case but hasn't persuasively addressed the terms of the contract which the Investigator pointed towards in their assessment of the matter. I should note that Mr T clearly agreed to both quotes including prices. I say this because for the first quote I've seen a copy of it signed by him (electronically) and the second I've seen an unsigned version but an email from Mr T to Firm P saying he will agree and pay the second quote amount 'under protest'. So clearly Mr P agreed to both quotes and costs.

Mr T says in essence the first quote should have primacy over the second quote and thus he should be refunded the difference between the less costly first quote and the more expensive second quote. I disagree and shall explain why.

The first quote agreed (which Mr P says should apply) is dated by Mr T in June 2021 but notes a different delivery address to that in the second quote which Mr T accepts on 9 May 2022. I've looked at the delivery locations (both quotes note the same origin location) and they're significantly different distances and locations apart from the origin location. So immediately these appear obviously different removal jobs in terms of distances travelled and destinations.

Furthermore if Firm P considered the first quote to be the agreement in place it wouldn't have drafted a new quote and then provided it to Mr T for agreement. Clearly it thought it had reason to provide a second quote. So I've considered this issue carefully.

Both quotes/contracts require those agreeing to them to have received, read, and understood the terms and conditions of business and that those cannot be changed after agreement unless in writing they are agreed before the service start. So it is clear on both counts Mr P agreed to the terms and conditions of business.

The terms and conditions of business state if the information or the customer requirements change for any reason then "*if the changes affect the quotation, we will let you know and if necessary issue you with a revised quotation.*" So clearly Mr T agreed to revised quotations in the event of changes. It is clear from the terms here that what constitutes changes or changes affecting the quotation is at the discretion of Firm P. And as the delivery address changed then on that basis I think it would be fair for CO to consider the provision of a revised quotation as being fair under this term in the agreed terms. It is also clear that Firm P also points to differences in the amount of chattels to be moved between quotation and the actual amounts to be moved. And clearly Firm P provided a revised quotation at its discretion in this case. Which Mr T agreed to and those services were provided (albeit with the matter I referred to in my background which is being dealt with separately). And those services were provided, so I'm not persuaded that there is a breach or misrepresentation here which CO should be held responsible for.

The terms go on to say "*Our quotation is valid for 28 days from the date of issue and is subject to the availability of your preferred moving dates and our resources*." And it says later "*This agreement will not come into force until we have received your acceptance*". I can see Mr T dated the agreement in June 2021. So I don't think it would be unfair for CO to rely on this to consider the quotation being no longer valid after 28 days after Mr T's acceptance. Such a position is further strengthened later in the terms because it goes on to note that "additional charges" may be chargeable if the services aren't provided within 28 days of the date of acceptance (Mr T accepted in June 2021). So it is abundantly clear that Mr T agreed that additional charges could be chargeable from 28 days after he agreed in June 2021. And in essence that's what happened. And "additional charges" aren't defined here. And as Mr T accepted the revised quotation 'under protest' and specifically notes the overall cost in his email of May 2022. So I don't think he's lost out here because he knowingly agreed to the overall price of the new quote which is in essence a revised quote bearing in mind the time elapsed and the change of delivery address and amounts of items to be moved. So overall I'm not persuaded CO have treated Mr T unfairly by not refunding him in relation to issues around the contract terms.

I should also note the quotes are both in the name of another person. It is true that Mr T signed one of these documents and paid for these services. But just because you fund a transaction doesn't make you a contracting party in the contract. And the terms here defined "you or "your" as "the customer". This isn't particularly helpful to deciding who the contracting parties are here. But bearing in mind neither of the addresses being delivered to on the quotes appear to be Mr T's address and that another person is named (who may be a relation) then I could imagine an argument being made that Mr T wasn't a contractor here as he was not the individual the documentation was prepared for and it appears he wasn't the

recipient of the moved chattels nor is it clear they are chattels belonging to him. I don't think I have to establish this matter definitively because it doesn't make a difference to the outcome as to whether CO has to refund Mr T in this case. But I do mention it because if Mr T was to reject this final decision and try to continue his dispute with CO directly over this matter he should be aware that there is at least a lack of clarity around whether the required Debtor Creditor Supplier agreement required to make a Section 75 claim is indeed in place here. But as I said, it is not at the crux of the matter here because it doesn't materially impact what my outcome is in regard to this dispute brought to this service as I don't think CO should refund Mr T.

For completeness I shall now turn to some of Mr T's arguments. Mr T points to the definitions of costs in the contract under the additional charges section of the contract. I note that within that definition it says changes relating to costs due to (gives a list of issues which could change costings) but that changes to costs are "*not limited to*" those issues or for "*any reasons beyond our* (Firm P's) *control*". Mr T's argument here isn't at the crux of the matter to my mind. I say this because of the reasons I've already given but in addition also because it says these are examples where additional costs "*may*" apply. It is clearly not a list designed to be exhaustive. And in any event he agreed to the revised quote and knowingly paid it and received benefit of the service for it. So I'm far from persuaded that CO have treated Mr T unfairly here.

Mr T makes arguments around issues such as data protection between CO and Firm P, whether or not CO asked him for support in dealing with Firm P and whether he refused this or not, and whether he provided CO sufficient information to support his claim. I consider the matters I've described already as being the important factors here in deciding this case. And in the interests of brevity and clarity I'm not going to address these issues because I don't consider they make any difference to whether Mr T gets the refund he seeks.

Mr T says "*There is no doubt at all that (*Firm P*) has breached the terms of the contract because they have admitted that some of the 35% increase in price relates to costs that the contract does not allow them to pass on. Specifically, (*Firm P*) stated in their e-mail to me of 4 May 2022 that "the final volume [of furniture] was 35% more than we estimated or quoted for"* and *"we have now amended the quotation to reflect the right volume on the delivery ex store".* I disagree for the reasons I've already given, and I think Mr T's arguments here fall significantly short of being persuasive bearing in mind the terms agreed here and that he agreed the revised costs in line with the agreement (s) he agreed to.

I appreciate that this isn't a decision which Mr T wishes to read. And I appreciate that this decision will mean Mr T's avenues for recouping the loss he feels he's suffered are now reduced. But this does not mean that CO has treated him unfairly or that it should refund him.

So all in all having considered the matter and everything Mr T has said, I'm not persuaded CO has treated Mr T unfairly. So unfortunately for Mr T his complaint does not succeed.

My final decision

For the reasons set out above, I do not uphold the complaint against Capital One (Europe) plc. It has nothing further to do in respect of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 17 August 2023.

Rod Glyn-Thomas

Ombudsman