

The complaint

Mr H is unhappy with how Tandem Bank Limited handled his claim for a refund on a hotel booking he couldn't use.

What happened

On 19 February 2020 Mr H paid for a four-night hotel stay from 16 March to 20 March 2020 using his Tandem credit card. He paid through an online travel agent, who I will refer to as B. The price paid was £318.60.

Mr H said his son, who lived in the country he was due to visit, told him in early March that Spain would be in lockdown by 14 March 2020. As Mr H's return flight was also cancelled, he contacted the hotel through B's website portal to get a refund. After an exchange of correspondence, the hotel said as the booking was non-refundable, it could only offer him the chance to change his booking for a future date.

Spain declared a state of emergency on 14 March 2020, imposing significant restrictions on movement throughout the country and on 18 March 2020 it confirmed that all hotels in the country would be closed from 24 March 2020. The UK government also began issuing guidance on restricting movement in light of the Covid-19 pandemic, advising against all unnecessary travel and social contact on 16 March 2020 and on 23 March 2020, the UK went in to full lockdown.

Given all the restrictions, and the fact that Mr H's return flight was also cancelled, Mr H contacted Tandem on 19 March 2020 to get a refund for the hotel booking. Tandem sent Mr H a declaration form to complete and applied a temporary credit on his account.

Although Mr H returned the requested information, between March 2020 until May 2020, Tandem requested further information including that which Mr H had already provided.

In May 2020 having reviewed the evidence from Mr H, Tandem declined to raise a chargeback. As the merchant hadn't cancelled the booking and was still able to provide the service, Tandem didn't consider Mr H had a valid chargeback claim. Unhappy with this, Mr H contacted Tandem requesting it reconsider his claim. On 24 May 2020 Tandem said Mr H's concerns had been passed to its complaint's team.

On 27 May 2020 Tandem applied a temporary credit again and raised a chargeback for him.

On 7 June 2020 Tandem said it was still looking into Mr H's concerns. Mr H responded to say as the *item* was returned to his account for a second time, no further enquiries were necessary and to consider the matter closed. On 8 June 2020 Tandem confirmed to Mr H his complaint had been closed as per his request.

On 7 July 2020 the merchant defended the chargeback, providing evidence that Mr H cancelled a non-refundable booking. Tandem told Mr H it didn't consider a chargeback right existed, and the temporary credit was reapplied to his credit card balance.

Mr H said when Tandem confirmed the complaint was closed, on 8 June 2020, he booked new flights as he thought everything was sorted. He thought Tandem dealt with his claim extremely unprofessionally, as the refund was taken back twice, and he wanted a full refund.

On 17 July 2020 Tandem sent Mr H a final response letter. It explained the merchant provided evidence to show the booking was non-refundable and the hotel was also open during the dates of his stay. As there was no right to a refund, based on Mr H cancelling, Tandem said the chargeback couldn't be taken further.

In terms of the credit being applied and removed, Tandem said the first temporary credit was applied and removed when it didn't believe a chargeback could be raised. The second temporary credit was added when the chargeback was raised but later removed when the merchant successfully defended the chargeback. Tandem said sorry Mr H changed his plans, but said the credit was only temporary, and subject to the dispute outcome. However, Tandem said it could've handled Mr H's dispute better as it asked him to provide information he'd already provided. It credited his account with £20 for the inconvenience caused.

Mr H said he didn't change his plans but made fresh plans, based on Tandem confirming his complaint was closed. He said there was no mention the chargeback may still be ongoing, and he thought Tandem should offer a refund of 50%.

When Mr H received no further response, he referred his complaint to our service. In summary, the investigator thought Tandem acted fairly in not taking the chargeback further when it was defended, as the hotel service remained open and it was Mr H who cancelled the booking. In terms of Section 75 Consumer Credit Act 1974 (s75), given Mr H had cancelled a non-refundable booking, the investigator didn't think Tandem had acted unfairly or unreasonably by not pursuing a s75 claim for him.

In terms of Mr H relying on an email from Tandem and making another booking, as Tandem hadn't guaranteed a refund in any of its communication, the investigator didn't think Mr H was due a refund. With regard to the service Mr H received, the investigator thought the £20 paid by Tandem was suitable compensation to remedy what went wrong at the start of the dispute process.

Mr H didn't agree with the investigator's assessment. He said he wasn't aware of the timescales relating to chargeback. He felt it was reasonable to accept when Tandem said the matter was closed, that it looked at the situation and accepted that his circumstances had changed too. Mr H reiterated that he wouldn't have booked the additional flights if he didn't receive confirmation that everything was in order from Tandem. In terms of the £20, he said this was for Tandem's own incompetence and nothing to do with the relevant claim.

As no agreement could be reached, the case has now been passed to me for a final 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.

In order to consider if Tandem has treated Mr H fairly here – I need to think about whether it should have done more to assist Mr H in getting his money back. That means considering whether Tandem did enough in respect of the chargeback process and, if its response to the s75 claim was fair and reasonable.

Chargeback

There are different ways that a bank can assist consumers who have had issues with goods or services not being provided. In some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between card holders and suppliers/merchants. They are dealt with under the relevant card scheme rules and in this case that is the Mastercard card scheme.

In certain circumstances the process provides a way for Mastercard to ask for a payment Mr H made to be refunded. There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and there is some prospect of success.

When a chargeback is raised, the scheme allows a given period of time - usually around a month - for the supplier to reply to say whether or not they agree to the refund. And when a supplier does defend a chargeback, this can lead to further representations by the cardholder's bank, if it considers the supplier has raised a weak or invalid defence. The process then allows for further representations to be made, if parties do not agree for the issue to be decided by the scheme in a process known as arbitration.

Here Tandem didn't initially raise a chargeback when Mr H first contacted it. Tandem said the evidence showed the hotel was able to provide the service and it was Mr H that was cancelling a non-refundable booking. And so, it didn't think there were grounds to raise a chargeback. When Mr H disputed this and asked Tandem to reconsider, it raised a chargeback in case the merchant accepted, or couldn't provide evidence to defend the chargeback. When the merchant then defended the chargeback for those same reasons (that the services were available and Mr H cancelled the booking), Tandem closed the chargeback dispute.

Given the above, I've gone on to think about whether Tandem should reasonably have done more here. This means considering whether B, who was the agent and merchant of record here, submitted a valid defence fairly bringing the dispute to a close, or, whether its defence was weak and whether in light of this Tandem should reasonably have done more.

From what I've seen it's not clear if Mr H formally activated the agent's cancellation policy. If he did it's unlikely, he would have had grounds for a chargeback for services not received as he'd already cancelled the services before the chargeback was raised. And at the point that it's alleged he cancelled, while some covid-19 related restrictions were beginning to take hold in Spain and the UK, I've not seen anything that makes me think it was clear the hotel was going to be closed during the period of Mr H's stay.

I've also given thought to the position if Mr H's emails to the agent did not constitute a cancellation.

Having looked through Mastercard's chargeback rules, as well as the guidance from its "*Dispute Resolution Management During COVID-19 (Public Version) May 1, 2020*", it contains guidance which I think is relevant to this scenario.

The guidance explains that where services are available, but a cardholder is unable to use those available services because of travel restrictions for example, there is no chargeback right, as the merchant has fulfilled its obligations to provide the service that was paid for.

In this case the hotel was open and able to provide the service to Mr H, and from what I have said already, it appears the country he was due to visit said hotels would be closed from 24 March 2020. As Mr H was due to stay from 16 March until 20 March, whilst there may have been restrictions in place, there was nothing to suggest that the hotel wasn't open

or couldn't provide the service to Mr H. As the terms also didn't allow for a refund in the event of a cancellation made by Mr H, I don't think Tandem acted unreasonably by not pursuing the chargeback further, as it doesn't appear it would have succeeded even if Tandem had pursued it more robustly.

Mr H said he paid for flights for a new booking on the basis he'd been led to believe his chargeback was successful. He said this was because Tandem effectively confirmed it had credited his account permanently when it told him it would close down his complaint in response to his email of 7 June 2020.

Following Mr H's request, I can see Tandem said it would close his complaint in its email of 8 June 2020. But I can see this was referring to his complaint and not his actual chargeback claim. I appreciate there may have been some overlap with Tandem's communications regarding Mr H's claim and complaint, given they were both occurring at the same time, but I can't see anything showing Tandem at any point said the chargeback claim had been successful, or it was being closed, and/or that the temporary credit was being made permanent.

As I'm not persuaded that the content of the emails from Tandem implied the actual chargeback was successful, I don't consider Mr H is due a refund for booking new flights because he relied on that information.

Section 75

Section 75 of the Consumer Credit Act 1974 (CCA) says 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.

But for s75 to apply, there are certain criteria that need to be satisfied before looking at whether a breach of contract or misrepresentation has occurred. These include that there is a specific relationship between the parties, known as the debtor-creditor-supplier relationship and that the purchase meets a certain cash price.

Here Tandem said Mr H cancelled the booking which was made on a non-refundable basis, the merchant did not break its agreement, and the hotel was also open during the dates of his stay. Because of this, Tandem said it didn't raise a s75 claim as it didn't think it would succeed.

In considering whether Tandem acted reasonably by not raising a s75 claim, I have firstly considered what the agreement was between Mr H and B. It appears that the contractual agreement was for B to make the booking, rather than to provide the hotel service itself. From what I can see this had been done insofar as the agent booked the room with the hotel for Mr H. As Mr H's cancellation also didn't seem to give rise to a refund, in the event of a cancellation or no-show by him, under those terms and conditions, I don't think Tandem was liable to Mr H under s75. So, I don't find it acted unfairly or unreasonably by not raising a s75 claim for Mr H.

Service

In terms of service failings from Tandem when it dealt with Mr H's chargeback claim, I can see between March 2020 to May 2020, it requested information from him which it was already in receipt of. Tandem apologised for this and credited Mr H's account with £20.

Given that I haven't seen any persuasive evidence of other service failings from Tandem, and as the chargeback itself was dealt with quickly without any further delays, I don't think any additional compensation is warranted here.

My final decision

I appreciate Mr H will be disappointed with this decision, but for the reasons above my final decision is that I don't uphold Mr H's complaint against Tandem Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 April 2022.

Farhana Akhtar
Ombudsman