

The complaint

Mrs A complains about the way TSB Bank plc ('TSB') handled her request for a refund of a holiday she paid for but which was subsequently cancelled.

What happened

Mrs A purchased a package holiday consisting of flights and accommodation using her TSB credit card on 20 October 2019. This was arranged via a travel agent who I shall refer to as B. The holiday was due to take place between 20 June 2020 and 5 July 2020.

The travelling party consisted of Mrs A, and two members of her family. To reserve her chosen accommodation and flights, Mrs A agreed to pay a deposit of £600 to B. The remaining sum of £4,514 was paid on 19 March 2020 again using Mrs A's TSB credit card.

Mrs A said in May 2020, she was informed by B that the travel operator was unable to fulfil her booking in response to the growing Covid-19 pandemic and it cancelled her holiday.

In June 2020 Mrs A submitted a claim to TSB under Section 75 of the Consumer Credit Act ('section 75') to recover the total sum that she had paid to B for the holiday.

Shortly after this, Mrs A contacted TSB to establish the progress that had been made. Upon doing so, she discovered that her claim hadn't been registered and was advised to resubmit the details online – to which she agreed.

Around two weeks later, Mrs A contacted TSB to make further enquiries. Having been informed that her case was still awaiting review, she registered a formal complaint – arguing that TSB had failed to provide adequate information with respect to the process of recovering her funds or indeed, the timescales involved.

TSB responded to Mrs A's complaint in July 2020. This followed a telephone conversation with Mrs A in which TSB acknowledged that her complaint should be upheld and awarded compensation of £50 in recognition of the inconvenience she had suffered. In addition, TSB agreed to reimburse the cost of telephone calls that she had made, amounting to £24.

Whilst Mrs A said she understood that her claim under Section 75 would be assessed separately, she accepted the resolution that TSB had proposed and agreed that her complaint had been resolved. In the meantime, TSB explained that Mrs A should await further advice from its credit card disputes team.

A few days later, Mrs A was contacted by the relevant department. Unbeknown to Mrs A however, TSB had chosen to recover her funds via the Chargeback scheme – rather than assess the scope of its liability under Section 75.

TSB temporarily credited the transactions to Mrs A's account – pending a response from B. The interest that had accrued was also temporarily reimbursed, culminating in a credit balance being applied to her account.

In the meantime, Mrs A was informed that these transactions would be rendered permanent within 45 days – providing that B did not contest her entitlement to a refund, or if it failed to respond to the chargeback within this time period.

Mrs A said she visited the premises of B in August 2020 in an effort to achieve a swifter resolution. During her visit, she said B confirmed receipt of TSB's correspondence pertaining to the chargeback and accepted that she was entitled to a refund.

The following week, Mrs A received a response from TSB – explaining that B was disputing her entitlement to a refund and had offered her a credit note equivalent to the cost of her holiday instead. Later that afternoon, Mrs A approached B for clarification and enclosed a copy of TSB's remarks.

B refuted this and confirmed that the travel operator had refunded it in full for the cost of the holiday so there would have been no need to provide Mrs A with a credit note. It also said that chargebacks for the two sums had already been debited by its bank.

Mrs A supplied TSB with a copy of B's response – together with an invoice showing the two sums debiting her account with B at the time the chargebacks were raised. She also asked if the transaction for £600 could be transferred into a different account as it was still showing a credit balance on her account.

TSB agreed to the transfer, explaining that B had not defended the chargeback for this amount. It said there was no refund on her account for the remaining £4,514 however.

On 3 September 2020 Mrs A said the other £4,514 was "*owed to TSB*" and that because "*the merchant has refunded the amount directly, the matter should now be resolved*".

Soon after this Mrs A discovered that the sum of £4,514 had been re-posted to her credit card account and immediately sought an explanation. Upon doing so, TSB attributed this to Mrs A's e-mail of 3 September and inferred that she had already been reimbursed by the merchant directly. So, it said it had re-posted the sum to her credit card account.

This culminated in Mrs A registering a second complaint after the Disputes Team failed to respond to any of her subsequent correspondence. This included a written undertaking from B, confirming that it had not refunded her directly and that both sums paid to it by Mrs A had been debited from it by TSB via chargeback.

B went on to explain that had it refunded Mrs A directly, it was obliged to reimburse the same credit card that was presented at the point of sale. B said it should therefore, be self-evident to TSB that this had not occurred.

B also emphasised that it had cooperated fully with the Chargeback request and had offered no objections to the recovery of Mrs A's funds via this method.

Having reached an impasse, the complaint was subsequently referred to our service.

Our investigator thought Mrs A's complaint should be upheld. He said that TSB should refund Mrs A £4,514 as it appeared to him that the chargeback for that amount was successful and should not have been withheld by TSB.

TSB did not agree with the investigator. It said the following which I've copied below:

"I feel the important factor on this dispute is that this was a third party charge back request, so even if TSB were to take this on today, we wouldn't be able to do a charge back because it was a third party. Therefore, the chain had been broken for the S75 chargeback and even when we initially refunded Mrs A, we would have always taken it back as we don't have the right to claim under S75."

The investigator explained to TSB that chargeback and section 75 are two distinct processes with separate considerations and that it appeared to have confused the two in its response. He said the fact remained that TSB looked to have successfully charged back £4,514 in July 2020 but had not paid this to Mrs A.

TSB responded again to say the chargeback for £4,514 was defended by B on the basis it had received a refund from the travel operator and was in a position to refund Mrs A directly. TSB said that by the time it had become apparent Mrs A still wanted TSB to pursue the refund, it was too late to raise it again.

The investigator then provided TSB with emails he had obtained from B's bank in which it explained that the chargeback for £4,514 was successfully claimed by TSB in July 2020 and that B had not challenged this. He invited TSB again to provide evidence that B had defended the chargeback.

TSB responded to say it didn't think this information changed its position and asked that an ombudsman review the complaint.

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.

Chargeback

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 or merchants. They are dealt with under the relevant card scheme rules. In certain circumstances the process provides a way for TSB to ask for the payments Mrs A 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 grounds exist and there is a reasonable chance of success.

Raising a claim isn't a guarantee that it will be successful. A merchant can defend the claim and if it provides a valid defence – the bank might decide not to take any further action. Or the bank can represent the claim if it considers the merchant has raised a weak or invalid defence. And if the merchant continues to defend the claim the bank can take matters to an arbitration process, whereby the card scheme decides who should get to keep the funds.

Contrary to what TSB said in its response to the investigator's assessment (i.e. that payment to an agent would prevent a chargeback being raised) the card scheme would view a travel agent as the merchant of record. So, it would assume responsibility for chargebacks if the service is not provided - as appeared to be the case here.

TSB has said it raised chargebacks for both sums of £600 and £4,514. It hasn't said under which of the card scheme's dispute codes the chargeback was raised. The best chance of

success in this case looks to have been the 'services not received' dispute code which provides grounds for a chargeback where, among other examples, services have been cancelled by a supplier.

TSB explained that the larger of the two transactions was defended by B on the basis it had already provided a credit note to Mrs A. It has also said that it didn't represent the chargeback after it was defended because Mrs A asked it to re-debit her account in September 2020.

We've invited TSB on a number of occasions to provide evidence that B defended the chargeback for £4,514, or evidence to show what happened to the money. For example, it could have provided some screenshots showing B's exact response to the chargeback or something to show the money was returned to B's bank. TSB hasn't done this and has insisted that its explanation of what happened should be enough in this case to evidence what happened.

I've thought about this explanation. I note that TSB told us B defended the chargeback for £4,514 on the basis it was able to refund Mrs A directly having received a refund from the travel operator. But it told Mrs A when it responded to her complaint that the reason it was defended was because B had provided a credit note. On another occasion it told us B did not defend the chargeback for the smaller amount but on a later occasion it said it had to represent this before it was successful. Mindful of the lack of clarity here, along with the lack of evidence to corroborate what it has said, I've not found TSB's explanations convincing.

I weigh this up against the evidence provided by Mrs A and the evidence obtained by the investigator. This includes emails from B and B's bank explaining that:

- a chargeback for £4,514 was debited from B's account in July 2020;
- B and its bank didn't challenge this;
- B has not provided a refund of £4,514 directly to Mrs A, and;
- this sum has not been re-credited to it since.

I've not seen evidence that persuades me B had offered Mrs A a credit note, or provided a refund directly. B has said it never did this. And I think it would have been apparent in the communication I've seen between Mrs A and B if this had happened – but it isn't.

With everything considered, I find on balance that the sum of £4,514 was successfully claimed by TSB from B via chargeback in July 2020.

TSB has said that Mrs A asked it to re-debit her credit card account with the sum of £4,514 in September 2020 and this was another reason why it didn't provide a refund to her. I've looked at the email in which TSB says she asked it to do this.

The relevant part of the email that TSB provided us with reads:

"The other balance of £4,514 is owed to TSB. It was outstanding on my credit card when I opened the dispute. As the merchant has refunded the bank directly, the matter should now be resolved.

Please confirm this for me."

I don't think this can reasonably be interpreted as Mrs A asking TSB not to pursue the chargeback or to re-debit her account. Mrs A had already emailed TSB a few days earlier explaining that she'd spoken to B and that it had told her that *"both the disputed amounts had been paid to TSB"*. I find it more likely that Mrs A was simply re-iterating what she'd said in her previous email i.e. that as far as she was aware B had paid the refund to TSB following the chargeback. And, that as a result of this she was querying what had happened to this sum.

Just in case there was any doubt about this, I see Mrs A emailed TSB on 8 September 2020 setting out the following:

- *"I have already sent evidence to yourselves, from (B), confirming that they have refunded TSB directly - and have NOT sent any money directly to me!*
- *I want the £4514 balance **removed** from my credit card with **immediate** effect, as TSB have already been refunded this money directly from (B)*
- *I have no idea what generic account they sent this to at TSB, but I can assure you that I have **NOT** received this money!*

I think these points made it abundantly clear that in Mrs A's view she had not received a refund from B and still considered this was due from TSB.

Based on what I've seen, TSB should have realised at this point that the chargeback for £4,514 had not been defended by B and that Mrs A still sought a refund of this from TSB. It is not fair for TSB to hold on to this money when it seems it was likely successful in its pursuit of it from B and when Mrs A hasn't received a refund from B. The money is not TSB's to keep.

Even if I didn't think that TSB had the money at that point, and that there was still a chargeback to pursue, B had accepted in its communications with Mrs A that she was a due a refund. And in B's view it hadn't defended the chargeback when it was raised. So, If TSB had pursued the chargeback more robustly it seems most likely it would have been successful in any event. Especially as this appears to be a pretty clear case of services not being provided.

On this basis, I think the fair thing to do here is pay Mrs A £4,514 plus interest from the point it re-debited her account and declined to help her further in September 2020. It should also remove any adverse information from her credit file that relates to this sum.

Section 75

Section 75 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.

I do not find it necessary to consider in this case whether TSB should have met Mrs A's claim under section 75. I say this because I've already concluded for other reasons that it should pay the sum Mrs A asked it to refund.

While I cannot make an award of compensation for the way TSB has handled Mrs A's complaint since it's been with this service, I have been very disappointed by the way TSB has done so. Since the investigator provided it with evidence from B and B's bank that the chargeback funds were not returned to B, TSB has made very little effort to evidence what happened to the chargeback (despite being invited several times to do this). It has made arguments that a break in the debtor-creditor-supplier relationship would have prevented it

from raising a chargeback which it should know is not correct as it relates to an entirely different process. And it has sought to put responsibility for a misunderstanding on its part on to Mrs A.

I can however make an award for any distress or inconvenience that TSB caused Mrs A in its handling of her request for a refund. The investigator thought £150 was fair compensation for this.

It's clear that Mrs A has suffered distress. The sum of money involved was relatively large and Mrs A was understandably worried that she would not get it back – along with the impact this might have on her finances. She was also put to unnecessary inconvenience when she had to keep checking with B whether what TSB had told her was correct – which on most occasions it wasn't. And, TSB accepts it didn't handle Mrs A's claim satisfactorily when she first raised it.

Taking all of this into account, I think £200 is a fairer reflection of the distress and inconvenience Mrs A has suffered. TSB can deduct £50 from this amount if it has already paid it to Mrs A – which is the compensation it offered to pay to Mrs A for its handling of her complaint in June 2020.

My final decision

For the reasons I have explained above, I uphold Mrs A's complaint. To put things right TSB Bank plc must:

- Pay Mrs A £4,514 plus interest at 8% simple per annum* on this amount from 8 September 2020 until the date of settlement.
- Remove any adverse information about Mrs A's credit card account that has been recorded with the credit reference agencies during this period.
- Pay Mrs A compensation of £200 for the distress and inconvenience it caused her (less £50 if this has already been paid to Mrs A)

*If TSB Bank Plc considers it should deduct tax from the interest part of my award it should provide Mrs A with a tax deduction certificate so that she may claim this back from HMRC if applicable

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 11 March 2022.

Michael Ball
Ombudsman