

The complaint

Mr W is unhappy that Tandem Bank Limited ('Tandem') will not refund him for flights he purchased using his Tandem credit card.

What happened

Mr W bought return flights from a travel agent ('the Agent') in October 2019 using his Tandem credit card for £1,284.24.

In April 2020 he wrote to the Agent to say his hotel had been cancelled due to the Covid-19 pandemic and his flights had been disrupted. He told the Agent that the airline had referred him back to it for a penalty free refund.

Mr W says he did not hear back from the Agent, so he wrote to Tandem to claim a refund. However, Mr W is unhappy that Tandem will not refund him and with the way it handled his claim. In summary, he says it took a long time to get answers and he wasn't able to access the funds which he really needed back.

Tandem says that it raised a chargeback which failed as it was defended by the Agent. And that Mr W does not have a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') because the Agent is not the direct supplier of the flights.

Our investigator looked at the case and upheld it. In summary, she said that even though Tandem raised an initial chargeback it should have pursued this more robustly. She was satisfied the flights were not provided to Mr W and if Tandem had taken the chargeback further it is likely it would ultimately have succeeded. She also felt that in not doing more to progress the chargeback it was likely that Tandem had caused Mr W to be without his funds for longer than necessary.

Overall, the investigator considered it fair and reasonable that Tandem refund Mr W the cost of the flights plus simple interest from the date the chargeback dispute was closed to the date of settlement. She also felt that Mr W would have had his money back sooner had Tandem robustly pursued the chargeback – and this caused him additional distress and inconvenience. So she recommended £50 compensation payable for the distress and inconvenience caused.

Tandem has asked for the matter to be looked at by an ombudsman.

I issued a provisional decision on this case on 30 March 2022. In this I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I note Mr W also paid for a hotel with his Tandem card and had made a claim to Tandem in relation to this. However, as this appears to have been resolved (Mr W got a refund) I am not covering this transaction in my provisional decision.

Chargeback

I have requested further information from both parties about the chargeback attempt to clarify some things. After considering this my view is different to our investigator.

Tandem recently confirmed that it raised the chargeback under a particular scheme reason code 'Service Not Provided'. However, although the airline had offered flexible options (including fee free refunds) to customers by the time the chargeback was raised, Mr W's flights (which were not due to depart until September 2020) were apparently still available at the time and had not been cancelled. The flights appear to have been cancelled by the airline several months later at the end of August 2020. Therefore, the criteria for the chargeback reason code 'Service Not Provided' were not met when Tandem first presented it in that April. Even if Tandem continued to pursue the chargeback under this reason code, I think it is unlikely to have succeeded at the time because the service was still available.

For completeness, I have thought about whether things might have been different if Tandem had raised the chargeback under a different chargeback code. Having reviewed the other possible codes, I don't think it likely would have resulted in a different outcome. What's more, from the information Mr W initially provided in April 2020 I think Tandem was not acting unreasonably in raising the chargeback using the reason code it did.

Overall, I don't think the chargeback would have succeeded in any event, so I don't think the way Tandem handled the chargeback is a reason for fairly refunding Mr W.

However, I have gone on to look at whether Tandem could have done more for Mr W in relation to his request for its help to get his money back.

Section 75

Mr W used a credit card to pay for the flights which means that Section 75 is relevant to this case. Section 75 allows Mr W to hold Tandem responsible for breach of contract or misrepresentation in respect of goods or services purchased using the credit afforded here. However, there are certain technical criteria that have to be met for a Section 75 claim to be valid. These criteria relate to the cost of the goods or services, the parties to the transaction, or the way the payment was made. One of those is for a 'debtor-creditor-supplier' (DCS) agreement between the parties to the transaction.

I have considered what Tandem has said about Mr W's Section 75 claim being invalid because the Agent did not directly supply the flights. I believe that Tandem is referring to the lack of a valid DCS agreement here. However, it isn't in dispute that Mr W's payment went to the Agent and that he entered into a contractual relationship with it. So rather, I think the position is that there is a valid DCS agreement between Mr W and Tandem for the financing of purchases from the Agent.

Therefore, I have turned to the specific terms and conditions of the Agent in respect of any breach of contract which Tandem might be liable for under Section 75. Our investigator has obtained online what appear to be the terms and conditions in force at the time of Mr W's purchase. In the absence of anything to the contrary, I think I can fairly rely on these. It later became clear that when Mr W first wrote to the Agent in April 2020 to claim a refund the flight had not yet been cancelled. However, the Agent would have known this and should, I think, have treated Mr W's email as a customer request to cancel. In this situation Section 16 of the Agent's terms are particularly relevant. Despite some ambiguity (which, with the Consumer Rights Act 2015 in mind, should be read in favour of Mr W) these appear to indicate:

- where a customer cancels a flight only booking any right to a refund depends on the particular airline policy; and
- the Agent undertakes to arrange such refunds on behalf of the customer.

In Mr W's case I can see that the airline had previously written to him (in light of the unfolding pandemic) to promise a fee free refund for his booking even if he chose to cancel it himself. Mr W also said the airline referred him back to the Agent to get his money back. So I think that when Mr W wrote to the Agent he was exercising the right to cancel and get his money back. By not responding to him to issue the refund the Agent has breached its contract with him.

Furthermore, while I don't consider it necessary to go into great detail at this stage, it is worth noting that by late August 2020 (when the flights were cancelled) Mr W appears to have been entitled to a refund under section 17 of the Agent's terms and conditions. And although Mr W had not approached the Agent since the cancellation of the service in August 2020 – it would have already been on notice since April 2020 that he wanted to pursue a refund – yet it had not done anything about this.

In summary, I think the Agent has breached its contract with Mr W and he was entitled to a full refund via its terms and conditions. So with Section 75 in mind Tandem should fairly pay him this refund.

Tandem should have fully investigated Mr W's Section 75 claim soon after the initial chargeback had failed (particularly as Mr W specifically raised Section 75 to it in early May 2020). Had Tandem done so I think it likely the specific facts around Mr W's entitlement to a refund via Section 16 of the Agent's terms would have become clear. And despite the challenges around the pandemic at the time, I think it fair and reasonable that Tandem pay Mr W out of pocket interest running from a few weeks after it gave him an initial outcome on the chargeback aspect of his claim as opposed to when it actually gave him a response to his Section 75 claim in December 2020. So I think it fair that it pay him 8% simple yearly interest on the refund from 1 June 2020 to the date of settlement.

Customer service

I have considered the level of customer service Tandem provided here. I acknowledge the frustration and distress caused to Mr W, who wanted access to his funds sooner, and I have also considered the unprecedented circumstances at the time of the global pandemic which presented a significant operational challenge for businesses and likely contributed to responses which did not appear to be as tailored or timely as Mr W would have expected. I don't think that Tandem are due to pay any additional compensation in respect of the way it handled the chargeback. It appeared to raise a chargeback reasonably promptly and as I have already said - had it acted differently I still don't think Mr W would have had his money back sooner. However, I do think that despite the circumstances surrounding the pandemic it did take too long to provide him with an answer on his Section 75 claim. I think this caused additional distress to Mr W – and therefore the £50 compensation recommended by the investigator is still fair and reasonable.

I upheld the complaint and provisionally directed Tandem to refund Mr W the price of the tickets and pay simple yearly interest at 8% on this from 1 June 2020 to the date of settlement. I also directed it to pay him an additional £50 for the distress and inconvenience it caused.

I asked both parties for their comments:

Mr W said he agreed with my provisional decision and had nothing further to add.

Tandem did not agree with my decision. In summary, it said that it has found no evidence that Mr W's concerns were not handled or raised in the correct way. While it has identified some issues that could have gone better it does not believe that it should be asked to refund the transaction, pay interest or £50 compensation.

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.

Tandem's response is fairly general and the matters it has raised (such as why it was unable to temporarily credit Mr W while it was investigating his claim) do not directly address the reasons I am upholding his complaint as outlined in my provisional decision (above). In particular Tandem has not sufficiently persuaded me that it properly considered Section 75, or that it gave Mr W an answer on this as promptly as it could have done.

For the reasons already given in my provisional decision I still consider that Mr W is entitled to a refund for his flight tickets via Section 75. And despite the pandemic Tandem should have fully investigated and given Mr W an answer on a Section 75 claim sooner than it did.

Putting things right

For the reasons already given I consider it fair and reasonable that Tandem refund Mr W for his tickets plus interest and £50 compensation.

My final decision

I uphold this complaint and direct Tandem Bank Limited to refund Mr W the price of the tickets being £1,284.24. Tandem should also pay 8% simple yearly interest on this amount from the 1 June 2020 to the date of settlement. It should also pay him an additional £50 compensation for the distress it caused.

If Mr W accepts my decision and Tandem does not settle the complaint within 28 days of when it is notified of said acceptance then it should also pay 8% simple yearly interest on the £50 compensation calculated from the date of my decision to the date of settlement.

If Tandem is required to deduct tax from my interest award it should provide Mr W with a certificate of tax deduction so he may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 May 2022.

Mark Lancod
Ombudsman