

## The complaint

Mr B complains about the way Lloyds Bank PLC dealt with his attempts to recover money he'd paid for a holiday booking that he was unable to take due to the Covid-19 pandemic.

## What happened

Mr B booked a cottage with a third party, F. He paid an initial deposit, followed a few weeks later by the balance. On both occasions he used his Lloyds Bank MasterCard credit card. Unfortunately, shortly after Mr B paid the balance, his holiday was caught by restrictions imposed due to the Covid-19 pandemic. F contacted him to say it wouldn't be able to fulfil the booking. Mr B was unhappy that F didn't propose to refund him, so he turned to Lloyds Bank to see if he could recover his money through the bank.

Lloyds Bank responded to Mr B to say that it had considered whether he had a valid claim under section 75 of the Consumer Credit Act 1974. This has the effect that in certain circumstances, a credit provider can be liable for a misrepresentation or breach of contract claim that the borrower might have against the supplier of goods or services. Lloyds Bank took the view that in this case, it had no liability to Mr B.

The bank said Mr B's agreement with A states in respect of cancellations that no refunds would be given due to unforeseen circumstances. It took the view that this meant there was no breach of contract. Mr B was unhappy with Lloyds Bank's position and made a complaint about its approach to his claim; however, the bank wasn't willing to change its stance so Mr B referred matters to us.

Our investigator didn't agree that A's no refund cancellation policy applied in the circumstances at play in Mr B's case. He felt it only applied in the event of Mr B cancelling, which wasn't what had happened – A had clearly been unable to provide the booked accommodation following the government lockdown. However, he noted that Mr B had in the meantime made use of a credit note A provided later in the year. So he didn't think the bank needed to take any further action to resolve matters.

Mr B didn't accept the investigator's assessment. He pointed out that he'd only accepted the voucher because Lloyds Bank was unwilling to refund him. In addition, he had to pay a higher price for the rebooking in order to redeem the voucher, so he was out of pocket by £188.

## My provisional decision

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought matters should be resolved. I said:

*"Mr B was understandably unhappy that his holiday had to be cancelled. The circumstances in the UK at the time were such that A was unable to fulfil the contract it had with him. He sought to recover his money through Lloyds Bank. Although he did so by making a claim against it under section 75, that wasn't the only*

*mechanisms by which he might have been able to get a refund. The bank could - and should – have considered whether this could be achieved through chargeback.*

*Lloyds Bank has told us it didn't look into chargeback, noting that Mr B had only raised a section 75 claim. I don't think that was a fair way for the bank to have dealt with Mr B. It should have explored both possibilities. If it had done so, there was a realistic prospect of securing a cash refund for Mr B. So I don't consider the bank dealt with him fairly, and I intend to require it to compensate him in light of this. I'll explain why.*

## **Section 75**

*For there to be a valid claim under section 75, there needs to be a specific relationship between Mr B, A and Lloyds Bank. I'm satisfied the relevant section 75 relationship exists between the parties in this case. And the overall cash price of the booking meets the financial limits of section 75. None of this is disputed by the parties. The issue at hand is whether Mr B has a valid claim for breach of contract.*

*In this respect, A's terms don't seem to be particularly well drafted. The cancellations policy isn't explicit about whether it applies only to situations where the customer cancels, or includes cancellation by A. If the terms were intended to include that no refund would be made if A was the cancelling party then that might well have created a significant imbalance between the parties, such that the term might be considered unfair under the Consumer Rights Act 2015. As such, it might well have been unreasonable for Lloyds Bank to seek to rely on the 'no refunds' term to defend the claim.*

*That doesn't automatically mean there was a breach of contract, however. It's possible the pandemic circumstances that led to A being unable to fulfil the booking would be construed as a 'frustration' event, rather than a breach of the contract. Where a contract is frustrated – that is, unforeseen circumstances have made it impossible to perform – the usual remedy is that the parties are released from their contractual obligations. So A wouldn't be obliged to fulfil Mr B's booking, and he should be restored to his original financial position by having his money back.*

*Because of the way section 75 operates, Lloyds Bank wouldn't be liable to Mr B for a frustrated contract. So although the bank's original argument wasn't an appropriate reason, I'm not convinced Mr B would otherwise have been entitled to recover his money through a section 75 claim. However, that same line of argument doesn't prevent him from recovering via chargeback.*

## **Chargeback**

*Because Mr B paid using his MasterCard, Lloyds Bank ought to have considered whether chargeback offered the opportunity of recovering his money. The bank has already confirmed to us that it didn't consider this option. The MasterCard card scheme rules say that where goods or services aren't received, the card issuer can submit a claim on behalf of the cardholder.*

*Of note in this respect is guidance issued by MasterCard in May 2020 in response to the Covid-19 pandemic. Although Lloyds Bank issued its response to Mr B's section 75 claim in mid-April 2020, it should have had regard for this guidance when reviewing its stance before issuing its complaint response in late July. The MasterCard guidance suggests that in the circumstances at play in Mr B's case, a chargeback right exists when services are cancelled*

*due to government restrictions, and that a voucher or similar alternative can only be offered when so provided in the agreement or by the government legislation.*

*At the material time, A hadn't offered a voucher or alternative to Mr B. And the UK government hadn't made any imposition on businesses to do so in lieu of a refund. A's cancellation policy doesn't appear to be something that the card scheme would have accepted as a valid response to a chargeback claim – it's not cited in the card scheme rules as a valid second presentment – and the issues of a frustrated contract wouldn't be fatal to recovery via chargeback. If anything, they would seem to suggest a refund would fall due.*

*Taking all of this into account, I see no reason to find that, had Lloyds Bank considered a chargeback (as I am satisfied it should have done), this wouldn't have resulted in Mr B recovering his payments. His claim was received within the applicable timescale. It follows that I'm minded to conclude there were deficiencies in the way Lloyds Bank approached Mr B's claim that led to him being treated unfairly.*

### **Putting things right**

*I've thought about how best to address that unfairness. While I understand Mr B reluctantly accepted the alternative booking A later offered him, he has had value for the money he paid. So it wouldn't be right now to say Lloyds Bank should reimburse him, even if that might have been the appropriate remedy at the time.*

*I do think he's been put to some distress as a result of the way the bank approached matters. I don't doubt there was a period in which Mr B thought he might have lost that money entirely, though thankfully that turned out not to be the case. And he has been put to some unnecessary inconvenience in pursuing matters that could have been avoided if Lloyds Bank had handled things correctly in the first place.*

*I realise that at the time, the pandemic situation made things much more difficult for businesses in general, and to some extent I can understand why the bank dealt with the claim in the way it did. However, its actions did cause trouble and upset to Mr B, and I think it's only right that he's compensated for this.*

*Assessing fair compensation isn't an exact science, and there's no obvious scale by which appropriate awards can be measured. However, I am aware that Mr B has said he had to pay an extra £188 when he rebooked with A. Although that isn't a loss that I'd ascribe to Lloyds Bank's actions, it seems to me that if Lloyds Bank were to pay Mr B this amount, it would represent suitable compensation for his distress and inconvenience."*

I invited both parties to let me have any further comments they wished to make in response to my provisional 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.

### **Response to my provisional decision**

Both Lloyds and Mr B accepted my provisional findings. I'd like to thank both parties for their prompt response and for enabling an amicable resolution.

In such circumstances I've no reason to reach a different conclusion from the one I proposed in my provisional decision. For the reasons I set out, it's a fair and reasonable way to resolve this dispute.

### **My final decision**

My final decision is that to settle this complaint, Lloyds Bank PLC must pay Mr B £188.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 March 2022.

Niall Taylor  
**Ombudsman**