

## **The complaint**

Mrs M complains about the way TSB Bank plc has dealt with a claim she sought to make in relation to recovery of money she'd paid towards a holiday booking that didn't go ahead following the insolvency of the booking company, "T".

## **What happened**

Mrs M used her TSB credit card to pay for a holiday booking arranged through T. Her husband Mr M also paid a sum using his credit card with another provider. The holiday arrangements included flights, accommodation, and additional activities, being theme park admission tickets.

Sadly, before the holiday was due to take place T ceased trading. Some of the money paid was recovered through a claim to ATOL, with whom T had bonding arrangements. Mr M recovered his money from his credit card provider, though there was some initial confusion when this was twice refunded. Mr M's credit card provider corrected the overpayment. But Mrs M was still out of pocket by £2,223.98.

In June 2020 Mrs M approached TSB for assistance in recovering this money. She heard nothing further from the bank and in January 2021 she complained to it. In response, TSB said that it had been experiencing significantly higher volumes of disputes and this had an impact on its ability to respond to Mrs M's claim. It apologised for the frustration this had caused Mrs M and offered her £75 compensation. It also said it would arrange for its disputes team to look into matters and that it would be in contact with Mrs M.

Mrs M wasn't satisfied with TSB's response and referred her complaint to us.

Our investigator recommended that TSB reimburse Mrs M in full, together with interest for the time she had been deprived to access to the money. The investigator considered that the transaction was undertaken in respect of a package holiday and that the booking terms had the effect of including Mrs M as party to the contract, such that she could bring a claim against TSB under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

The investigator was satisfied that the available evidence demonstrated that T's insolvency meant it was unable to fulfil its contractual obligations, and that Mrs M therefore had a valid claim against TSB for the contract breach. She was further satisfied that the documents submitted to us supported the amounts Mrs M and her husband had said they'd been able to recover, and that the remaining sum was due to her under the claim.

TSB hasn't agreed to the investigator's proposal. It has questioned the basis on which we have dealt with the complaint, saying that Mrs M's original complaint was about the fact she'd received no response to her claim. It has pointed to the action it took in response to that complaint, and says that it did what it said it would do in its final response letter.

The bank says it requested more information about the ATOL claim from Mrs M between February and April 2021. It was unable to assist further because it didn't receive this from

her until June 2021. TSB says it then reopened Mrs M's claim and requested further information from her in March 2022.

### **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.

I shall first address the issue of our power to deal with this complaint. In summary, the bank's position appears to be that, as it is still dealing with Mrs M's claim and has done what it said it would do in its final response, we should not be considering her complaint. But this position doesn't seem to recognise that Mrs M asked us to look into her complaint because she wasn't satisfied with what the bank proposed in its final response. Her complaint is not about the steps the bank has subsequently taken to deal with the claim, but about the fact that it failed to take any steps to deal with it for more than six months.

That the bank has belatedly taken steps is the minimum I would expect of it (though I note that despite those steps, Mrs M's claim remains unresolved more than two years after it was made). But none of this affects my consideration of the complaint that Mrs M made and referred to us. I'm satisfied that complaint falls within the remit of our service.

Undoubtedly, there were factors that affected TSB's ability to respond as promptly as it might otherwise have done. The Covid-19 pandemic caused an unprecedented increase in the number of claims all banks had to deal with, and I have some sympathy with the position in which TSB found itself. However, it is for a bank to ensure it is sufficiently resourced to manage increased volumes. While I think some latitude can be given to TSB in terms of the time taken to engage with Mrs M's claim, I don't think it unreasonable for Mrs M to expect that her claim would have been considered within the timescale she gave it before making her complaint.

With this in mind, I've considered what the position would have been had TSB dealt with the claim in a timely way. The bank is aware of its potential section 75 liability, and presumably as a minimum would have obtained evidence relating to the contract, any relevant consumer protection legislation or regulations, details of payments made and the purpose of those payments. Had it done so, its investigation would have established the following.

The holiday arranged by T comprised flights, accommodation, insurance and theme park tickets. These amount to travel services as defined in the Package Travel and Linked Travel Arrangements Regulations 2018 ("PTR"). The company through whom T arranged to provide the theme park tickets ("A") has described the booking as a package travel arrangement. But even if that isn't correct, the travel services in the booking meet the PTR definition of a linked travel arrangement. T was the organiser of the travel services, and under Part 4 of the PTR is liable to the traveller for performance *of those travel services*. *And Mrs M meets the PTR definition of 'traveller' as she was someone "...entitled to travel on the basis of a contract concluded...within the scope of these Regulations [the PTR]"*

Part 4 also provides that the provision relating to responsibility for performance – among others – is implied as a term of the contract. A failure to under this part amounts to a breach of contract, which even though the booking was made by Mr M extends to Mrs M as a traveller. That seems to be supported by other legislation, such as the Contracts (Rights of Third Parties) Act 1999, though for the purposes of this complaint it's not necessary to address every avenue by which Mrs M might formulate a claim.

It ought then to have been sufficiently clear to TSB that a) this meant the necessary debtor-creditor-supplier arrangement between Mrs M and T was in place, and b) Mrs M had

sufficient grounds to make a breach of contract claim against T (and by extension under section 75, against the bank).

From that point, the question becomes one of whether T performed its contractual obligations. The fact that in February 2020 ATOL settled a claim for the flights and accommodation is a rather clear indication that T failed to do perform the contract. The bank's investigation would further have established that T never paid over to A the balance of the money (other than an amount of £50). A confirmed this in writing in a letter it sent to Mr M dated 10 March 2020. All of these facts were established some time before Mrs M even made her claim to TSB, and therefore would have been within the ambit of a competent investigation into her claim.

Whether Mrs M would have supplied this information to TSB had it instigated its investigation sooner is not a question I need to address, given that the situation didn't arise. TSB was not hampered in its investigation between June 2020 and January 2021, because it didn't begin one until after that time. And it doesn't change the factual position – that T had a liability towards Mrs M in performance, that T failed to perform its obligations, and that this failure amounted to a breach of contract. The relationship between Mrs M, TSB, and T was such that the provisions of section 75 were engaged. So I would have thought TSB would reasonably have concluded that it was liable to Mrs M.

### **Putting things right**

I'm conscious that TSB has sought clarification of amounts paid and sums received by way of reimbursement by other parties. This information was documented by our investigator and I understand we have also forwarded all relevant correspondence to TSB, so that it is in a position to query the proposed redress. The bank hasn't offered any persuasive reason why the remedy our investigator proposed was wrong, or that she failed to properly account for the money already received in redress from elsewhere. And I'm satisfied the amount specified – £2,223.98 – is an accurate reflection of the sum by which Mrs M remains out of pocket. The £50 A did receive from T has not, to my understanding, been refunded by A.

Based on my findings, I consider it appropriate that TSB pays Mrs M the outstanding £2,223.98. And given the time she has been left without access to this money due to the way TSB failed to address her claim in a timely way, I also consider it only right that the bank pays her interest on this sum. I've noted the £75 TSB offered for its handling of matters, and for clarity, this element of my award is in addition to any sum the bank has already paid.

That interest should be assessed at a rate of 8% simple per year as suggested by the investigator, other than that I believe it would be fair to say that interest should be payable from the point at which TSB ought to have concluded its investigation had it acted timeously and in light of the latitude I said I would afford the bank due to the problems caused by the pandemic. Allowing for this and a reasonable period to conclude an investigation, I direct that this interest should be calculated on the sum in question from 26 November 2020, being five months from the point at which Mrs M submitted her claim, until the date TSB pays this settlement.

### **My final decision**

My final decision is that I uphold Mrs M's complaint. To settle it, TSB Bank plc must, within 28 days of receiving Mrs M's acceptance of it, take the following steps:

1. pay Mrs M £2,223.98
2. pay Mrs M interest on the amount in 1., together with interest calculated at 8% simple

per year from 26 November 2020 to the date it pays this settlement. If TSB deducted tax from this interest element of my award, it should provide Mrs M with a tax deduction certificate, should she ask for one

3. if it has not already done so, pay Mrs M £75 to reflect the delays as set out in its final response letter

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 25 October 2022.

Niall Taylor  
**Ombudsman**