

The complaint

Mr R complains TSB Bank plc treated him unfairly when he approached it for assistance in obtaining a refund after a holiday company he had paid with his debit card became insolvent and could no longer provide his holiday.

What happened

I've already outlined the facts of the case in a provisional decision I issued to both parties on 19 May 2020. Because of this, I've only summarised very briefly the most important events below:

Mr R booked a holiday with a coach travel company ("S") on 20 September 2019, for a trip due to start on 12 April 2020. He paid a total of £694 using his TSB Visa debit card.

The holiday was cancelled due to the Covid pandemic and was in the process of being rebooked when S went into liquidation on 22 May 2020. Mr R did not get his holiday and made a claim for reimbursement from a trade body which provided a bond for travellers who had bought package coach holidays. On 15 October 2020 the trade body told him he should approach his bank for a refund because he'd paid using a debit card.

Mr R did approach TSB the next day and asked them to help. They said he couldn't claim a refund now because he was too late under the Visa rules. Mr R disagreed and his complaint about TSB's refusal to help ended up coming to this service.

An agreement couldn't be reached between our case handler, TSB and Mr R, so the complaint was then referred to me to make a decision. As mentioned above, I issued a provisional decision on Mr R's case on 19 May 2022.

In my provisional decision I noted that the mechanism TSB could use to obtain a refund for Mr R was a chargeback, and the rules for chargebacks were set by Visa because it was a Visa debit card which had been used.

I said that I thought TSB hadn't interpreted the time limits in the Visa rules correctly, and that Mr R had not in fact been too late. I summarised the time limits which applied to Mr R's scenario and provided the following analysis:

“A Dispute must be processed no later than any of the following:

- 120 calendar days from the Transaction Processing Date
- 120 calendar days from the last date that the Cardholder expected to receive the
• merchandise or services [but not to exceed 540 days from the Transaction Processing Date]
- If the Issuer was required to attempt to obtain reimbursement from a bonding authority/insurance scheme, a Dispute must be processed no later than 60 days

from the date of the letter or advice from the bonding authority/insurance scheme [not to exceed 540 days from the Transaction Processing Date].”

The reference to a bonding authority/insurance scheme requires further context, which can be found earlier in the Visa rules. These say that in the Visa Europe region (which this was), special conditions apply in the case of the insolvency of a travel provider:

“For a Dispute related to non-receipt of travel services from a provider who has failed, if the services are covered by a bonding authority/insurance scheme, the Issuer must attempt to obtain reimbursement from the relevant bonding authority/insurance scheme, unless the bond or insurance scheme is insufficient. If the bond or insurance scheme is insufficient, the Issuer may use information in the public domain to initiate the Dispute.”

Mr R’s scenario fitted this description. He had bought travel services from a provider (S) which had failed. There was also a bonding authority which covered the services (run by the trade body referred to earlier). This meant TSB (or in practice, Mr R) was required to approach the trade body first for a refund. Mr R approached the trade body, which wrote to him on or around 15 October 2020 saying that, because he had paid using a debit card, he should approach his bank. Mr R then contacted TSB on 16 October 2020 to ask them to dispute the payments to S.

Returning to the question of the time limits, my view is that the third point quoted above applies: that there would be 60 days from the date of the trade body’s communication to Mr R, for a chargeback to be attempted. But I note the points are preceded by the words “A Dispute [chargeback] must be processed no later than any of the following:” (My emphasis underlined).

Based on its email to us, I think TSB has interpreted this to mean that, regardless of the third point, it was too late to attempt a chargeback for Mr R because it was already too late under the first and second points. While I do think the way the rules are worded is a little unclear, I think TSB’s reasoning is logically flawed and unlikely to be representative of how the rules were intended to be applied.

I say this because I think it is clear it is intended that whichever of the points gives the longest window in which to attempt a chargeback, will be the point which applies. It wouldn’t make sense for it to be the other way around, where the point which gives the shortest window would apply. Indeed, TSB appears to accept that, where a service was to be provided more than 120 days after the transaction processing date, there will be 120 days to attempt a chargeback from the last expected date the cardholder expected to receive the services. Because the bank already agrees that the second point is intended to provide an extension to the time limit in the first point, it is inconsistent to argue that the third point does not have the same effect.

It will often be the case where a large travel provider becomes insolvent, that a significant number of claimants will come forward to bonding schemes, seeking reimbursement.

Processing a large number of claims can take a long time, and could cause chargebacks to “time out” on the first and second points while consumers are waiting for an outcome to their claim. In this context it makes more sense that the third point is intended to allow for potential delays in making claims via such schemes, especially given it is the Visa rules which require such a claim to be made before a chargeback can be attempted.”

I then went on to think about what position this left Mr R in and whether TSB had treated him

fairly by not attempting a chargeback:

“So where does this leave Mr R? I think a correct application of the rules would have given him 60 days from the date he received the communication from the trade body (subject to a maximum of 540 days from the date of the original transactions). He contacted TSB one or two days after receiving it, meaning he was within 60 days of the date of the communication, and within 540 days of the dates of the original transactions. He also appears to have had a good case for a refund: he had paid for a holiday which had not been provided by S by the time it had gone out of business. This is a scenario I would normally expect to result in a successful chargeback.

By not applying the rules correctly and declining to attempt a chargeback when there was at least a reasonable prospect of success, TSB denied Mr R the opportunity to obtain a refund via this method. I think it would be fair and reasonable of the bank to treat Mr R as though it had attempted a chargeback on 16 October 2020, and this had been successful.”

I said I was minded to uphold Mr R’s complaint and direct TSB to do the following:

- Refund the debit card transactions of £200 and £494 made to S on 20 September 2019 and 7 January 2020 respectively.
- Add 8% simple interest per year to the above refunds, calculated from 16 October 2020 to the date the refunds are made to Mr R (but potentially subject to income tax being deducted).

I noted the bank had also offered £50 compensation in respect of some service failings and I said it was my view that this was enough, and that the bank should pay this if it hadn’t already done so.

The responses to the provisional decision

Both parties responded promptly to the provisional decision. Mr R said he was in agreement with the decision and confirmed TSB had in fact already paid him the £50 compensation some time ago.

TSB said it would agree with the recommendations I had made in my provisional decision. It made no other comments on my findings.

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 thank both Mr R and TSB for their prompt responses to my provisional decision. Because both parties appear to be in agreement with the provisional decision, I see no reason to change my provisional findings.

It follows that I consider Mr R’s complaint should be upheld for the same reasons explained in my provisional decision which I’ve quoted above.

My final decision

For the reasons given in this final decision and the quoted extracts from my provisional

decision, I uphold Mr R's complaint and direct TSB Bank plc to take the following actions:

- Refund the debit card transactions of £200 and £494 made to S on 20 September 2019 and 7 January 2020 respectively.
- Add 8% simple interest per year* to the above refunds, calculated from 16 October 2020 to the date the refunds are made to Mr R.

*If TSB Bank plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much tax it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 June 2022.

Will Culley
Ombudsman