

The complaint

Mrs R complains that Lloyds Bank PLC will not refund two payments made to a holiday company, which I'll call "T". She says that it did not book the holiday as she had requested and did not accept her cancellation of it.

What happened

In March 2021 Mrs R tried to book a group holiday by telephone through T. She says that her call was cut off but that she then received a booking confirmation, indicating that the deposit of £2,000 had been taken from her Lloyds credit card. Mrs R says that the booking details were not correct, and she sent an email to T the following morning, saying:

"Good morning

I made a booking with you last night and after an hour of being on the phone I was cut off My email containing the booking details came through after i had paid a £2000 deposit and after I was cut off. Some of the booking details are not as requested. Please contact me as soon as possible to rectify this..."

Mrs R says she received no response and followed up with further emails, as well as attempting to contact T by telephone, without success.

On 2 April 2021 she wrote by email to T:

"I have attempted to contact you since I made my booking and paid £2000 deposit on 16.03.21. Tonight i eventually got through on the phone and once I had explained about the wrong flights being booked by yourselves and being charged for a "free" transfer, your agent disconnected my call. I need to speak with someone urgently please."

On 22 April 2021 she received the following email:

"Dear,

Thank you for your e-mail. Please be informed that, contact with the lead passenger email address.

Regards,

Customer Support"

Mrs R replied:

"Hello

I am the lead passenger and i have not heard from you. The attachment has no content. Please confirm you have received my cancellation due to lack of communication re: issues with booking.

Regards"

On 26 April 2021 T responded:

"Thank you for your e-mail.

Please be informed that your holiday is still live. Flights and accommodation are still live. If you would like to cancel the holiday please contact to the customer support number [xxxxxxxxxxxxx]. If you wish to cancel your holiday, your flights will be at 100% non refundable..."

Mrs R says she tried to call the number provided but was unable to get through.

In May 2021 Mrs R received an email from T indicating that her concerns had been resolved. She replied to question how that could be so, since nobody had contacted her, even though she had requested a refund of her deposit and a transcript of her telephone booking.

On 18 July 2021 Mrs R received a further email from T. It said:

"Thank you for your e-mail.

Please be informed, as we can see your flights are in live, if you wish to cancel your holiday they will be cancellation charges.

For any further queries please contact our customer support number [xxx xxxx xxxx].

Regards,

Customer Support"

In the meantime, Mrs R contacted Lloyds and asked it to refund the £2,000 deposit. The bank sent a request for a refund through the chargeback scheme. Initially, T did not respond, and a refund was made. Later, however, T requested the payment again, along with the balance of £2,475. Lloyds took the view that a further chargeback request was unlikely to be successful, since there was no evidence that T had agreed to a refund.

Mrs R did not think this was fair, but Lloyds was satisfied it had handled the refund requests correctly. It did however acknowledge that it hadn't always communicated as well as it should have done, for which it offered Mrs R £75.

Mrs R did not accept the bank's offer and referred the matter to this service, where one of our investigators considered what had happened. He thought it was reasonable of Lloyds not to have taken the chargeback request any further. He did not believe either that there was enough evidence to support a claim under section 75 of the Consumer Credit Act 1974. The investigator did not recommend that Mrs R's complaint be upheld. Mrs R did not accept the investigator's assessment and asked that an ombudsman review the case.

I did that and, because I was minded to reach a different conclusion from that reached by the investigator, I issued a provisional decision. In that decision, I said I thought that T had not passed the correct information to the suppliers of the individual elements of the holiday and had therefore breached its contract with Mrs R. Having made the error, it had then not taken sufficient steps to resolve the situation. Because Mrs R had used her credit card to pay for the holiday, I thought that it was equally liable with T and should refund the payments made.

Mrs R accepted my provisional conclusions. Lloyds asked for more information about the error, along with evidence of Mrs R's attempts to resolve matters with T and the individual suppliers. Mrs R was unable to provide very much evidence, explaining that most of her contacts had been by telephone and that she had not received written responses in many cases. It appears however that the initial problem was that the wrong flights had been booked.

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

Chargeback is a process by which certain card transactions can be challenged. It is operated by the card schemes (in this case, Mastercard) and will often lead to a refund where, for example, a payment is duplicated or has not been authorised, where goods or services were not provided, or where a refund has been approved by a merchant but has not been made.

It is however a largely administrative process. That means that if there is evidence that a card payment has been approved and goods or services provided, it will often be unsuccessful for the cardholder.

There is no legal or regulatory requirement for a card issuer to make a chargeback request, but we take the view that it is usually good practice to do so where there is a reasonable prospect of success.

In this case, the initial chargeback request was successful. That however was because T did not respond to the bank's request, not because the bank or Mastercard had examined the merits of Mrs R's claim against T. Once T took the payments again, however, I think that Lloyds was justified in taking the view that T would not handle a further refund request in the same way it handled the first one and was, therefore, unlikely to be successful. It was therefore reasonable for the bank to decline to make a further request.

Section 75

One effect of section 75(1) of the Consumer Credit Act 1974 is that, subject to certain conditions, a customer who pays for goods or services with a credit card and who has a claim for breach of contract against the supplier of those goods or services can bring that claim against the card issuer as well as the supplier.

In this case, the payment was made to T. T was not the supplier of the holiday; that was to be provided by a combination of the airline, the hotel and an airport transfer business. The booking form included:

"[T] is at all times acting as an agent on behalf of the supplier(s) of the services specified on this payment summary. Your contract is with the supplier(s) and their terms and conditions apply. Your booking is also governed by our terms and conditions, available on our website or upon request."

The terms and conditions on T's website explained that T would take bookings on behalf of the customer and make bookings with the relevant suppliers – airlines, hotels, excursion operators and providers of other services. That was therefore the basis of Mrs R's contract with T – that T would make the booking she had requested and pass on payment to the relevant suppliers (presumably having deducted its own fees). By making the booking, Mrs R would enter into separate contracts with the individual suppliers.

Under the Consumer Rights Act 2015, Mrs R's contract with T was to be read as including a term that T would act with reasonable care and skill. That was not a term that could be excluded by the published terms and conditions. In my view, acting with reasonable care and skill included recording correctly the booking details provided by Mrs R. Indeed, making the booking with the correct details was, along with paying the suppliers, the core of T's obligations to Mrs R.

Mrs R's complaint about T is that it did not take down the correct details and therefore made errors in making the booking. It then made the situation worse by not addressing her concerns when they came to light.

Mrs R has provided only limited information about the errors in the booking, and T has not in its correspondence with her suggested that it did, in fact, record the correct details. The only record I have of Mrs R's telephone call when she made the booking is her own account of it. I do note however that she asked T to provide a call recording, but it did not do so.

I do note however that Mrs R has been consistent – from her first contact with T – in saying that the details were not as requested. T had the opportunity to address that, but did not do so, instead referring Mrs R to a telephone line which she was not able to use, sending emails which ignored her cancellation request and which in some cases were meaningless.

It is possible of course that the error or errors in the booking form were in fact Mrs R's; T's transcript or recording of the call might shed some light on that. My current view, in the absence of any evidence to the contrary, is however that T probably took down the details incorrectly and failed to check fully with Mrs R before confirming the booking. In doing so, it's likely that it was in breach of contract.

Whether Mrs R could cancel the individual elements of the booking depended on the terms and conditions of the individual suppliers. I note that T said that the flights were not refundable, and I think that's likely to have been the case. The position of the hotel in regard to cancellation is not clear, but many hotels allow cancellation as long as it is done sufficiently far in advance. Cancellation fees often increase closer to the date of the booking. Mrs R had, I think, made it clear by April – six months ahead of her booking – that she wanted to cancel, but T did not address her request.

By not addressing the cancellation request, therefore, T may have increased the level of any cancellation fee due. Whether or not it did, the question would not have arisen if the booking had been correct in the first place.

I am satisfied too that Mrs R has not used the booking or any part of it. Had she done so, it seems to me that T would have known that, since the airline and the hotel would have had a record.

It is of course not for me to decide whether Mrs R has a claim for breach of contract against T. What I must decide is how her complaint about Lloyds should be resolved. I am required to do that by reference to what I consider to be fair and reasonable in all the circumstances. And in deciding what's fair and reasonable I must have regard to, amongst other things, any relevant law. Relevant law in this case includes the relevant parts of the Consumer Credit Act and the Consumer Rights Act.

In my view, there is a strong argument that T was in breach of its contract with Mrs R, in that it did not properly record the details of the holiday she wanted to book. It then failed to address her cancellation requests. In the circumstances, it would be fair of the bank to refund the two payments made to T. In my view, Lloyds could have addressed the refund request more effectively than it did and might have been able to obtain a partial refund at least of the hotel costs. It should therefore also pay Mrs R £250 in recognition of the further inconvenience to which she has been put.

My final decision

For these reasons, my final decision is that, to resolve Mrs R's complaint, Lloyds Bank Plc should refund the payments of £2,000 and £2,475 made to T. So that any resulting interest

and charges are also refunded, Lloyds Bank Plc should backdate the refunds to the date of payment. Lloyds Bank Plc should also pay Mrs R £250 in recognition of the inconvenience to which she has been put .

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 3 January 2023.

Mike Ingram
Ombudsman