

The complaint

Mr M complains about the way Tesco Personal Finance PLC trading as Tesco Bank ('TB') handled a claim he made in relation to a transaction on his credit card.

What happened

Mr M paid £10,000 using his TB credit card to a venue ('the supplier') for his daughter's wedding event due to be held in April 2020. However, due to the global Covid-19 pandemic the wedding could not go ahead. The wedding was re-arranged for May 2021 but then the supplier agreed to provide a smaller wedding event in October 2020 for £3,457.

Shortly after the wedding the supplier went into administration, so Mr M contacted TB to help him. TB says it managed to raise a successful chargeback claim for £1,100 for photography services which were not provided. However, it was unable to pursue the remainder. It also concluded that Mr M didn't have valid claim under Section 75 of the Consumer Credit Act 1974 ('Section 75').

Mr M was unhappy with the outcome and complained. TB did not change its position on the refund of the balance, but it agreed to pay him £250 for any distress and inconvenience caused by its customer service failings.

Our investigator upheld the complaint. In summary, he said it was evident the supplier had only provided services under the contract to the value of £2,357 even though Mr M had paid it £10,000 in total. Therefore, there was a valid chargeback claim, which likely would have succeeded. He said that TB should now pay the outstanding sum of £6,543 to Mr M plus interest.

TB does not agree. In summary, its key arguments for not raising a chargeback for the outstanding amount are as follows:

- it couldn't raise a chargeback for 'service not provided' as the parties agreed to an alternative wedding arrangement which (apart from the photography element) was provided;
- it couldn't raise a chargeback for 'credit not processed' as there is no written evidence to support this; and
- other reason codes such as 'transaction did not complete' are not applicable to this situation.

Because TB did not agree the matter has come to me for final decision.

I issued a provisional decision on this case. 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 am sorry to hear about the disruption to Mr M's family wedding plans resulting from the global pandemic. But it is worth noting that TB is not the supplier of wedding services which are the subject of this dispute. So I have considered its liability in respect of its role as a provider of financial services. In that respect the key protections are chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75'). So I have considered these when determining what TB should fairly do to put things right.

Section 75

Section 75 can in certain circumstances allow Mr M to make a 'like claim' against TB for breach of contract or misrepresentation by a supplier paid for goods and services on his TB credit card. There are certain technical requirements that must be met for a valid Section 75 claim as set out in the legislation.

I note TB has said that Section 75 does not apply here because there is no valid 'debtor-creditor-supplier' relationship. Because of my proposed outcome in respect of chargeback I do not consider it necessary to go into detail regarding Section 75 here. However, in the interest of completeness, I agree that Mr M does not likely have a valid Section 75 claim against TB in relation to this transaction. In summary, I say this because it appears that Mr B hasn't got an agreement with the supplier for the wedding services –despite him financing the transaction the contractual agreement looks to be with his daughter and her partner.

Chargeback

Chargeback is a way TB can try and recover the money Mr M has spent on his card. The rules relating to chargeback are set out by the relevant card scheme (Mastercard here). I have considered the relevant card scheme rules and had regard to any additional scheme guidance published in light of the Covid-19 pandemic.

I note that TB says it raised a successful chargeback for the photography services not provided, which were originally agreed to feature as part of the smaller function in October 2020. As this £1,100 has now been refunded back I am not going to cover that aspect of the chargeback here. My focus is on the remaining £6,543 representing the balance originally paid on the card after a deduction of the price agreed for the alternative event held in October 2020.

It will often be good practice for a bank to raise a chargeback where there is a valid reason to do so. In this case it appears the most appropriate chargeback reason code would be that relating to services which have not been provided. From what I understand TB agrees and has stated it considers this the most appropriate code here - but it says it would not be successful because Mr M received the alternative service agreed.

However, I don't agree with TB that Mr M received the alternative the parties had agreed. I still think there is a valid claim under this rule. From the evidence I have been provided (including an email chain which I will provide to TB) it appears that when the April 2020 wedding could not go ahead the parties eventually settled on the following alternative arrangement:

- 1. a smaller ceremony for less people valued at £3,457 as set out by a new agreement; and*
- 2. a credit for the remaining balance.*

I think what occurred in respect of the agreed credit can be looked at different ways. But in my view both ways would give rise to chargeback rights in any event.

I note the supplier wrote to Mr M's daughter that the amount for the smaller ceremony will be 'deducted from your May credit'. The initial impression I get from this and some of the prior correspondence I have seen is that the parties agreed the remaining balance would be held as a credit note/voucher on account potentially with a view to being used towards a larger follow up event in May 2021. However, what occurred is that the supplier went insolvent, and Mr M lost the value of any credit note.

It is quite clear from the Mastercard Covid-19 guidance that accepting an alternative for cancelled services does not mean Mr M loses his chargeback rights in respect of the original transaction. It is also clear that if a merchant later becomes insolvent and the reasonable alternative for future services (including the value of any credit such as vouchers/gift cards) cannot be used then there are still chargeback rights.

Therefore, prima facie Mr M had a case for recovering the unused value of the credit via the 'services not provided' chargeback reason code here. And he would have been in time to do so as the credit had not yet expired at the time he approached TB to raise a dispute.

I think an alternative approach would also be that the credit mentioned was in fact a refund for cancelled services— rather than a credit note to be held on account. I note that Mr M has said that his daughter recalls a discussion to say that the money would be refunded. I know TB has suggested there isn't enough evidence to support a chargeback via 'credit not processed' but I think had it explored this avenue there is sufficient information for it to have raised a robust chargeback under this reason code.

I also note system notes show that TB's original reason for not raising the chargeback for the balance appeared to be for a different reason to the one it has given later. This was not because it considered services were provided but because it didn't have evidence that the supplier was in administration. I can't see where this information is required to raise a chargeback under the reason codes I have discussed above in any event.

Overall, it appears there were reasonable grounds for raising a chargeback for the £6,543 in question via 'service not provided' or in the alternative 'credit not processed'.

While it is unclear what would have happened had TB raised a chargeback, when deciding what is fair and reasonable I note that in not raising the chargeback TB has deprived Mr M of a reasonable opportunity to get his money back. I also note that this does appear to be a fairly clear-cut case of Mr M losing out. It is clear from the correspondence that the supplier had agreed to provide a credit of some kind and it stands to reason that Mr M and his family would not have agreed to pay £10,000 for a wedding then substitute it for an alternative valued at around 1/3 of the amount and simply agreed to write off the remainder. And I think Mr M was able to provide TB (assuming it made reasonable enquires) with everything it needed in order for it to pursue a robust chargeback.

All things considered I think TB should have raised a chargeback for the £6,543 balance – and had it done so it is more likely than not to have succeeded. As a result I think it is fair and reasonable that it now refunds Mr M this amount plus out of pocket interest from the date it first declined his claim - which I understand to be 13/1/21.

I note TB offered Mr M £250 for poor customer service in the way it handled the claim. I have looked at what it did and agree that the customer service could have been better. It appears

TB was not very responsive and did not keep Mr M well informed of what was happening with his claim. Mr M had to chase several times for updates, and it looks as if TB asked for additional information which probably wasn't required to raise a claim initially. It also appears that TB sent Mr M unclear correspondence and there were delays in looking at the Section 75 part of the claim due to some systems issues. Overall I think the £250 is an appropriate award here for the distress and inconvenience caused to Mr M. If TB has not paid him this already then it should do as part of my award.

My provisional decision

Tesco Personal Finance PLC trading as Tesco Bank should refund Mr M the £6,543 balance plus 8% simple yearly interest calculated from the date it first rejected his claim to the date of settlement. And if it hasn't already it should pay him the £250 compensation for distress and inconvenience.

Mr M responded to agree with the provisional decision. TB said that while it understood my position it disagrees with it. In summary, it says:

- the chargeback scheme is voluntary and provides no guarantees – it will always consider whether to raise one and do so where it deems there is a reasonable chance of success;
- a chargeback for a 'service not received' in this case would ultimately fail (and be easily defended) because both parties had agreed to a reduced service which was received; and
- a chargeback for 'credit not processed' would also not be appropriate without supporting evidence that a refund was agreed.

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 TB for its submissions. I have considered these carefully, but they are broadly the same as prior comments. Overall, they do not persuade me that my provisional findings (as copied above) are unreasonable. I do not wish to repeat all my prior findings – however, I will briefly deal with TB's latest comments.

Firstly, I wish to reassure TB that I do recognise the chargeback scheme is a voluntary one (and not guaranteed to succeed) and appreciate what it has said about how it assesses whether it will raise one for a customer. However, I consider it reasonable for TB to have raised one in this case for the reasons I have already given. Furthermore, as previously noted, TB appears to have changed its reasons for not raising a chargeback from those it gave at the time - which causes me to question whether it did fully consider the grounds it has now given for choosing not to raise one.

I note TB has also indicated my interpretation of the reason code relating to a service not received is a somewhat 'semantic' one, but I do not agree. It appears what TB is proposing in the alternative is that the scheme would not recognise the value of credit agreed by the supplier as a response to it not providing the original service. However, I think this conclusion is not in line with the scheme guidance issued in light of the pandemic which I referred to in my provisional decision. The guidance in my view is clear that if a merchant later becomes insolvent and the reasonable alternative for future services (including the value of any credit such as vouchers/gift cards) cannot be used then there are still chargeback rights.

Accepting TB's argument would in my view go against such clear guidance which acknowledges that the scheme would recognise chargeback rights for unused credit which was agreed as an alternative to the original service. Furthermore, although I accept that a portion of the monies went towards an alternative ceremony I don't see persuasive scheme guidance or other information from TB to show that this would invalidate 'service not provided' chargeback rights for any remaining credit that could not be used because the merchant had later gone insolvent.

I also note that TB has not provided persuasive evidence showing the information Mr M has provided would not have supported a valid chargeback under the alternative reason code relating to a credit not being processed. But even if I were to accept its argument in relation to this I still consider there to be compelling reasons for it to have alternatively raised and pursued a chargeback for a service not received.

For emphasis I repeat the following from my provisional decision:

While it is unclear what would have happened had TB raised a chargeback, when deciding what is fair and reasonable I note that in not raising the chargeback TB has deprived Mr M of a reasonable opportunity to get his money back. I also note that this does appear to be a fairly clear-cut case of Mr M losing out. It is clear from the correspondence that the supplier had agreed to provide a credit of some kind and it stands to reason that Mr M and his family would not have agreed to pay £10,000 for a wedding then substitute it for an alternative valued at around 1/3 of the amount and simply agreed to write off the remainder. And I think Mr M was able to provide TB (assuming it made reasonable enquires) with everything it needed in order for it to pursue a robust chargeback.

All things considered I think TB should have raised a chargeback for the £6,543 balance – and had it done so it is more likely than not to have succeeded. As a result I think it is fair and reasonable that it now refunds Mr M this amount plus out of pocket interest from the date it first declined his claim - which I understand to be 13/1/21.

Putting things right

For the reasons given here (and incorporating my provisional findings as copied above) I consider TB should put things right as outlined below.

My final decision

Tesco Personal Finance PLC trading as Tesco Bank should refund Mr M the £6,543 balance plus 8% simple yearly interest calculated from the date it first rejected his claim to the date of settlement. And if it hasn't already it should pay him the £250 compensation for distress and inconvenience.

If TB considers it needs to deduct tax from my interest award it should provide Mr M with a certificate of tax deduction so that he may claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 March 2023.

Mark Lancod
Ombudsman