

The complaint

Miss P complains that TSB Bank plc didn't treat her fairly when she requested a refund of a payment made with her credit card.

What happened

Miss P bought a plot in an online property auction in April 2021. She decided after making the successful bid of £2,520 that she didn't want to go through with the purchase because she'd found out that the plot was inaccessible. An amount of £3,000 was charged to her credit card on the day of the auction. Miss P asked the auction house for a refund but was refused. In June 2021 Miss P asked TSB for help.

TSB refunded the payment plus interest incurred to Miss P's credit card account in July. It raised a chargeback (refund) request with the card scheme on her behalf on the basis that she hadn't received the goods she'd paid for. The auction house provided evidence to the card scheme in August that the charge was correct and not refundable in the event of a successful bid.

TSB sent a letter to Miss P on 11 August to advise her of the outcome and provided a copy of the auction house's challenge to the chargeback request. TSB told Miss P that if it didn't hear from her that it would re-debit the £3,000 from her account on 31 August. Miss P didn't respond to this letter and TSB charged the amount to her account.

Miss P was unhappy that TSB had taken back the money and spoke to the bank a number of times in September. TSB didn't uphold her complaint but said that it should have considered an alternative refund route for Miss P which is to claim for the amount she paid under Section 75 of the Consumer Credit Act 1974 (CCA). In its final response letter of 27 September it apologised for this delay and offered Miss P £50 compensation.

TSB then investigated whether Miss P could claim a refund of the money she'd paid to the auction house under Section 75 rules on the basis that the plot of land she bought had been misrepresented to her. It concluded that the claim wouldn't succeed so didn't pursue it. It sent a letter to Miss P in October 2021 to let her know.

Miss P wasn't happy with how TSB dealt with her refund request and she referred her complaint to us. Our investigator looked into Miss P's complaint but didn't recommend that TSB should take further action. They found that TSB hadn't treated Miss P unfairly because it had raised a chargeback on her behalf which was successfully challenged and it wasn't likely that a claim under Section 75 rules would succeed.

Miss P disagreed with this recommendation and asked for her complaint to come to an ombudsman to decide and it came to me. I sent out a provisional decision to both parties on the 1 March explaining why I didn't plan to uphold Miss P's complaint. I shared the information I'd relied on and allowed time for either party to comment on my findings or send me any new information they wished me to consider. Both Miss P and TSB have acknowledged 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.

Having done so, and having no new information or comment to consider, I see no reason to depart from my provisional conclusions. I'll set these out again in this final decision.

As I'd said in my provisional decision - for clarity, this is a complaint about how TSB dealt with Miss P's refund request. I have not looked into whether or not the supplier, in this case the auction house Miss P made her winning bid through, treated Miss P fairly when it charged her an amount of £3,000 in April 2021. That question is outside my remit and might be best dealt with either through a complaints process with the auction house, its associated ombudsman scheme or through the courts. I'm considering whether TSB has acted fairly and reasonably in the way it handled Miss P's request for a refund.

When dealing with disputes of the type raised by Miss P there are two ways in which refunds can be considered - via a chargeback or via a claim under Section 75. TSB didn't have to raise a chargeback request for Miss P but I would consider it a fair response to her request for help, if it seemed that such a request could result in Miss P having her money refunded and she'd already tried to resolve things with the business. TSB did have to consider whether Miss P was entitled to ask for a refund under Section 75 because the CCA offers customers a level of protection in certain circumstances when they use credit to pay for purchases.

When Miss P asked TSB for help, TSB raised a chargeback with the card scheme or, in other words, asked the card scheme to consider a refund. Chargeback is a process that allows customers to ask for a transaction to be reversed if there's a problem with the goods or services they've paid for. The chargeback process is subject to rules made by the relevant card schemes (companies that run the card networks for example VISA or Mastercard) and refunds aren't guaranteed. There are specific circumstances in which such a request can be raised and strict time limits for doing so.

TSB raised a request on the basis that Miss P didn't receive the goods she'd paid for. She hadn't gone through with the purchase and so didn't end up as the owner of the plot of land she'd bid on although she'd paid £3,000. TSB said that the auction house provided a copy of the Terms and Conditions (T&Cs) Miss P signed up to when she registered to bid through an account with it. These state that once a deposit has been paid and a bid is successful the customer has to pay the remaining balance or forfeit their deposit. It concluded that the deposit Miss P paid was non-refundable and so the chargeback had been correctly challenged.

It seems to me that TSB's interpretation of the disputed transaction was reflected in how it approached the chargeback request. It considered the £3,000 to be a deposit towards the plot cost. I suspect this is how Miss P referred to it. TSB later told us that its understanding of the transaction was that the full price of the plot had been charged to Miss P when the sale completed and not just the deposit.

The auction house's T&Cs state that a deposit of 10% of the purchase price (subject to a minimum of £3,000) is to be paid by the successful bidder within 24 hours after the making of the successful bid to the auctioneers and after the completion and subscription of the Minute of Preference and Enactment.

Miss P told us that she didn't sign the purchase documents after making the successful bid because she had learnt that the plot had no access. She said that the usual deposit required

after an auction is 10%, not £3,000, and if she was to forfeit an amount it should be 10% of the sale price not the full sale price. Miss P said that this was irrelevant in her case because she was sent an email from the auction house the day after the auction to say that it was not going to take a deposit from her given the low price of the plot and it was now up to her to pay the full cost to the seller via her solicitor. She's provided a copy of the email which I've reviewed and it does clearly state that no deposit was to be paid.

Miss P also said that the cost of the plot was £2,520 so if she was to be charged the full amount it would not be £3,000. I understand that the plot was later resold.

If the money Miss P paid was for a deposit on the purchase price after the sale then it seems to me that £3,000 was the usual minimum charge according to the T&Cs, although Miss P been told that no deposit would be taken. If, on the other hand, the money Miss P paid was for the full cost of the plot, then it may be that she should have paid no more than she bid for it.

In considering how TSB dealt with Miss P's request for a refund, I've thought about whether it would have been reasonable for it to have considered raising a chargeback under another reason. It is possible that TSB could have raised a chargeback request for Miss P on the basis that she was charged an incorrect amount not that she didn't receive what she'd paid for. Unfortunately for Miss P I don't think it would have made a difference to the outcome of her refund request if TSB had done so. This is because there was another fee that Miss P was required to pay according to the T&Cs.

The T&Cs state that "Any bidder will pay the buyer's premium of either £2,500/3% when making a bid for a Lot at an Auction. In the event of the bid being unsuccessful the buyer's premium of £2,500/3% will be returned to the unsuccessful bidder. Buyer's premiums are subject to VAT at the standard rate." The auction website states that "any bidder will have a Pre-Authorisation Instruction for the buyer's premium of the greater of either £2,500 / 3% plus VAT on their credit or debit card when registering to make a bid for a Lot at an Auction...In the event of a successful bid, the holding charge will be automatically processed as the Buyer's Premium."

I've reviewed the documents sent from the auction house in response to the chargeback request. These include a description of the transaction in question as a deferred payment of £3,000 registered as a security deposit on the date of the auction and before it closed. It is possible that the money Miss P paid was the Buyer's Premium of £2,500 plus VAT as I understand that Miss P didn't pay anything after the auction.

I asked Miss P whether she'd received any communication from the auction house about the premium fee. Miss P confirmed that she had no communication from them. So, it seems the minimum premium fee of £2,500 plus VAT applied. Whether or not that was a fair charge in Miss P's case is a matter to be taken up with the auction house or failing that through other bodies. Having considered everything carefully, I don't think TSB got something wrong in its handling of the chargeback process which meant Miss P ended up losing out on the chance to have a refund. As TSB said to Miss P in its final response letter, it could have considered a claim under Section 75 earlier than it did, however it has apologised for this and offered Miss P compensation for this delay.

Unlike a chargeback, customers have a right under Section 75 of the CCA to request a refund in certain circumstances, for example if the goods or service they've paid for haven't been provided or haven't been as described. Had Miss P paid for the plot she might be entitled to seek a refund under these rights because the amount she paid was an amount which would be covered under the Act and she used her credit card account to pay for something from a third-party – the auction house acting as agent for the land owner. As with

a chargeback, a refund isn't guaranteed but TSB was obliged to consider this option for Miss P.

TSB told Miss P in October 2021 that it had considered whether or not a refund request under Section 75 on the basis of the plot not being as described was likely to succeed and it decided that it wasn't. The auction house T&Cs clearly stated that it was up to Miss P to undertake her own review as to whether the plot was suitable for her: "The Purchaser shall be deemed to have made all necessary enquiries in connection with the planning position, the status of roads, footpaths, and main drains and generally all such other matters as are normally covered by Local Authority Searches and Property Enquiry Certificates and the Seller will not be required to produce and such certificates or Searches. All purchasers and prospective purchasers are deemed to have placed no reliance whatsoever on any sales evidence...".

The particular issue Miss P had with this plot was lack of access. She's sent us a link to the advertisement for the plot which describes it as adjoining 'a number of individual residential properties', a 'ransom strip' and 'ideal for adjoining home owners to buy'. Altogether, I don't think that TSB treated Miss P unfairly by not pursuing a claim under Section 75 on the basis of mis-representation of the plot.

Having reconsidered everything carefully, I am not upholding Miss P's complaint. I've concluded that TSB didn't get anything wrong in its handling of Miss P's refund request which meant that she missed out on having her money returned and overall I don't think TSB treated her unfairly. I appreciate that this is not the outcome Miss P is hoping for and I am sorry to disappoint her. I don't require TSB to take any further action in this regard though I will mention its obligation to treat Miss P fairly and with forbearance and due consideration if she is experiencing financial difficulty at this time.

My final decision

For the reasons I've explained above, I am not upholding Miss P's complaint against TSB Bank plc and do not require it to take any action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 3 April 2023.

Michelle Boundy
Ombudsman