

The complaint

Mr C has complained that TSB Bank plc won't reimburse him money he paid out for a wedding that didn't go ahead.

What happened

Mr C entered into a contract with a wedding venue company that I'll call "E" for a wedding to take place in April 2021. The total cost was £4,495. He paid a £600 deposit using his TSB credit card on 1 April 2020 and made monthly transfers of £389.50 for the next six months. The contract was signed on 12 May 2020.

In October 2020 Mr C contacted E to discuss how much had been paid; what his options were in the circumstances relating to Covid-19 at that time; whether there was any scope for postponement; whether cancellation was an option, if not why and what penalties would be incurred. E responded to provide details of what was left to pay, the contract that'd been signed and it offered to postpone the wedding.

On 3 November 2020 Mr C contacted E to say *With regret there will be no wedding on Wedding 17 April 2021 ...I will be unable to postpone the wedding to another date. We have found the situation intangible. Where do we go from here!*

It looks like Mr C contacted E by phone. E responded to say it would prefer correspondence in writing and it referred to certain sections of the contract. The sections it referred to said:

1.2 All payments made are non refundable.

...

3.1 A £600 non-refundable deposit is required to reserve the date.

...

6.2 All deposits and payments are non-refundable.

Mr C continued to speak to E and it offered to move the wedding date. Mr C had some questions about how that would work and how the Covid-19 pandemic would impact the wedding. He thought that in April 2021 it was highly likely restrictions would be in place, and that it would have a major impact on the wedding. So he asked what would happen in that situation – would he receive a refund or discount. E responded to say it had dates available for 2022, 2023 and 2024. It clarified the amount Mr C had paid at that point (£2,937). And it let him know more about the different prices it charged throughout the year.

E said Mr C wrote to it on 8 December 2020 and mentioned the contract had unfair terms in it. E says Mr C wrote to it again on 8 January 2021 attaching an open letter from the Competitions and Markets Authority (CMA) about weddings affected by Covid-19. E asked a representative to respond to say if Mr C wanted to pursue things further it suggested he obtain legal help.

Mr C responded to say he denied he'd cancelled the contract and he highlighted that in the unprecedented times it wasn't acceptable for the venue to keep all payments and not

negotiate. He said terms such as 1.2 are not acceptable and are contrary to government guidance and contract law. He said he was happy to negotiate.

E's representative said it would offer Mr C a single payment of £1,168.50 – equivalent to three instalments of £389.50.

Mr C decided to obtain his own representation who put in a letter of claim to E. And it asked for a full refund by 31 March 2021. E's representative said it wasn't prepared to make a full refund and reiterated its previous offer. Mr C's representative said Mr C would be willing to accept £2,500 in full and final settlement. E increased the offer to £1,558 but things weren't resolved for Mr C, so he contacted TSB to put in a claim for money back. He requested a refund of everything he'd paid E.

Over the next couple of months Mr C spoke to TSB about the claim. It looks like Mr C was getting frustrated TSB kept asking for information he said he'd sent in. So he raised a complaint. As things weren't resolved for him, Mr C referred his complaint to the Financial Ombudsman in November 2021.

Our investigator didn't make any recommendations. She said she thought Mr C had cancelled the contract in November 2020 when he told E there'd be no wedding and stopped his payments. She said Mr C agreed to E's terms saying payments were non-refundable. And that they were sufficiently disclosed to him. Ultimately our investigator said there was no breach of contract so there was no valid section 75 claim. And as Mr C had requested a full refund of everything paid, she didn't think it was unreasonable TSB didn't raise a chargeback.

Mr C didn't agree. In summary, he said:

- He didn't cancel the contract. He was told to cancel the wedding he and his wife would need to write in with reasons why to do so. And they'd need to sign to confirm.
- He'd paid the deposit before he'd seen the contract.
- He'd not agreed to pay monthly – E simply emailed invoices to his partner.
- E had relisted the venue in January 2021.
- It was very difficult to plan a wedding during lockdown. There was plenty of evidence to indicate there would have been restrictions, but E wouldn't discuss this.
- E didn't confirm the wedding would have been able to go ahead in April 2021 and Mr C needed at least six months to plan things.
- The contract was signed before restrictions were in place, so it hadn't taken into account the effects of Covid-19.
- E can't rely on terms that are unfair.
- E was reported to the CMA.
- E misled Mr C by saying he could postpone the wedding rather than refund him.
- E would need to prove the wedding could go ahead on 17 April 2021.
- E wouldn't give details of the costs it had incurred and it's not fair it retained £2,937.

I issued a provisional decision that said:

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr C and TSB that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I'm very sorry to hear that as a result of Covid-19 the wedding couldn't go ahead as planned. But in order for me to decide whether it's fair for TSB to reimburse Mr C I have to think about its obligations as a provider of financial services under the specific card protections that are available – in this case chargeback and section 75. It's important to note that TSB isn't the supplier here.

Section 75 of the Consumer Credit Act 1974 (CCA) makes TSB jointly liable for a breach of contract or misrepresentation by the supplier (under certain conditions). It's not been disputed the technical conditions for a valid claim to be considered exist. And I agree it looks like that's the case.

Has there been a breach of contract or misrepresentation? A breach of contract occurs when one party to an agreement breaks either its explicitly agreed terms, or terms which are treated as included – for example because that's what the law says must happen. A misrepresentation is a false state of fact which a person relies on when deciding to, for example, enter a contract.

I've referred to the terms in the contract within the background that highlight payments made are non-refundable. Mr C signed the contract, albeit after he'd paid the deposit. And the terms are reasonably prominent. When Mr C asked E about the option to cancel he was told he could do this but payments were non-refundable, as per the contract.

Overall, I think the booking with E was non-refundable in the event Mr C wanted to cancel the booking. I don't think this was misrepresented to him.

But there's a dispute whether Mr C cancelled the booking or not. E says he did but Mr C says he didn't. When Mr C said the wedding wouldn't be going ahead in April 2021 and that he'd be unable to postpone it to another date I can understand why E may have thought he intended to cancel. But he entered into further discussions with E, so I'm not persuaded the cancellation was formally exercised. I think Mr C was worried about a potentially frustrated contract – that is through no fault of either party, due to the potential restrictions of Covid-19 his wedding would be radically different to what was originally agreed, if it could be performed at all.

If I accept Mr C didn't cancel the contract, E didn't break the contract by not issuing a refund because the contract says the payments are non-refundable and Mr C stopped paying for the wedding – which could also explain why E relisted the venue.

I've thought about the CMA guidance Mr C has mentioned which points to scenarios where the contract would have been frustrated. I note Mr C's representative said the same. It said "We are confident the Court would find the Contract has been frustrated and our clients are entitled to a full refund...".

While it might be possible to argue the contract may have been frustrated, this is not the same as breach of contract – it's a different legal doctrine. And it's not one of the types of claim that is covered by section 75. So, while I know Mr C will be disappointed, and that he may be able to take the supplier to court to recover sums under the Law Reform (Frustrated Contracts) Act 1945, I don't find a potentially frustrated contract ought to have led to a successful claim with TSB.

I've also thought about what Mr C has said about the terms of the contract being unfair. Given an example of an unfair term could be where the consumer has to pay a disproportionately high sum in compensation if they decide not to conclude a contract, I think E's cancellation terms could be considered unfair. In those circumstances, the effect of the unfair term is that the part of the term that isn't fair is read out of the contract. But that

doesn't allow me to read new language in that re-writes the contract – for example by saying that a fair proportion of any pre-paid sum is recoverable. The rest of the contract is silent on this point. Therefore, even if I were to say Mr C shouldn't be bound by E's cancellation terms, I still can't point towards a breach of contract that means he should be refunded some or all of what he's paid.

In summary, it may be that there has been a total failure of consideration and/or frustration, so that a court would find E has been unjustly enriched at Mr C's expense. And it may be that Mr C is entitled to recover sums from E. But this means he may have a legal claim against E through restitution or under statute. The difficulty here is that this way of achieving justice is not based on a breach of contract – which is what TSB could be liable for. Claims in restitution and under statute are outside of the scope of section 75.

I've finally thought about chargeback. The process is subject to rules made by the relevant card schemes. It's not a guaranteed way of getting a refund. There are time limits and chargeback 'reason codes' to consider. I'd only expect a firm to raise a chargeback where there's a reasonable prospect of success. The problem here, for similar reasons to what I've said above, is that I don't think there was an appropriate chargeback reason code that would've applied here that would've had a reasonable prospect of success. Mr C wasn't due a refund if he cancelled. And if he didn't cancel, I've not seen enough to show another reason code would have likely been successful either. Moreover, chargeback would have only covered the amount Mr C paid using his card (the deposit), and he wanted a full refund.

While I have a lot of sympathy for what happened, I do have to consider the complaint about how TSB handled the claim thinking about its liability as a provider of financial services. And based on what I've seen I don't think there are grounds to direct it to refund Mr C. I should however reiterate Mr C is able to pursue the claim by other means, such as through the courts.

TSB didn't respond initially, but Mr C did. He didn't agree with the provisional decision. He thought it lacked detail and factual specifics. In summary, he said:

- He paid for a wedding venue and accommodation. The wedding was taking place in a Church.
- E's representative was a legal representative.
- There's no mention of the terms relating to the offer made by E's representative. One being that it could reclaim the money unless Mr C kept the settlement confidential.
- Mr C had been in touch with TSB for 9 months as he first contacted it in April 2021.
- TSB didn't respond with due care and attention.
- Under regulations any attempt to mislead a customer is a criminal offence.
- Findings should be based on facts and not assumptions.
- Mr C didn't break the contract in any way. E relisted the venue while he still had time to complete payment.
- The supplier broke the contract before it could be considered frustrated. And that the venue was not open.
- He should have been given more time and not been misled or misinformed.

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 want to thank Mr C for his response. Once again, I do want to make it very clear that I'm very sympathetic to the situation. I can't imagine how frustrated and disappointed Mr C is.

He should have been able to enjoy the whole process of booking his wedding. But I also need to consider what TSB is liable for as a provider of financial services. TSB is not the supplier.

I agree Mr C paid for a venue and accommodation. And that E's representative was a legal representative. I've not considered the terms relating to the offer made by E's representative because TSB isn't responsible for those terms. That offer doesn't form part of the contract that was part-funded by credit from TSB.

However, I agree Mr C spoke to TSB for longer than he should have needed to. And I can appreciate why he was getting frustrated. TSB says it didn't have all the information it needed, but I think it ought to have been clearer with Mr C given he'd already sent a lot of the information it had requested in his initial claim pack. I appreciate it was an unprecedented time that affected firms in different ways. But by mid-2021 I think TSB ought to have been able to respond sooner. It looks like TSB was always going to decline the claim because the contract clearly says payments are non-refundable. But, even taking into account those circumstances, I still think it took too long for Mr C to get an answer. And it ought to have been handled better.

I arranged for the parties to be told I thought TSB should pay Mr C £200 in recognition of the way things were handled. I also supplied evidence that demonstrated the contact that took place throughout 2021 to TSB. Mr C didn't add anything further. TSB said it wasn't bound by timescales for a section 75 claim. And that it was dealing with a high volume of claims due to Covid-19 related cancellations. It also said it was disappointing the focus had switched to service issues. And that £200 is more than it would expect to be awarded when the delay had no impact on the eventual outcome.

While I take on board TSB's comments. I think that £200 is fair in all the circumstances for the reasons I've set out above. I think despite the impact of Covid-19, had TSB been clearer and fairer in its communications with Mr C he would have had an answer much sooner than he did. He could have avoided a lot of waiting and worrying about what was going to happen, at what was already a difficult time. And while I appreciate there may not be a specific timescale for dealing with section 75 claims, having considered things holistically, I think the £200 is fair in all the circumstances.

Mr C has referred to criminal offences and regulations. But as I set out in my provisional decision, the complaint I'm considering is against TSB. And I need to think about what it can be held liable for – and that's limited to breach of contract and/or misrepresentation. And while I appreciate Mr C wants everything to be based on facts, I've considered the evidence that's been presented. And where things are inconclusive or contradictory I'm required to base my decision on the balance of probabilities.

Mr C has referred again to the supplier relisting the venue. But I do have to bear in mind that it relisted it after Mr C told it the wedding wasn't going ahead on the date originally planned for. I appreciate Mr C was still within the time period to pay for the wedding venue in full. But I don't think that matters because he'd already told it the wedding wasn't going ahead on that day.

Mr C thinks he should have been given more time. But I'm mindful that the supplier was quite responsive when he got in touch with it. And it did try to accommodate him by discussing alternative dates. In any event, I'm still not convinced there are the grounds to say that there's been a breach of contract that TSB should be liable for. And while Mr C has supplied a copy of the Financial Conduct Authority (FCA) guidance for firms dealing with customers seeking refunds upon cancelled events, this was intended to remind firms about how to deal with claims. It doesn't demonstrate there's been a breach of contract by the

supplier here – which is what I need to consider. So, other than directing TSB to pay compensation, I'm not making any other directions.

However, for the avoidance of doubt, I'm not saying something has not gone wrong here. But that Mr C may have to pursue the main thrust of his complaint by other means – such as through the courts.

My final decision

For the reasons given above, my final decision is that I partially uphold this complaint and that I direct TSB Bank plc to pay Mr C £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 June 2023.

Simon Wingfield
Ombudsman