

The complaint

Mrs K complains that TSB Bank Plc didn't do enough to help her when she told it about a dispute, she had with a merchant over services paid for using her TSB credit card.

What happened

Mrs K paid £2,891.26 using her TSB credit card for two rooms for a duration of three nights in the merchant hotel (I'll call X). One room was to be occupied by Mrs K and her husband and the other was to be occupied by her mother. Mrs K argues that it was agreed with X that both rooms would have a lake view. She has provided a copy of an email from X to her husband dated 27 August 2023 confirming this.

When Mrs K and her party arrived, they found they didn't have lake view rooms. Mrs K said she didn't raise this with the hotel at the time as she was concerned this was the last adjoining room available. They remained at the hotel for the duration of the stay.

When she returned to home, Mrs K raised a complaint with X. In response X offered 25% discount and one free night's stay on a future booking. Unhappy with this Mrs K contacted TSB to recover the funds paid.

TSB considered a claim under s.75 of the Consumer Credit Act 1974 (CCA) but declined it. It concluded that the offer made by X was fair particularly when considering that Mrs K and her party didn't raise their concerns at the time. In addition, TSB offered to refund Mrs K the difference between a room without a lake view and a room with a lake view which it said was £18 per night per room.

Unhappy with TSB's response Mrs K referred her complaint to our service. One of our investigators considered the complaint but didn't uphold it. She concluded that TSB had fairly considered the claim. She also thought that if TSB had raised a chargeback (another way to recover the funds paid) this was unlikely to be successful.

Mrs K didn't agree. She didn't think her rights under the Consumer Rights Act 2015 had been considered by the investigator. She didn't feel the complimentary offer made by X was fair as she didn't intend to return to the hotel and the lack of a lake view room ruined her holiday. She also felt that it would be difficult to move rooms due to her mother's age and health.

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, I'm not going to uphold this complaint. I appreciate this will be disappointing to Mrs K and I've explained my reasoning below.

There were two avenues that TSB could have explored to recover the sums paid – a s.75 CCA *like* claim or by raising a chargeback. I'll address both in turn.

The s.75 CCA claim

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.

As explained above, Mrs K paid X for use of the two hotel rooms using her TSB credit card. There are a number of requirements needed to make a claim of this nature. One of which is that there needs to be a debtor-creditor-supplier (DCS) relationship in place. I don't have a copy of the invoice or sales receipt, so I can't say for sure who had the contract with X. But TSB has looked at the claim on the basis Mrs K did contract with X. And for the reasons explained below, I think that if Mrs K does have a right to claim, I'm not asking TSB to do anything further.

The Consumer Rights Act 2015 ("CRA") implies certain terms into a contract. One of which is that services should be performed using reasonable care and skill (s49 CRA 2015). I think it's clear that the requirement for lake view rooms were a requirement of the contract. s.50 CRA 2015 stipulates that anything written or said to the consumer, by or on behalf of the trader which is taken into consideration by the consumer when deciding to contract or is taken into consideration by the consumer when making any decision about the service after entering into the contract should be treated as a term of the contract. What this means is even if the confirmation about the lake view came after the booking, it would still be a term of the contract (although I do note Mrs K says she confirmed this before booking.)

Mrs K says they didn't receive a lake view and have sent photos to demonstrate this. Based on this I think it's likely there was a breach of contract here. Under the CRA Mrs K is entitled to repeat performance or a price reduction. X offered a reduction in cost and a free night's stay, however Mrs K has confirmed she doesn't want to return to the hotel. And given this was abroad and so would carry increased travel costs, I think it's fair that she receives a cost reduction in this case. Mrs K has said she hasn't been offered a price reduction by TSB. However, in its final response letter dated 24 November 2023 (which Mrs K has provided a copy of) TSB has offered to pay her the difference between the cost of a room with a lake view and one without for both rooms. It calculated this to be £18 per day, per room at a total of £108 having reviewed prices detailed on X's website at the time. On balance I think the offer to pay Mrs K the difference between rooms with a lake view and without is fair.

I appreciate that Mrs X has asked for a £2,000 refund of the £2,891.26 cost, but I don't think this is fair or reasonable in the circumstances of the complaint. I'm mindful that Mrs K and her party stayed at the hotel for the full duration. In addition, Mrs K confirms she didn't raise the lack of a lake view with X during her stay, therefore X wasn't given the opportunity to put things right for her at the time. I appreciate Mrs K has said she was given the impression there weren't any more adjoining rooms available, however X may have been able to offer a solution at the time – without raising this with X it's hard to conclude that no suitable alternative could have been found for some or all of her trip.

Mrs K has raised that her rights under the CRA haven't been taken into consideration, however the sections she's quoted relate to goods not services. I have referenced the correct provisions above. This will hopefully assure Mrs K that I have considered her rights under the CRA.

So taking everything into consideration I think that if Mrs K does meet the requirements for a valid s.75 claim, the method TSB has used to put things right is fair in the circumstances. So I don't think TSB has handled Mrs K's claim unfairly.

Chargeback

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. It allows customers to ask for a transaction to be refunded in a number of situations, including where goods or services were not as described or defective. This was another avenue which TSB could have explored to recover the money Mrs K paid X for the hotel rooms.

There's no automatic right to a chargeback; the chargeback process doesn't give consumers legal rights; and chargeback is not a guaranteed method of getting a refund because chargebacks may be defended by the merchant. This is because the rules, set out by the card scheme lay down strict conditions which must be satisfied for a chargeback claim to succeed. If a financial business thinks that a claim won't be successful, it doesn't have to raise a chargeback. But where there's a reasonable chance of success, I'd expect a financial business to raise a chargeback.

TSB hasn't specified if it raised a chargeback, so I think it's likely it didn't. The relevant scheme would be the Mastercard scheme and the most applicable reason would be goods or services not as described or defective. However, I don't think Mrs K would've had a reasonable prospect of success. This is because she and her party used the hotel rooms for the duration of their stay and she didn't tell the merchant at the time that she was unhappy with the rooms received. Therefore, I don't think a chargeback would've had a reasonable prospect for success and so I don't think it's unreasonable that TSB didn't raise a chargeback.

My final decision

For the reasons explained, I don't uphold this complaint against TSB Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 8 January 2025.

Claire Lisle
Ombudsman