

## **The complaint**

Mr M complains about Lloyds Bank PLC (“Lloyds”) response to his claim brought under s.75 Consumer Credit Act 1974.

## **What happened**

In May 2022 Mr M booked a package holiday including flights and accommodation for him and his family with a supplier I’ll call T. The holiday cost £5,483.13 and he paid some of this using his Lloyds credit card. He was due to travel in August 2023.

Mr M said the quality of the hotel was poor and not to the standard shown in the pictures and descriptions on T’s website. Upon his return he wrote to T setting out a list of complaints about the room, the communal areas, the food and T’s rep.

T apologised and offered to pay Mr M compensation of £270. Mr M did not find this amount acceptable and asked Lloyds to step in and help.

Lloyds didn’t think it was liable to Mr M under s.75 as it didn’t think T had breached its contract with him. It said Mr M’s contract required him to tell the hotel or T straight away if things went wrong and Mr M had said he didn’t do this. It thought that because the hotel or T weren’t given the opportunity to put things right during the stay, it wasn’t liable to Mr M. It said T’s offer to pay Mr M £270 was fair in the circumstances.

Mr M then logged a complaint with Lloyds about its response to his claim.

Lloyds responded to Mr M’s complaint along similar lines in January 2024 explaining that he had not provided photographic evidence to support his list of complaints and had not reported them to the hotel at the time. So, it still didn’t think it was liable to Mr M under s.75.

Dissatisfied Mr M referred his complaint to this service.

An investigator thought it was likely T had breached its contract with Mr M by failing to provide accommodation to an appropriate standard. However, he thought the compensation T had offered to pay Mr M was fair in the circumstances, so he thought Lloyds was reasonable to conclude the same.

Mr M did not agree with the investigator and asked an ombudsman to review his complaint. He said there was a good reason why he didn’t raise his complaints with the hotel or T at the time and he wasn’t given a chance to give this context to Lloyds when he made his claim.

## **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 am sorry to hear Mr M was disappointed in his holiday. However, it is important to note that Lloyds is not the supplier of the holiday. So, in order to decide if it has acted fairly, I need to consider its role as a provider of financial services only. I note that Mr M used his credit card to pay for the holiday. And with this in mind I consider the rules of chargeback and s.75 to be particularly relevant as to how Lloyds could reasonably assist Mr M. It is these I have focused on when determining what is fair and reasonable.

## **S.75**

S.75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Relevant to this determination are the Package Travel and Linked Travel Arrangements regulations 2018 ("The PTR") and the Consumer Rights Act 2015 ("the CRA").

Very briefly, the PTR implied terms in Mr M's contract with T making it liable to Mr M for the performance of the travel services included in his package contract. The CRA implied a term that services, including the provision of the hotel accommodation, would be provided with reasonable care and skill. A breach of this term could ultimately give Mr M the right to ask for an appropriate price reduction.

From looking at the photographs Mr M provided of his room, I agree with the investigator that this part of his package was not provided with reasonable care and skill. His room did not appear to meet the standard a reasonable person would expect given the price he paid and the description of the hotel as 'five star'.

I've not seen any other photographs to support Mr M's claims about the communal areas so it's difficult to know if the condition of these areas was as described by Mr M. I also find that some of the things on Mr M's list of complaints could be perceived as subjective and quite difficult to prove – such as the hotel giving preferential treatment to locals for example

Lloyds said the terms of Mr M's contract with T said he had to alert it straight away if he had any problems and he didn't do this. I do understand why it was made more difficult for Mr M to do this given the circumstances of his family's illness. But in any event, I do not think this term defeated the term implied by the CRA that services would be provided with reasonable care and skill and on balance it doesn't appear that all of them were.

It appears therefore that Mr M may have had the right to seek an appropriate price reduction.

In deciding what this might have been I've taken account of the extent and severity of the breach of contract in the context of the overall package of services that were supplied. This means I should account for the fact that Mr M did have use of those facilities he hasn't complained, including the flights – which for a trip like Mr M's could have made up a significant portion of the overall cost of the package.

I do think its relevant also that some of Mr M's holiday appears to have been made worse by illness suffered in the family. I am sorry to hear about the impact this had on Mr M's holiday. I've not seen enough however to attribute this to any lack of conformity with contract or lack of reasonable care and skill by the hotel. So, I don't find it would be fair to ask Lloyds to compensate Mr M for it.

Taking everything into account, I find the compensation T offered Mr M was fair in the circumstances. It is around 5% of the total cost of his holiday, and as a percentage of the accommodation cost that is likely to be an even higher portion.

## **Chargeback**

Chargeback is not a legal right but a dispute resolution process set out in rules made by the card schemes. It was a separate option to s.75 in which Lloyds could have attempted to recover money from T should the circumstances of Mr M's dispute have fit within the card scheme dispute conditions. It will often be good practice to attempt a chargeback where there is a reasonable prospect of success.

There were dispute conditions in the card scheme rules for where the quality of services was disputed. However, in view of the fact that T had made an offer of compensation already to Mr M and taking account of the fact I think this was fair compensation in the circumstances, I don't find Lloyds was wrong not to have raised a chargeback. Even if it had, I'm not persuaded Mr M would have been able to recover more than T was already offering him given the available evidence.

Mr M confirmed that T's offer of £270 is still available to him. I don't find Lloyds was unreasonable to conclude this offer was fair in the circumstances. However, if Mr M decides he would like to accept that offer and T does not pay it to him then Lloyds must pay £270 to Mr M subject to him providing evidence of T's refusal. I make this conditional award because I do find T was in breach of contract to Mr M by failing to provide its services with reasonable care and skill. So he likely had a valid s.75 claim against Lloyds. It wouldn't be fair to leave Mr M out of pocket should T not honour its offer.

I recognise that Mr M is unhappy with the way Lloyds handled his s.75 claim and feels he wasn't given the opportunity to give context to why he didn't complain to T or the hotel sooner, or a right of reply. However, I've not seen anything in the way Lloyds dealt with Mr M's claim that makes me think it should pay him compensation. It gave him an answer to his claim in a reasonable time and based on the evidence that had been presented to it. Lloyds was not required to give referral rights to this service in its response to his claim, only to his complaint. I don't think Lloyds prevented Mr M from going back to it with additional evidence should he have wished to either.

## **My final decision**

For the reasons I have explained I do not currently require Lloyds Bank PLC to do anything to settle Mr M's complaint. However, if Mr M accepts T's offer to pay him compensation of £270 and T does not pay this, Lloyds Bank PLC must pay Mr M £270 (subject to him providing evidence of T's refusal to pay).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 July 2024.

Michael Ball  
**Ombudsman**