

complaint

Mr P complains about TSB Bank plc's refusal to give him the refund he considers he is entitled to.

background

In September 2018 Mr P hired a car while he was abroad. He used his credit card provided by a third party who is not involved in this complaint, to pay for the hire. But on collecting the car the car hire company made Mr P pay what it called a deposit, it appears it took this payment in advance by pre-authorising Mr P's credit card with TSB.

Mr P tells us that he was given contradictory information by the car hire company about where to return the car. As a result, he did not know where he was required to drop the car off. On this basis, Mr P phoned the car hire company for guidance, he tells us, its representatives agreed to meet him at the airport for the handover. He also tells us the car was handed over, on time, undamaged and with petrol in the tank. According to Mr P the representatives indicated to him that he had left the car in a satisfactory condition and nothing further would be charged.

However, subsequently and much to Mr P's dissatisfaction, he was charged by the hire car company for damage to the car, returning it late, and returning it without a full tank of fuel. Mr P does not accept that he did any of this, quite the reverse. He suggests that by acting as it has done the car hire company has committed fraud and scammed him. Moreover, Mr P points out that he did have car insurance that would have paid out if he had damaged the car. He took out this insurance before his trip and he suggests that the car hire company was rather put out, when he declined to take out insurance with it. Mr P has not claimed on that insurance policy because his stance is that he did not damage the car, and so he has no ability to make a valid claim.

At first Mr P contacted the car hire company but this got him nowhere. So instead he turned to TSB for help to get his money back.

TSB initially refunded Mr P under a process known as chargeback. But when the car hire company defended the chargeback claim TSB reversed the refund. Mr P objects to this. In addition, he also suggests that TSB's customer service fell well below the standard he might reasonably expect to receive. TSB has offered him £300 in total to make up for the level of customer service he received which it accepts was not good enough. However, Mr P does not think this is sufficient compensation for the "*emotional distress*" experienced by both him and his partner.

TSB suggests it has gone as far as it can go. The chargeback was defended and under the terms of the chargeback scheme, which it is obliged to follow, it considers there is nothing more it can do using this route, in the circumstances.

Moreover, TSB does not agree with Mr P's characterisation of the car hirer's actions amounting to fraud or a scam. Rather it points out that Mr P gave the car hire company his card details for it to carry out the pre-authorisation, it did not obtain them by stealth. It added that "*if for example he paid for hire car and it was a non-existent company when he arrived at his destination and as such purchased goods that did not exist (i.e. never was provided with a hire car) that would be a different situation and would be considered fraud. However, this is not the case in this instance.*"

TSB also indicated that a pre-authorisation is a guaranteed form of payment so it would not have been able to put a stop on the payment in any event.

Further, TSB remains of the view that the £300 it has offered for its customer service shortcomings is enough.

Dissatisfied Mr P came to our service.

One of our investigators looked into Mr P's complaint. She concluded that TSB had acted fairly, and she didn't recommend taking any further action. She came to this conclusion because the chargeback had been carried out properly in her view.

Also, our investigator looked at whether Mr P might be able to ask TSB to use the provisions of Section 75 of the Consumer Credit Act 1974 ("Section 75") to help him with this complaint. But she came to the view that this was not possible because the way Mr P's contract had been set up with the car hire company meant that Section 75 did not apply.

Our investigator recognised that Mr P views the car hire company's actions as fraud. But our investigator was more persuaded by TSB's stance on that point.

Lastly our investigator agreed that TSB's customer service hadn't been up to par but she also agreed that TSB's offer of £300 was enough.

It seems TSB accepted our investigator's recommendation, but Mr P did not. Mr P reiterates the points he made previously. Mr P asked that an ombudsman take a fresh look at his complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No courtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where there is a dispute about what happened (as is the case in part, in this complaint), I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

chargeback

I took a look at the chargeback first because if this had succeeded Mr P would have got all of his money back and that's the main thing that Mr P is asking TSB for.

The chargeback process allows credit card users to ask for a transaction to be reversed if there's a problem with goods or services paid for. There's no automatic right to a chargeback, nor is chargeback a guaranteed method of getting a refund. There are rules for chargebacks. These rules are not set by TSB, but TSB must follow these rules and it has no leeway to alter them or discretion to apply the rules differently. If I am to order TSB to refund all or part of the payment the car hire company took, I must be satisfied that TSB acted incorrectly in the way it made a chargeback claim under the chargeback regulations.

I've looked at how TSB behaved in relation to the chargeback. I've concluded that it followed the process correctly. Under the rules it could have taken things further after the car hire company defended its actions. Even if TSB had pushed on and taken the chargeback further it is unlikely that it would have succeeded. I say this because the car hire company's stance is that Mr P did breach the contract and it is entitled to charge for this. Mr P does not appear to dispute that the contract contained clauses about charging for returning the car late, damaged and without a full tank of fuel. Instead he is indicating that's irrelevant because none of this happened.

By the by however, I don't know how TSB could have known what the contract said as all I have seen is a copy of the contract in Italian. Moreover, the text in the copy is so unclear that our service could not get professional translators to translate it. However, as I have already said the provisions of the contract do not appear to be in dispute.

For all of these reasons, in the circumstances the supplier's defence would most likely have defeated any further chargeback attempt.

Section 75

Mr P paid the supplier using his credit card because of this he might have had the protection provided by Section 75. On that basis I've looked at this point too.

Before I go any further with this I think it's important to set out my role here in relation to this part of Mr P's complaint. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in deciding what's a fair way to resolve Mr P's complaint, I have to take relevant law into account. Section 75 is relevant law, therefore I've taken Section 75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mr P pursued a claim for misrepresentation or breach of contract. This service is an alternative to the courts.

The general effect of Section 75 is that if Mr P has a claim for misrepresentation or breach of contract against the supplier he can also bring that claim against TSB provided certain conditions are met.

One of these conditions is that there must be a very specific relationship in place that is a valid debtor-creditor-supplier relationship. For Mr P to be able to rely on Section 75, he has to be the debtor, TSB has to be the creditor and the money had to have gone to the car hire company as the supplier. The difficulty for Mr P is that there is no valid debtor-creditor-supplier relationship here. I say this because the supplier was one company the company that took his money was another. I don't doubt that this arrangement was a nasty surprise to Mr P, as far as he was aware his payment went to the supplier. But his credit card statement does not show this. Rather it shows it went to the third party. We have probed to find out what is the nature of the relationship between the supplier and the third party. We have done

this because if there is a close enough relationship between the supplier and the third party (known as an associate relationship) we could treat the payment to the third party as if it went directly to the supplier. And this, in turn, would mean there was a valid debtor-creditor-supplier relationship.

But although we looked at this point, our investigation has not shown that the relationship between the supplier and the third party was close enough for us to say the relevant parties are associates. I realise that this is a very technical argument and Mr P may be, very understandably, frustrated that his complaint falls down on such a technical point. But the provisions of Section 75 are technical, and I have no fair and reasonable basis here to disregard the requirements of Section 75.

I'll make this observation Mr P has acted honourably it appears. Based on the information he has sent us he had insurance that would, on the face of it, have covered him for the damage to the car. If he had claimed on his insurance, he would not now be so out of pocket. But he, correctly, has refused to make a claim on that insurance because he does not accept that he did cause any damage. His actions are certainly those of a person who is certain he did not cause damage.

distress and inconvenience

I can well understand that both Mr P and his partner experienced distress and inconvenience. But Mr P is the only eligible complainant in this complaint under the rules that govern our service, which I must follow. So, I can make no award for Mr P's partner which is something he has asked us to look at.

TSB accepts it let Mr P down on occasion with the level of customer service it provided, it accepts that it for example was not always easy to contact, did not always keep Mr P updated and did not always contact him when it said it would. In addition, Mr P talks about having the phone put down on him amongst other things.

It's clear that TSB did not give Mr P the level of customer service he is entitled to expect. That said it has offered £300 in total to make up for this and when I look at what went on, I think this is fair and reasonable in all the circumstances. It follows I have no proper basis to say TSB must pay more.

I can also well understand if Mr P feels short changed here. He thinks the car hire company has committed fraud. Fraud is a criminal matter and this service has no power to make findings about criminal matters. He also indicates that he thinks he has been the victim of a scam because he suggests the car hire company took money from him for something he says did not happen. But I have explained above why I can't fairly and reasonably ask TSB to do anything more to help him. So, whilst I appreciate Mr P may well be disappointed with my decision, and that's not my intention, far from it, I can do nothing further for him. He has gone as far as he can go with his complaint with us.

Finally, I apologise to Mr P and to TSB for the length of time it has taken this service to reach this point. I thank them both for their patience.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 July 2021.

Joyce Gordon
ombudsman