

## **The complaint**

Mr M is unhappy with Lloyds Bank PLC's ("Lloyds") handling of a claim he made for compensation in respect of a transaction he made using his Lloyds credit card.

## **What happened**

In May 2022 Mr M paid for return flight tickets for him and his family with an airline I'll call F at a total cost of around £798. The flight was scheduled to depart on 4 June 2022 and return on 11 June 2022.

Mr M said the outbound flight was delayed and landed around five hours late.

Mr M said he tried to claim compensation from F in accordance with his rights under Regulation (EC) No 261/2004 of the European Parliament and of the Council ("the regulation"). He said based on the distance of his flight, the regulation entitled him to compensation of £680. He said he was also entitled to around £20 per person that travelled for refreshments as these were not provided by F.

F did not pay Mr M's claim. He therefore asked Lloyds to consider its liability to him and pay the compensation he wanted from F.

Lloyds said it couldn't help Mr M. It considered its liability to him under section 75 Consumer Credit Act 1974 ("section 75") but didn't think it was responsible for paying the compensation he was claiming. It said there was insufficient evidence F had breached its contract with Mr M as he hadn't shown the delay was not the result of exceptional circumstances.

Dissatisfied, Mr M referred his complaint to this service.

An investigator didn't think Mr M's complaint should be upheld. He said that although the regulations did entitle Mr M to compensation in the event his flight was delayed, they did not imply a contractual obligation on F to pay this to him. He said F's terms contained no express provisions for compensation in the event of a delay either. So, he didn't think F's failure to pay the compensation Mr M was claiming was a breach of contract. Accordingly, he didn't think Lloyds had treated Mr M unfairly by declining to meet his claim under section 75.

Mr M did not agree with the investigator and asked an ombudsman to review his complaint. He said the law very clearly entitled him to compensation.

## **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 looking here at the actions of Lloyds and whether it has acted fairly and reasonably in the way it handled Mr M's request for compensation and money back. This will take into account the circumstances of the trip and how the supplier has acted, but there are also other considerations, including relevant law, which in this case includes section 75 and the regulation.

## Section 75

Section 75 provides that subject to certain criteria and limitations 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.

The criteria includes that the transaction must have been financed by a debtor-creditor-supplier agreement. In other words, there had to be a certain kind of relationship between Mr M, Lloyds and F.

Looking at the booking confirmation Mr M provided, it says "*Dear (name redacted), we have listed the services you have purchased on 29.05.22*". The name is not Mr M's but that of another party (Mr M's partner presumably). It appears from this that Mr M may not have been the party that made the booking with F. On that basis, it's possible that even though Mr M paid the whole cost of the booking using his Lloyds credit card, Lloyds did not finance a transaction for the whole booking between Mr M and F but rather one between F and another party. Because of the way F's contract is worded, this might mean that Mr M did not have a claim in respect of the whole booking but rather only in respect of his own ticket with F. I've not explored this any further however because it does not appear Mr M had a valid claim under section 75 for other reasons – which I will now explain.

Mr M said F was in breach of contract because it didn't pay the compensation he was entitled to under the regulation and because the flight didn't take off at the time it was supposed to.

I've looked at an archived version of F's conditions of carriage from its website and from the time Mr M made his booking. In the absence of a set of terms and conditions from either party I believe this is the best indication of the terms that applied in this case.

The terms set out that "*the departure times as indicated on the flight schedules shall not constitute an integer part of the contract of carriage*". So, it appears departure times were not contractually guaranteed. No other reference is made in the terms as to what F would do in the event a flight was delayed. So, there was nothing that expressly obliged F to pay the compensation set out in the regulation to Mr M in the event of a delay.

Mr M has said that regardless of this, F's failure to pay compensation in accordance with the regulation was a breach of contract as he was entitled to this by law.

Simply put, the regulation provides minimum rights for passengers when their flight is delayed, cancelled or denied boarding against their will. It established specific conditions under which the law applies and set assistance and compensation amounts for each situation.

However, the provisions in the regulation are not implied into contracts. By this I mean the legislation did not insert terms into Mr M's contract with F requiring it to pay him compensation and/or provide assistance in the event of delays or cancellation. So, while Mr M may have had an entitlement in law to compensation and assistance from F in the event his flight was delayed by a certain length of time, this entitlement was not a contractual one. What this means in the circumstances of Mr M's case is that the failure by F to provide the compensation amounts set out in the regulation did not appear to have been a breach of contract.

Lloyds is only liable to Mr M under section 75 for F's breaches of contract or misrepresentations – not for its failure to follow legislation which is not implied in contracts.

In the circumstances therefore, I don't find Lloyds has treated Mr M unfairly by declining to meet his section 75 claim.

I recognise the reasons for this conclusion are different to the reasons Lloyds gave for not meeting Mr M's claim. In deciding what is fair and reasonable in Mr M's complaint I am required to take into account relevant law where necessary. This means I need to consider in all of the circumstances whether Lloyds treated Mr M unfairly by declining to meet his claim. So, where it appears Mr M did not have a valid claim under section 75 for reasons other than those given by Lloyds, I don't think it's reasonable to disregard this just because Lloyds did not give those reasons in its defence to the claim.

It is important to make clear also that I'm not saying Mr M was not entitled in the circumstances to compensation from F under the regulations. It appears on the face of it that he may well have been, and I acknowledge the Civil Aviation Authority has confirmed as such. However, that doesn't mean Lloyds was liable to pay him the compensation for the reasons I have explained. Mr M may wish to take advice in respect of any claim he may have against F.

### **My final decision**

For the reasons I have explained, I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 February 2024.

Michael Ball  
**Ombudsman**