

The complaint

Mrs T, who is represented by a third party, is unhappy with how TSB Bank plc ('TSB') handled a claim she made to them.

What happened

Mrs T booked a stay at a hotel I shall call 'G', for a 'Murder Mystery' event on 11 and 12 March 2023. The booking was made via an agent, which I shall call 'J', that provides event booking services. The payments were made directly to them using Mrs T's TSB credit card totalling the full amount of £598. The booking was for a party of eight people for four double rooms and was made in December 2022, a few months prior to the event.

Mrs T says her mother-in-law, who was one of the guests intending to stay, suffered an accident in February 2023 and broke her hip. Other members of the party were also taken ill. Due to this Mrs T contacted J, initially asking if it was possible to retain the vouchers for the booking and use them at a different date after her relatives had recovered.

J offered to speak to G for a change in date, however Mrs T noted in March that the only remaining dates were for the following month which were too soon for them to attend. On 10 March J advised that while they appreciated the circumstances, the tickets were non-refundable. However it was confirmed they were transferrable so Mrs T could arrange for them to be passed on if she wished.

Mrs T says she then contacted her credit card provider TSB on 6 July 2023 requesting a chargeback claim, or a Section 75 (s75) claim under the Consumer Credit Act 1974 to be raised so she could be refunded for what'd happened.

TSB responded with a final response letter on 20 July 2023 saying they couldn't raise a chargeback claim as it was outside the 120 day timescale required under the card issuer (Mastercard) rules. They did offer to raise a s75 claim if Mrs T provided more evidence. TSB subsequently raised the s75 claim on 12 August 2023 but this was later declined as they felt the booking terms and conditions clearly said the tickets were non-refundable. They therefore didn't feel there had been a breach of contract by J and so there wouldn't be a successful claim.

Mrs T was unhappy that TSB was unable to get her a refund and complained.

Our investigator looked at the complaint but didn't uphold it. They did however say TSB had since acknowledged that they should've raised a chargeback but felt this wouldn't have resulted in a different outcome. TSB offered £50 compensation to address this error which the investigator felt was fair.

Mrs T didn't agree with the investigator and has asked for an ombudsman to make a final decision. She says she didn't agree to the terms and conditions stating the booking was non-refundable. I also understand Mrs T thinks the price of the booking was misrepresented with

regards to the 41% discount said to be applied as there is no evidence of the original price at which these tickets would've been sold.

She is unhappy with how TSB had handled both the chargeback and s75 claim and don't consider this to be fair.

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've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that TSB aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mrs T paid for this booking using her credit card, both chargeback and a s75 claim could possibly help her. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for TSB to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard). I've considered the relevant chargeback rules in deciding whether TSB acted fairly.

Here it appears that TSB initially failed to raise a chargeback as the matter was raised as a complaint and not sent to the appropriate team. They then said in their final response that they felt the claim was out of time under Mastercard time limits requiring it to be raised within 120 days from the latest expected delivery date for the goods or services.

Since then TSB has accepted they should've looked at the possibility of a chargeback when the initial complaint letter arrived. I agree – Mrs T's complaint letter to TSB is dated 6 July 2023 and was sent recorded delivery, which would mean it should've arrived before 9 July 2023 which is within 120 days of the event date on 11 March 2023. To address this TSB offered £50 compensation but say there was still no prospect of success.

I note that if a chargeback claim had been raised in time, it should've been under the reason: 'credit not processed' – and I agree this would've been defended as J say their terms and conditions are clear that the tickets were non-refundable and this was apparent prior to purchase. I go further on this point under the heading 'Section 75' below.

Whilst I appreciate it would've been frustrating for Mrs T to be told TSB didn't raise a chargeback in time, banks are able to decline to take a chargeback claim further if a dispute is raised by the supplier and this is most likely to have happened here. I do agree with the investigator however that the £50 offered for not raising the claim in the first place is fair under these circumstances.

Section 75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

I see there is documentary evidence of the screen Mrs T would've seen prior to making payment when booking her hotel stay online. At the bottom of the screen it says the following:

“Can I get a refund?”

*In the event that an event is cancelled, your ticket will be refunded in full
Unless an event is cancelled your tickets are non-refundable or exchangeable after purchase”.*

I note Mrs T has said in her submissions that there wasn't a tick box present to confirm if she actually accepted these terms. I think these terms were made sufficiently clear and that they applied to this booking. I also think that her decision to proceed with the booking would be a reasonable acceptance of these terms and conditions stating the tickets were non-refundable.

I note that if Mrs T wanted further clarity about this, and had she referred further to J's website, I'm satisfied she would've understood the terms and conditions which say: *'once purchased, tickets cannot be transferred, exchanged, refunded or returned unless the event is cancelled, moved to another date, or if the details of the event are significantly changed after an order is placed (significant changes being a change of the headline act (concerts only), venue or time).*

I also see under their section for 'refunds' it says any unused tickets with a specified date and time such as these are non-refundable

I therefore think the non-refundable aspect of this booking was made sufficiently clear. Whilst the terms and conditions also say the booking is non-transferrable, G did subsequently advise J that the tickets could be transferred here as an option.

I must also briefly mention that Mrs T also complained about the 41% discount applied to her booking and says she can't find any evidence of the original price and therefore this is a misrepresentation and untrue. While I appreciate her position, I consider that it would've been her decision if she wished to book at the price offered.

I've insufficient evidence that it was the discount that induced her into the purchase and that she would've done anything differently if it hadn't been presented as a discounted price. With everything considered it doesn't appear to me there was a breach of contract or misrepresentation by J here. Mrs T's decision to proceed with the booking was acceptance of the terms and conditions stating the tickets were non-refundable, and I think this was made appropriately clear prior to booking.

I therefore can't conclude that TSB acted unreasonably in rejecting Mrs T's s75 claim.

My final decision

For the reasons above my final decision is that TSB Bank plc must pay Mrs T, to the extent it hasn't done so already, £50 - but it need do nothing further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 6 June 2024.

Viral Patel
Ombudsman

