

The complaint

Mr M says Lloyds Bank Plc, has treated him unfairly in relation to a transaction on his credit card which paid for flights for him and others.

What happened

In September 2021 Mr M used his Lloyds credit card to make a payment for flight tickets costing a total of over £10,000. He bought the tickets from a company I'll call 'Firm T' which arranged the flights with a separate airline ('the Airline'). Mr M said he wanted to buy fully refundable flights because he wasn't sure of being able to organise accommodation at the flight's destination. He later sought a refund for the tickets when he says it had become clear that sourcing the accommodation was a problem for him. But Firm T then said the flights weren't refundable. Mr M said they were fully refundable and pointed to the flights being 'cancelled' by the Airline after he sought to cancel them. But Firm T still didn't give him his money back, so he complained to Lloyds.

Lloyds says it considered the matter and having done so it didn't think it needed to refund Mr M. It raised a chargeback which was defended by Firm T. It also pointed to the non-refundable nature of the flight tickets and that Firm T said Mr M cancelled the tickets. Lloyds did consider it had provided a poor level of customer service in dealing with Mr M. So it offered him £240 in relation to the customer service it had provided him. However, Mr M remained unsatisfied as he hadn't got back the money he paid for the tickets, and he brought his complaint to this service.

Our investigator felt Lloyds didn't have to do anymore. And Mr M remained unhappy and so this complaint came to me for a decision. I issued a provisional decision dated 29 August 2023 saying Lloyds should pay Mr M £240 for the customer service it provided but it didn't have to refund the flight tickets.

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.

Lloyds accepted my provisional decision and made no further submissions in relation to the complaint. Mr M has not responded to the provisional decision and the deadline for responding to it has now passed. Therefore, I'm able to proceed to determination of the complaint in the circumstances. I proceed to a final decision in this matter taking into account Mr M was emailed on 20 September 2023 reminding him of the deadline for responding to the provisional decision, which was 26 September 2023. In summary, as the time limit for responses has passed, and I have no further submissions to consider, I've decided in the

interests of finality to issue a final decision, and this mirrors the conclusions which I made in my provisional decision as below.

Mr M used his Lloyds credit card to pay Firm T for the flights. This means that section 75 of the Consumer Credit Act ('s.75') can apply to the transaction. This provides that where Mr M has a claim against a supplier of goods or services (in this case Firm T and/or the Airline) in respect of a misrepresentation or breach of contract he will have a 'like claim' against Lloyds as creditor subject to the provisions of s.75.

Also, Mr M's Lloyds credit card is part of a card scheme which is operated by separate company. This scheme has rules which include giving Lloyds an avenue for card transactions to be disputed with the relevant merchant, such as Firm T, namely through the chargeback process. The decision maker on chargebacks is the scheme itself and not Lloyds. So it is possible that Lloyds could take Mr M's dispute as far as it could in the chargeback process and Mr M still not be successful in getting a refund.

This decision is solely about Lloyds in relation to whether it did what it should have, and whether it treated Mr M fairly in consideration of his dispute with Firm T. This decision isn't directly about either the Airline or Firm T, neither of which are within this Service's jurisdiction for complaints regarding chargeback and s.75.

The evidence I have relied upon

This dispute is about whether Lloyds treated Mr M fairly in its consideration of Mr M's dispute with Firm T about his receiving a refund. Therefore, the outcome of this complaint depends (in part) upon what the contractual position was in relation to Mr M's agreement with Firm T and the Airline and how those contracts worked. It is not entirely clear which versions of these contracts Lloyds considered because both Firm T's and the Airline's contracts were revised relatively regularly.

As a consequence our investigator has been in contact with both Firm T and the Airline to try to establish the contractual position including which versions of the contract applied at the point Mr M booked these tickets and exactly what Firm T and the Airline did in the course of these events. Our investigator made repeated attempts to get this information from both Firm T and the Airline. However, little clarity was provided by either firm and the precise facts of what Firm T and the Airline did during the events in question remains unclear.

The rules under which I deal with complaints include DISP 3.5.9R(3) which entitles me to reach a decision on the basis of evidence which has been supplied. I'm satisfied that I've received all the key evidence that I'm likely to receive and can fairly decide this complaint considering the evidence which is available. Accordingly, in the interests of resolving this matter quickly and fairly, I rely on the following evidence in this decision.

Our investigator researched online to try and establish which contracts were likely to be those in place when Mr M booked the tickets and managed to get copies of some of the terms and conditions of the parties.

They managed to get a copy of Firm T's terms and conditions which confirm it was updated on 18 May 2021. Mr M made the booking in September 2021, so the investigator looked for updates or amendments between these dates and didn't find any. Therefore, I'm satisfied on balance of probabilities the terms and conditions belonging to Firm T marked "*updated 18 May 2021*" in our file are those which I ought to rely upon and consider when determining this complaint.

As regards the Airlines' terms and conditions I've considered a copy of its general conditions of carriage from 1 May 2021. We've also researched for relevant updates and amendments between that date and when Mr M booked the tickets in September 2021. Similarly, we've not been able to find any versions of the terms which were updated closer to the time in question. So I'm satisfied it is fair for me to rely on the Airline's terms and conditions of 1 May 2021 in the circumstances for the purposes of deciding the complaint.

Neither party provided further evidence or arguments on the evidence in response to my provisional decision. Accordingly I see no persuasive reason to deviate from the position articulated in my provisional decision and repeated here.

The important terms of the Airline terms and conditions

Having considered the Airline's terms and conditions there are several clauses I want to highlight as they support my conclusions on this matter.

In the Airline's terms clause 3a3) it explains:

"We sell some tickets at discounted fares which may be partly or completely non-refundable. You should choose the fare which best suits your needs and consider taking out insurance to cover instances where you might have to cancel your ticket."

This makes clear that the Airline did and could sell tickets at discounted prices that could be partly or completely non-refundable at the relevant time when Mr M purchased his tickets. Therefore, the tickets sold to Mr M *could* have been non-refundable.

Further, at clause 9b3) of the Airlines' terms and 'Remedy 3' on remedies for delays and cancellations, it states that if the Airline cancel a flight the ticket-holder has an option to receive an '*involuntary fare refund*'.

At clause 10a1) on refunds it states:

"We will refund the fare and carrier imposed charges and surcharges for your ticket, or any unused part of it and any taxes, fees and charges, as set out in the fare rules and conditions applicable to your booking."

Further, at clause 10b) it explains 'involuntary fare refunds' will be made if the Airline cancels a flight. The significance of this is that it demonstrates whether a refund is due will depend on the conditions of the ticket purchased. It also demonstrates that an 'involuntary refund' would be dependent on the Airline cancelling the flight. Here the Airline rebooked Mr M on

identical flights on the same day but only after Mr M had already sought to cancel the tickets already.

Firm T internal systems screenshot

During this dispute Firm T provided Lloyds with internal screenshots of its systems as evidence of the nature of the tickets booked. The screenshots show some of Mr M's details including name and postcode and that he'd accepted the terms and conditions by ticking a box. They also show a pop-up box of information around charges to these tickets including that in the event of cancellation the ticket was in all circumstances "*non-refundable*". I'm satisfied this screenshot is reliable regarding Mr M's booking because Mr M's details are clearly shown alongside the cost he paid for this booking. Therefore, I'm satisfied the non-refundable nature of these tickets was shown in relation to Mr M's tickets specifically.

Firm T's records of the booking

Our investigator has repeatedly chased Firm T for information. Particularly for its internal records to show what happened with Mr M's booking but it hasn't provided this. The evidence shows that Mr M emailed Firm T on the 3 October 2021 asking it to cancel his booking. Subsequently the Airline emailed Mr M on 17 October 2021 to say one of his booked connecting flights had been cancelled and he'd been rebooked onto a different flight for the same journey on the same day. On 18 October 2021 Firm T wrote to Mr M saying it had now applied to the Airline for a cancellation/refund and once it had received an answer from it then there was the possibility of a voucher or a refund. This isn't inconsistent with the tickets being non-refundable bearing in mind it had already told Mr M that they were non-refundable. There is no evidence as to whether Firm T received a response from the Airline or what any such response was. It has said to Lloyds that it issued tickets to Mr M and that the flights were available. It is unclear whether the Airline had received such a cancellation or treated Mr M as a 'no show'. This point has been put to both Firm T and the Airline, but we have been unable to establish what happened.

As I stated above, under DISP 3.5.9R (3) I am entitled to reach a decision on the basis of evidence which has been supplied, and to consider the failure by a party to provide information requested – this includes making findings on what is likely to have happened taking into account the information which is available. It is of note that neither Firm T or the Airline are parties to the dispute, and it is in both Mr M's and Lloyds' interests that after such considerable time I endeavor to move this dispute towards resolution.

Having identified the evidence I have relied upon in relation to the transaction and received no evidence or arguments on the matter in response to my provisional decision I proceed to consider Lloyds' position.

Could Lloyds challenge the transaction through a chargeback?

Mr M doesn't dispute that he used his Lloyds credit card. Nor does he dispute the amount, date, or any other details about the transaction itself. So I don't think Lloyds could've challenged the payment on the basis Mr M didn't properly authorise the transaction given what I've set out.

Lloyds is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. And it can fairly decide to not proceed at any stage if it doesn't think there remains a reasonable prospect of success with that particular chargeback.

Lloyds did raise a chargeback in this case which was then defended by Firm T stating that the tickets were non-refundable. Lloyds emailed Mr M about this, and it says Mr M didn't respond. Without any further information from Mr M it then decided that the chargeback no longer had a reasonable prospect of success considering the defence Firm T had provided. So it reversed the credited amount of the tickets which Lloyds had applied to Mr M's credit card account whilst the chargeback process had been ongoing.

I've considered what happened and I don't think Lloyds treated Mr M unfairly by not continuing the chargeback in these circumstances. Firm T had responded to the chargeback as per the process and provided evidence which set out that the tickets were non-refundable. And as Mr M didn't respond to Lloyds' request, I think it fair that Lloyds decided that the chargeback no longer had a reasonable prospect of success in the circumstances and decided not to pursue the matter further.

Subsequently Mr M has provided further evidence to this Service during the course of this dispute which Lloyds hadn't been provided with when it decided on the chargeback. But I don't think it makes a difference even if Mr M had provided the evidence then which he's since provided. I'll explain why.

I can see on the email confirmation (dated 22 September 2021) Firm T sent to Mr M when he purchased the tickets it says:

"Once the ticket is issued it is completely non-refundable and non-changeable, However in the event of cancellation please let us know to process your booking for airport tax refund only (Fuel Surcharge and all US taxes are non-refundable). Full terms and conditions are available at (website address).

We only issue electronic tickets and will email you your e-ticket receipt within 24 hours of your booking."

I can see Mr M emailing Firm T on 3 October 2021 (responding to the email I've quoted above and hence showing he'd received it) saying *"Unfortunately we need to cancel these flights. Please cancel them and refund my credit card."*

Firm T then respond by email (5 October 2021) explaining that the tickets weren't refundable and asking whether Mr M wishes to continue with the cancellation. Mr M then responds with some comments and concludes his response by saying "*Kindly confirm you will now return my money or otherwise I will issue a court summons.*"

Bearing in mind the events of the 17 and 18 October 2021 as described earlier in my decision, I've not seen any revised tickets being issued to Mr M after this point. Furthermore considering Mr M's stated wish and the evidence of 18 October 2021 where Firm T said it contacted the Airline, on balance I'm satisfied it is more likely that Mr M's booking was cancelled by Firm T on or after the 18 October 2021. If Mr M has evidence contrary to this position from after 18 October 2021 I'll reconsider this finding. No evidence or persuasive argument was provided in response to my provisional decision. So I see no persuasive reason to deviate from this finding.

In his submissions to Firm T Mr M points to the Airline's terms on its website which shows some tickets are refundable. But as I've set out the Airline makes clear in its terms that it also sells tickets which are non-refundable, so I don't think this particular argument is persuasive.

I note the Airline's website makes clear that if the tickets are purchased from a third party then the third party's terms are applicable to those tickets. Mr M has tried to argue that Firm T is acting as agent for the Airline and that this means the terms and conditions of Firm T are voided, disapplied or otherwise invalidated. I'm not persuaded by this because the Airline's terms make clear that if tickets are purchased through third parties, then the third party terms do apply.

As I've explained Firm T in its chargeback response to Lloyds provided its system information showing that in the event of cancellation the tickets were non-refundable. This was strong evidence going to Lloyds' consideration of whether to continue the chargeback taking into account Lloyds requested further evidence from Mr M but that wasn't forthcoming. Neither then or in response to my provisional decision.

Mr M says he only bought the tickets as he "*knew we could get our money back*". I've no reason to doubt Mr M's contention that he had aimed to purchase refundable tickets when he started the process of making this purchase. But having considered the evidence I'm satisfied on balance that Lloyds hasn't treated him unfairly by concluding that what he purchased were tickets which were non-refundable including in circumstances where he had cancelled them or where he was a 'no show' for the relevant flights.

Mr M points to the fact that the Airline later cancelled the flights. I'm not persuaded by this. The evidence shows an email dated 17 October 2021 from the Airline to Mr M's email address informing him one of the booked flights (due to fly on 2 January 2022) had been cancelled and that Mr M and his party of fellow travellers had been booked onto another flight from and to the same airports on the same day, approximately six hours later. There is no mention of any other flights for this booking in this email or of any flights being cancelled. So to my mind all his flights remained booked as per the original booking save for the changed flight I've described above up to and including the 17 October. I should note the

Airline's terms do allow flights to be changed in this manner. So I think his booking for the 2 January 2022 flight was amended in line with the terms of the Airline.

Having considered all of Mr M's arguments and the evidence available, I think that Lloyds fairly decided to no longer pursue the chargeback process when it did. It appears Mr M was booked onto the flights as planned by Firm T and that it cancelled them as per my earlier finding.

Normally if Firm T cancelled them Mr M would be entitled to a refund of taxes. However I note in the email quoted above it states that '*Fuel Surcharge and all US taxes are non-refundable*' which would be applicable here. I am not aware of any other taxes charged here which would be refundable. In the alternative if Firm T didn't cancel the booking he would have in essence 'no-showed' to the relevant flights and thus he'd not be entitled a refund of any refundable taxes.

Accordingly, I'm satisfied Lloyds treated Mr M fairly by not continuing with the chargeback. And on balance, had the chargeback continued, I think it likely it would have been unsuccessful for the reasons given. So I don't think Mr M has lost out because of what Lloyds did in relation to chargeback.

Section 75

Before deciding on whether there is breach or misrepresentation here there are some requirements set out in s.75 which have to be met before these issues can be considered. One of these tests is around financial limits and having considered these I think that Mr M's claim meets the financial limits criteria as it was above the minimum threshold and below the maximum threshold.

S.75 also requires there must be a Debtor-Creditor-Supplier arrangement in place (often referred to as a 'DCS arrangement'). This would be either between Firm T and Mr M and Lloyds or between the Airline and Mr M and Lloyds depending on what basis I felt there had been a breach of contract or a misrepresentation which Lloyds should be held accountable for. For the purposes of this complaint my reference to the supplier for the purposes of DCS is to Firm T in the circumstances.

I'm not persuaded I need to make a finding at this point on DCS because - for broadly the same reasons I've already explained in relation to chargeback - I'm not persuaded Lloyds needs to do anymore in relation to this complaint in relation to s.75.

For Lloyds to be liable under s.75 it has to be shown that there would be a claim against the supplier (Firm T) for breach of contract or misrepresentation.

I'm not persuaded that Lloyds has treated Mr M unfairly by concluding that Firm T hadn't breached the contract or misrepresented the tickets to him. An important factor in this matter is that Mr M hasn't provided any persuasive evidence that he bought fully refundable tickets or that there was a misrepresentation by Firm T which induced him to purchase the tickets believing them to be refundable. And he hasn't done so when invited to do so in response to my provisional decision.

I've considered Mr M's specific arguments. He points to another website which introduced Mr M to Firm T's website and the tickets it was selling. I'm not persuaded that this other website misrepresented the specific tickets Mr M purchased to him whilst he was on this introductory website. Although Mr M has pointed to that website advertising refundable tickets, that doesn't mean that is what Mr M purchased at the time in question once he arrived on Firm T's website or that all tickets available for purchase would be refundable.

Therefore, the introductory website does not persuade me that there was a good claim for misrepresentation against Firm T, and it follows Lloyds acted fairly when it declined the s.75 claim on that basis. The website made its introductory nature clear and is different in appearance and operation to Firm T's website which Mr M was then directed towards and to. Further, it was on Firm T's website which he entered details and agreed terms before purchasing the tickets.

Similarly, Mr M has provided screenshots of Firm T's website sales process which show refundable tickets are purchasable through it. But this isn't in dispute. What is in dispute is that Firm T said the tickets Mr M bought were non-refundable. So the fact that fully refundable tickets can or could be purchased on Firm T's website isn't persuasive. Firm T's terms from the relevant time clearly stated both refundable and non-refundable tickets were available to be purchased. I don't think Mr M's evidence is persuasive particularly in contrast to Firm T's internal screenshot regarding his booking showing Mr M's details and that his tickets were non-refundable as I explained earlier in the decision.

Mr M points to Firm T's own terms and conditions at the time, and there are explanations of how to cancel certain bookings with Firm T in those terms. But importantly there is also wording explaining that not all arrangements can be amended and that some may incur a 100% cancellation fee or are non-refundable. So I don't think Mr M's argument here is persuasive on this point as we've already established that Firm T sold both refundable and non-refundable tickets.

Mr M also points to the email of 18 October 2021 from Firm T which he says shows it confirmed "*we could have full cash refund*". I've considered this and to my mind this email doesn't say what Mr M says it does. What it says is:

"Your application has now been submitted to the Airline/supplier and is awaiting approval from them. Once we receive confirmation from the Airline/supplier we will be in a position to offer you one of the following two options (refund or voucher)."

In my view, the email makes clear that Firm T applied for a cancellation/refund on behalf of Mr M to the Airline and if the Airline confirmed its approval of a refund Firm T could then offer it to Mr M. So I'm not persuaded Mr M had been told he would definitely get a refund. I consider it more likely Firm T were trying to source a discretionary refund from the Airline as a gesture of goodwill. And if the Airline agreed to pay such a refund, Firm T would pass it on to Mr M. It is not clear whether the Airline ever responded to Firm T or what its response was. But I'm not persuaded that this email indicates that Mr M has any contractual right to a refund in these circumstances. It follows, I don't think Lloyds has treated him unfairly by not paying him under a s.75 claim on this basis.

Mr M has made several further arguments to this service in his email of 1 December 2022 in response to our investigator's assessment and throughout this matter. However, none of these arguments address the inescapable issue that Mr M hasn't produced any persuasive evidence from the purchase he made which shows these particular tickets were refundable. I particularly note that in Firm T's email to Mr M of the 12 October 2021 it stated:

"Please share the information where did you see the tickets are refundable. We have checked the ticket terms and condition and it states non-refundable."

And I've not seen any such persuasive evidence being supplied by Mr M with regard to the booking confirmation or the tickets themselves showing them to be fully refundable. I note that Mr M has shared with his complain an email from Firm T dated 22 September 2021 to Mr M which refers to an attached "*booking confirmation/invoice with this email*".

However, considering the evidence I have I do not think this attachment has been provided. In my experience of dealing with similar complaints such booking confirmations often have the details regarding their refundable or non-refundable nature within them. Mr M was invited to provide any evidence and arguments he wished to in response to my provisional decision. This service received no such response within the timeframe specified. And accordingly I am entitled to take this into account under DISP 3.5.9R (3) as I've described.

Accordingly I think Lloyds' position is more persuasive taking into account the information and evidence available to me and it follows that I don't think Lloyds has treated Mr M unfairly where Mr M hasn't been able to provide the booking confirmation or tickets or other evidence which demonstrates his booking was fully refundable as alleged.

Another point Mr M has made is about the Airline's advertising regarding the flights it sells. But for the reasons I've explained I don't think this makes a difference as the Airline makes clear that if its tickets are purchased through a third-party that third-party terms and conditions apply.

Mr M has also said he'll launch court action against Firm T. As I've explained this decision is about whether Lloyds has treated Mr M fairly. Mr M has not persuaded me that Lloyds have done anything wrong in relation to the s.75 claim or chargeback in the circumstances.

Mr M says he should be compensated for the time he's spent on this matter. I appreciate that Mr M is invested in this dispute, but where I'm not persuaded that Lloyds has treated him unfairly I see no persuasive reason for it to bear any costs for any time or inconvenience that Mr M has expended on the matter.

Mr M further explains he requires compensation for his damaged credit rating. The origin of Mr M's dispute is Firm T not refunding him when he expected it to. Mr M has known throughout his credit agreement with Lloyds and indeed his dispute with Firm T that he had an obligation to make repayments on the lending Lloyds made to him. So if Mr M hasn't been fulfilling that obligation then I'm not persuaded Lloyds has done anything wrong by

recording the true state of affairs in relation to his repayments on his credit agreement with Lloyds on his credit file. Mr M could have maintained his repayments in line with his obligations to Lloyds whilst bringing this dispute regarding Firm T and Lloyds to this service and thus maintained his credit file throughout. If Mr M chose not to make repayments, and Lloyds have recorded this on his credit file, then I'm not persuaded Lloyds has treated him unfairly.

Therefore, having considered the matter and everything Mr M has said and noting his lack of response to my provisional decision, I'm not persuaded Lloyds has treated Mr M unfairly in relation to the chargeback or s.75 claim. I can see Lloyds already made Mr M an offer in relation to the customer service it provided him, which I think is a fair offer in the circumstances, but which has not been paid. I don't think Lloyds has done anything else wrong here which requires further action.

Putting things right

In all the circumstances it is my final decision that this complaint should be upheld, and Lloyds pay Mr M £240 in regard to the customer service he's received.

My final decision

For the reasons set out above, I uphold the complaint against Lloyds Bank Plc. It should pay Mr M £240 to conclude this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 October 2023.

Rod Glyn-Thomas
Ombudsman