

## **The complaint**

Mr C complains that Tesco Personal Finance PLC rejected his claim under Section 75 Consumer Credit Act 1974 in respect of a holiday.

## **What happened**

On 6 October 2019 Mr C and his family booked a holiday at a holiday park, which I will call P, at a cost of £1,199. Payment was made on 6 October. The holiday ran from 21 October to 25 October 2019. P has supplied a booking confirmation document dated 22 October showing four adults and four children.

When they arrived, they were told the chalet was able to accommodate eight and Mr C invited some friends to join them. Mr C says the friends (two adults and two children) arrived on 23 October.

The chalet was mouldy and Mr C's friends decided not to stay. Mr C was having work done on his house and he and his family could not return. He stayed at the accommodation, but complained and P offered him £240 compensation which it later increased to £360.

Mr C made a section 75 claim to Tesco which it rejected. It said the holiday was for two families and it would only consider half of the cost. It said P has tested the chalet for mould spores and it was within their tolerance levels.

P also said that it was unable to offer a replacement chalet, but it had offered to clean the mouldy one on 22 October, but the cleaner was unable to gain access. Mr C disputes that and said P had a key and had made use of it. On 24 October P offered Mr C a two bedroom chalet, but he declined as it was the last full day of their stay and they didn't want to move their belongings.

Tesco accepted the chalet had been mouldy, but it thought the refund of £360 was reasonable. Mr C brought his complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He also accepted the chalet had been mouldy, but he considered that the appropriate level of compensation would be in the region of 20 to 25% of the cost. In reaching this conclusion he took into account that Mr C and his family made use of the chalet and the other facilities.

Mr C didn't agree and said P had full access to the lodge and it could have cleaned it straightaway. The walls had been bleached on 24 October. He added that the offer of alternative accommodation wasn't made until late in the day on 24 October and they were due to leave the following day. He said he had offered P the opportunity of a 50% refund and he would accept the same now. He added that they had not felt happy preparing food in the chalet and had eaten out resulting in 50% of the food they had taken being thrown out. Their whole holiday had been affected.

## **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.

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

Firstly, I would explain that I think the issue of the use of the chalet by the friends is a red herring. Having looked at the documents and their dates in conjunction with Mr C's explanation of events I am satisfied that Mr C booked the holiday for his family and when they arrived they were given the opportunity of adding some guests. I have concluded the chalet was rented with the intention of being used by Mr C and his family alone. As such I will consider only the impact on Mr C and his family.

That said, I can see why the confusion arose given the unusual circumstances and the booking confirmation details. However, I am not clear as to why the friends weren't warned in advance that the chalet was mouldy given they arrived two days later.

I have looked at the photos supplied by Mr C and I agree with Tesco and our investigator that the chalet was mouldy. I consider that to be a breach of contract in that Mr C and his family were entitled to be given access to a clean and mould free chalet.

There is some dispute about access to the chalet for cleaning, but it appears this wasn't done until the penultimate day of the holiday. That is regrettable. I also think the offer of alternative accommodation on the last day didn't really mitigate the situation.

However, Mr C and his family did make use of the accommodation and I presume the other facilities provided in the park. So, while I appreciate the holiday was tainted by the mould it wasn't terminated early. I acknowledge Mr C has explained that he was having work done in his house, but nonetheless he and his family did continue with their holiday.

In the circumstances I agree with our investigator that a refund of somewhere in the region of 25% is reasonable. This the sort of level I would award in other similar complaints. P paid Mr C 30% and that leads me to conclude that no further compensation is due. I appreciate Mr C will be disappointed with this decision, but I consider the sum paid by P to be fair.

### **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 C to accept or reject my decision before 28 January 2021.

Ivor Graham  
**Ombudsman**