

## **The complaint**

Mr P complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to him the money that he paid for a holiday voucher.

## **What happened**

Mr P used his Tesco Bank credit card in August 2012 to pay £196.72 for a holiday voucher from a holiday company that had phoned him. He says that he tried to use the voucher to book a holiday but couldn't do so and was told that the voucher would expire so he paid £197.11 in October 2013, using his Tesco Bank credit card, to extend the voucher.

He says that he again tried to book a holiday but couldn't do so and then became ill so didn't take any further action but then found out that the holiday company had stopped trading. He claimed a refund of the payments that he'd made to the holiday company from Tesco Bank under section 75 of the Consumer Credit Act 1974 and the chargeback rules.

It said that it was unable to establish a breach of contract or misrepresentation by the holiday company and that there was no documentation or evidence to show that he wasn't able to book the holidays as purchased. Mr P wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. He thought that there was a misrepresentation which Mr P relied on when purchasing the holiday voucher and extending the validity period. He recommended that Tesco Bank should: refund the payments that Mr P made to the holiday company and any charges for currency exchange; rework Mr P's account to make sure that he wasn't charged any interest or charges relating to those amounts; and pay him interest.

Tesco Bank has asked for this complaint to be considered by an ombudsman. It says that there's no evidence to show that Mr P has been a victim of a breach of contract or misrepresentation and the investigator's recommendations are based on wider reports about the holiday company but a different consumer being a victim of a breach of contract or misrepresentation doesn't mean that it's likely that Mr P experienced the same. It says that all cases should be treated on a case by case basis and the decision should be only be based on factual information and there's no documentation to suggest that Mr P couldn't have used the vouchers when they were available to him. It says that without a proven misrepresentation or breach of contract it should have no liability under section 75.

## **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.

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- Mr P used credit provided by Tesco Bank to pay for the holiday voucher and for its validity period to be extended and, in certain circumstances, section 75 gives a

consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;

- to be able to uphold Mr P's complaint about Tesco Bank, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier of the voucher and that Tesco Bank's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr P's claim under section 75 as only a court would be able to do that;
- the supplier has stopped trading and there's only limited evidence available to show what was agreed between Mr P and the supplier – in complaints such as this one, where the evidence is incomplete, inconclusive or contradictory, I have to make my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances;
- it's my understanding that Mr P bought a holiday voucher from the supplier which gave him the opportunity to book holiday accommodation but, when he tried to do so, he couldn't use the voucher so made a further payment to extend it – but when he again tried to use the voucher he was unable to do so;
- having considered the available evidence including Mr P's description of what happened and the wider circumstances of his complaint, including media reports about the supplier which describe similar situations, I consider it to be more likely than not that Mr P was induced into entering into the contract with the supplier by a misrepresentation about the holidays for which he would be able to use the voucher and that there's been a breach of contract by the supplier because Mr P wasn't able to use his voucher and it's stopped trading;
- I consider that Tesco Bank's response to his claim under section 75 wasn't fair or reasonable in these circumstances and I find that it should rework Mr P's credit card account as if he hadn't made the two payments to the supplier, as described in more detail below; and
- as I consider that Mr P's complaint about Tesco Bank's response to his claim under section 75 should be upheld, I haven't considered his complaint under the chargeback rules.

### **Putting things right**

I find that it would be fair and reasonable in these circumstances for Tesco Bank to rework Mr P's credit card account as if he hadn't made the two payments to the supplier, as described in more detail below.

### **My final decision**

My decision is that I uphold Mr P's complaint and I order Tesco Personal Finance plc, trading as Tesco Bank, to:

1. Rework Mr P's credit card account as if the payment of £196.72 hadn't been made in August 2012, the payment of £197.11 hadn't been made in October 2013, and there weren't any currency exchange charges relating to those payments and - if that puts the account into credit - to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit - it should also refund the credit balance to Mr P.

2. If Mr P has repaid any part of those amounts to Tesco Bank but doesn't have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.

HM Revenue & Customs requires Tesco Bank to deduct tax from the interest payments referred to above. Tesco Bank must give Mr P a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 March 2022.

Jarrold Hastings

**Ombudsman**