

The complaint

Mr H complains about the way Tesco Personal Finance PLC handled a dispute on a purchase made using his credit card account.

What happened

Mr H booked holiday accommodation through an accommodation marketplace website (“the website”). It cost about \$2,000 and was paid for using Mr H’s Tesco credit card account. Unhappy with the accommodation, Mr H complained to the website. The website refunded about \$1,550 of the cost and offered Mr H a \$150 voucher. Dissatisfied with this he raised a dispute with Tesco.

When Tesco declined his request for a partial refund Mr H complained. When Tesco responded to the complaint it stood by its decision not to refund Mr H, but it did pay him £25 compensation in recognition of some poor customer service. Mr H brought the matter to our service for an independent review.

The investigator thought Tesco had acted fairly. In her view a chargeback was unlikely to succeed based on the evidence Mr H supplied. And she didn’t think Mr H had a valid claim under Section 75 of the Consumer Credit Act 1974 (Section 75) because there wasn’t enough evidence to demonstrate a breach of contract or misrepresentation the part of the website. She did, however, recommend Tesco pay Mr H £50 (in total) in recognition of its customer service failings.

Mr H didn’t accept the investigator’s recommendation. In his view he’d supplied the information he was asked for and felt the customer service he’d received had been very poor. As an agreement couldn’t be reached the complaint has been passed to me to decide.

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.

Mr H has explained there were issues with the accommodation, including, but not limited to, no heating, a lack of cleanliness and no parking space. He’s further explained the accommodation owner’s reaction to him raising these issues with the website was to confront him in an unfriendly manner and demand he leave the accommodation prematurely. I can understand why Mr H was disappointed with the accommodation/experience.

But Tesco, as the creditor, isn’t automatically responsible for putting things right. In this scenario Tesco could pursue a dispute for Mr H under the chargeback scheme. Or consider a claim under Section 75.

Tesco has said it didn’t attempt a chargeback as it didn’t think one had a reasonable prospect of success. I think it was most likely correct. I’ll explain why.

The website appeared to have already addressed the matter through a refund and voucher. There would therefore have needed to have been an explanation for why this was insufficient, but Mr H didn't provide a full copy of his communications with the website, nor a breakdown of what the refund related to. Mr H (and his fellow guests) had spent some time in the accommodation, so a full refund was unlikely to be appropriate and a chargeback for a partial refund must be justified.

Mr H says he wasn't asked to provide a full copy of his communications with the website. I'm not persuaded that's the case though. I say this because Tesco's notes suggest he was, and I can see in Mr H's email of 20 March 2020 he said: "*I'm presently gathering all the exchanges between [the website] and myself...*"

Ultimately it was for Mr H to evidence his claim and for Tesco to decide whether, based on said evidence, a chargeback had a reasonable prospect of success. Based on the evidence available, Tesco decided against attempting a chargeback. I don't find that unfair or unreasonable. It follows I'm not persuaded it was wrong for Tesco not to attempt one.

Turning to a claim under Section 75. Mr H (the debtor) used his Tesco (the creditor) credit card to pay the website (the supplier). So I'm satisfied the necessary debtor-creditor-supplier relationship exists for a claim under Section 75. I should mention at this point that no such relationship between Mr H, Tesco and the accommodation owner (the host) exists. The fee charged by the website was over £100, so I'm also satisfied the necessary financial limits have been met for a claim under Section 75.

Having established that there can be a claim under Section 75, I now need to consider whether there's a breach of contract or misrepresentation on the part of the supplier, which is the website, not the host. The fee paid to the website was for the use of the platform. But it's also for the provision of a refund policy for when things go wrong, which includes things such as the accommodation not matching its description, special amenities/features not being provided, lack of cleanliness and health hazards.

From what Mr T has said, he experienced the relevant sorts of issues with the accommodation for the refund policy to apply. The website, therefore, needed to do something under the refund policy. So, if the website didn't act in accordance with said policy, it would have breached its contract with Mr T and under Section 75 he would have a like claim against Tesco as the creditor.

However, the website has done something. It's refunded most of the cost and offered Mr H a voucher. Without fully understanding what the website has done and its reasoning for doing so, I can't fairly conclude it hasn't acted in accordance with the refund policy. And if I can't fairly conclude it hasn't acted in accordance with the refund policy, it follows I can't be satisfied it's breached its contract with Mr H. Unfortunately, Mr H doesn't have a full copy of his communications with the website or a breakdown of what the refund he received was for. So he can't, in my view, substantiate his claim. In these circumstances I'm satisfied it was fair and reasonable for Tesco to decline Mr H's S75 claim.

I'm aware Mr H is dissatisfied with the customer service Tesco provided when he asked for a refund. Tesco has acknowledged it could have done better, especially with its call wait times. The investigator recommended Tesco pay Mr H £50 compensation, in total, in recognition of its customers service failings. I consider this an appropriate amount in the overall circumstances of this complaint.

My final decision

I uphold this complaint and require Tesco Personal Finance PLC to pay Mr H £50 (in total).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 May 2022.

James Langford
Ombudsman