

The complaint

Mr C complains that Tesco Personal Finance PLC mishandled his claim under section 75 of the Consumer Credit Act 1974.

What happened

In January 2020, Mr C booked a 12-night stay in a holiday apartment for end of July. The apartment was to be used by two adults and two teenage children. Mr C says he selected this apartment because it provided adequate space and sufficient bedrooms so that his children did not have to share. The apartment had 2 bedrooms though three separate beds were available.

The apartment was in a complex with a swimming pool and the cost for this break was 1,9905.94 Euros or £1,634.76. Mr C paid for the accommodation using the credit card he held with Tesco.

In June 2020, Mr C received an email from the company providing his holiday accommodation informing him that due to Covid the pool may not be available for use. They offered Mr C different accommodation at a different complex and provided photos of this new location. The company said that this new apartment would be *"a better proposal"* and that it was *"a better situation at the same price."*

Mr C responded by email confirming that he would alter his booking but also said *"I assume this is the same number of bedrooms/beds"*. The company didn't answer this point but did confirm the change.

Mr C emailed the company again as the confirmation stated there was only one room. Mr C said *"All being well, I will be travelling with my daughter (age 17) and my son (age 14). I notice that your last email states 'total guests 2, total rooms 1' but I assume that's just an administrative error. My original booking confirmation states '2 adults, 2 children'."*

The company emailed back and said *"Hello, Yes it's okay for 2 adults, 2 children."*

Mr C and his family arrived at the accommodation as planned in July 2020, and they were shocked to find the apartment was a one bedroom and had only two beds. Mr C says the complex was also unfinished. Mr C complained to the company's agent that his two teenage children should not be expected to share a bed. The agent said there weren't any other apartments available. Mr C took photos of the apartment and also visited the complex he had originally booked where he found the swimming pool was open. He sent these to the company in support of his complaint.

Mr C complained that there was no comparison between the two apartments and he set out the following matters: that the online cost of the second apartment was significantly lower than the original apartment; that there was no TV in the living area, just a bracket on the wall where it should be; that they only had use of a travel kettle which had boiled one cup at a time and that there was no air conditioning unlike the first apartment.

The company offered Mr C a 200 Euro refund around two days later which he declined as he said it wasn't sufficient in light of the standard of accommodation now provided. The company increased their offer to 400 euros. Mr C again declined and pointed out that this amount didn't even reflect the price difference between the apartment he had originally booked and the subsequent one. The company declined to improve this offer.

Mr C made a claim to Tesco in respect of the holiday accommodation. Tesco at first reviewed this as a chargeback claim which was declined as Mr C had made use of the apartment. Mr C complained to Tesco about its handling of his claim and it accepted it should have considered his claim under section 75 of the Consumer Credit Act 1974. Tesco offered Mr C £75 as compensation for its handling of his claim.

However, Tesco then declined Mr C's claim under section 75 as it said it hadn't been stated how many bedrooms the first apartment had when booked by Mr C, and that it would be a subjective opinion whether the quality of one apartment was better or the same as another. It said the offer of 400 Euros by the company had been fair and reasonable in the circumstances.

Mr C was unhappy at Tesco's decision and complained to this service. Our investigator recommended that his complaint should be upheld.

Our investigator said that, when looking online at the first apartment, this was advertised a 3-bedroom apartment that sleeps up to six people. And, that looking at the emails between Mr C and the company providing the accommodation, it was clear the number of bedrooms was an important factor for Mr C. He said he thought it was more likely than not that Mr C had booked a 3-bedroom property. This meant, said our investigator, that the provision of a 1-bed apartment, as a substitute, was a breach of contract.

Our investigator said that the company had also sought to persuade Mr C that the second apartment was better than the first. He said looking at the photos provided by Mr C that the kitchen and living room were both considerably smaller than in the first one. While our investigator acknowledged there was some subjectivity about whether one apartment was better than another, he said he thought the second apartment had been misrepresented. It had less bedrooms and was clearly smaller.

To put things right, our investigator said that Tesco should refund Mr C the difference between the two stays, which he calculated as 767.94 Euros. He said when converting this, Tesco should use the same rate as Mr C received when making the original payment. As Mr C had cleared his credit card the following month then Tesco should add 8% simple interest from the date this payment was cleared to the date of settlement.

Our investigator said that Tesco should also provide Mr C with £300 compensation for the distress and inconvenience caused by the misrepresentation of the second apartment. Plus, it should pay him the £75 compensation offered for the way it handled his claim.

Mr C agreed with our investigator's view and, although Tesco agreed it should reimburse Mr C for the breach of contract and for the way it handled his complaint, it disagreed that £300 compensation was fair and proportionate for the misrepresentation.

Tesco said that the purpose of a section 75 claim was to put Mr C back in the position he would have been in prior to the breach of contract. It said £300 compensation for not upholding Mr C's claim was excessive and disproportionate. Tesco said it wasn't liable for the company's service issues.

As the parties were unable to reach an agreement then the complaint has been passed to me.

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.

My role here is to decide whether Tesco has acted fairly and reasonably in its response to Mr C's claim under section 75.

Mr C says that he believes he has been the victim of a scam by the company as they knowingly persuaded him to change to a smaller and substandard apartment following his original booking. He says there was both a misrepresentation and a breach of contract.

Section 75 of the Consumer Credit Act 1974 may apply when the goods or services purchased via a credit cost over £100 and up to a limit of £30,000. The general effect of the section is that if a consumer has paid for goods or services with a credit, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider, which here is Tesco.

Tesco isn't now disputing that there has been a breach of contract and it agrees that Mr C should be reimbursed the difference in cost between the first and second apartment. I've seen that there isn't any direct evidence as to this amount but, using the example cost for the second apartment that Mr C was able to obtain, he was able to calculate this as 767.95 Euros. And I think this calculation is fair and reasonable in the circumstances.

However, Tesco disagrees that Mr C should receive £300 compensation for the distress and inconvenience caused by the apartment being misrepresented. It says this is an issue about the service provided by the company which it wouldn't be liable for. It agrees it would be liable for any consequential losses incurred by Mr C dealing with the misrepresentation but feels this payment may be a step too far and is also disproportionate. Tesco says an additional £50 compensation for its declining his claim under section 75 would be fair.

As set out above, under section 75 Tesco is as liable as the company for a breach of contract or misrepresentation. I think that in light of the evidence I've seen that the swapping of the first holiday apartment for the second one, in these circumstances, amounted to both a breach of contract and a misrepresentation.

I've seen in the email correspondence between Mr C and the company providing the holiday accommodation that he was told the second apartment would be superior to the first and suitable for his family. I accept that judging the quality of accommodation does have a subjective element. However, I think it's reasonable to say the second apartment wasn't what Mr C had been led to believe nor was it comparable in size or facilities to the one originally booked. In particular the second apartment didn't have the required number of beds and had fewer facilities such as no air conditioning. Mr C had certain requirements due to the make-up of his party and it's reasonable to say that by not having those planned facilities available would have caused him distress and inconvenience. I think it's reasonable to say that Mr C experienced a loss of enjoyment of his holiday due to the lower standard of the second accommodation.

I also think it's fair to say Mr C had been looking forward to spending time with his family while on holiday. Unfortunately, on arrival he discovered the second apartment was not as described and this led him to have to spend time chasing the company over

the unsuitability of the apartment which he'd been allocated. He also had to spend time investigating the first and second apartment complexes so that he could show he hadn't received what he had been told he would. I think it was reasonable for Mr C to have acted as he did as he needed evidence that his view was purely subjective. I think it's understandable Mr C was upset that the facilities he thought he would be provided with weren't then what he had reasonably expected and were actually unsuitable for his family.

I think compensation for the loss of enjoyment of the holiday is something Tesco is liable for and it is this, together with the service provided by Tesco when dealing with Mr C's claim that an award of compensation represents. I don't think the compensation payment as set out by our investigator was to cover the customer service provided to Mr C by the company that provided the holiday accommodation.

I don't think it was unreasonable for Mr C to expect that his teenage children would have a bed each and sufficient space to be comfortable. I think having to deal with this when abroad, and so having no choice but to accept the provided accommodation, would have caused him distress and inconvenience. I think compensation of £250 is fair to reflect Mr C's loss of enjoyment.

I've seen that Tesco has accepted that its handling of Mr C's claim had caused him distress. It said that £50 compensation would be proportionate and fair, and I agree with that amount for that action, however as set out above I also think there should be a payment for the loss of enjoyment.

So, I think a total compensation of £300 as recommended by our investigator is fair and reasonable. Mr C suffered loss of enjoyment of his holiday and had further distress and inconvenience when Tesco declined his claim. I disagree that £50 in total would be proportionate in the circumstances.

For the reasons given I'm upholding Mr C's complaint.

Putting things right

I'm asking Tesco to do the following:

- Reimburse Mr C the difference between the two apartments which has been calculated as 767.94 Euros. When converting this, Tesco should use the same rate as Mr C received when making the original payment. Interest is to be added to this amount at the yearly rate of 8% simple from the date of payment to the date of settlement.
- Pay Mr C a total compensation payment of £300 for the distress and inconvenience caused by loss of enjoyment of the holiday and by Tesco's handling of his claim.
- Pay Mr C (if it hasn't already) £75 compensation for the distress and inconvenience caused by its dealing of his section 75 claim.

My final decision

For the reasons given above I'm upholding Mr C's complaint. I'm asking Tesco Personal Finance PLC to do the following:

- Reimburse Mr C the difference between the two apartments which has been calculated as 767.94 Euros. When converting this, Tesco should use the same rate as Mr C received when making the original payment. Interest is to be added to this

amount at the yearly rate of 8% simple from the date of payment to the date of settlement.

- Pay Mr C £300 compensation for the distress and inconvenience caused by loss of enjoyment of the holiday and by Tesco's handling of his claim.
- Pay Mr C (if it hasn't already) £75 compensation for the distress and inconvenience caused by its dealing of his section 75 claim.

If Tesco Personal Finance PLC considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they've taken off. They should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 September 2022.

Jocelyn Griffith
Ombudsman