

The complaint

Mr F's unhappy with the way Tesco Personal Finance PLC dealt with his attempt to obtain a refund of money he'd paid for a hotel booking using his credit card.

What happened

Mr F had two rooms reserved for a short stay at a UK hotel. He paid in full for the booking using his Tesco credit card. Unfortunately, the booking fell during a period in which the UK was subject to government lockdown restrictions. Mr F contacted the hotel seeking a refund, but was only able to recover the cost of one of the rooms. He was offered a voucher for use against a subsequent stay.

Mr F was dissatisfied with the hotel's proposal and turned to Tesco for assistance. After some delay, for which the bank paid him £50 compensation, Tesco said it couldn't help Mr F to get his money back, saying that Mr F's request for a refund amounted to cancellation of the booking. As the booking was non-refundable, Tesco said Mr F wouldn't have been able to recover his payment. Although Mr F complained to Tesco about its stance, the bank maintained its position and so he referred matters to us.

Our investigator didn't think Tesco had dealt with Mr F's situation appropriately. He felt the bank was wrong to interpret Mr F's refund request as a cancellation instruction. The hotel wasn't able to provide the accommodation as booked due to Covid-19 restrictions, and the investigator found that the card scheme rules and guidance suggest a chargeback claim would have been successful, had Tesco raised it.

The investigator felt the bank's payment of £50 was fair in respect of delays in responding to Mr F's claim. But he thought it reasonable that Tesco pay Mr F £295.20 with interest, representing the amount he was out of pocket.

Mr F said he would be happy to accept this proposal. But Tesco didn't agree to the investigator's suggestion. It said:

- it was obvious and not comprehensible that Mr F's correspondence with the hotel amounted to him cancelling the booking.
- the hotel didn't make the service unavailable. Rather, government restrictions had prevented Mr F from attending. The hotel couldn't be held liable in such an instance as it hadn't breached or cancelled their contractual agreement

As our investigator wasn't persuaded to reach a different conclusion, the dispute has been passed to me for review and determination.

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.

I appreciate Tesco has a fixed view of how Mr F's request for a refund should be interpreted.

But I'm afraid I don't agree with the bank on this point. Mr F's request for a refund must be considered in light of the circumstances in the UK that prevailed at the time of his intended stay. In March 2020, shortly before Mr F's booking, the UK government issued The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("The Regulations").

The Regulations severely restricted both the movement of people outside their homes and the provision of non-essential services across business sectors including the hospitality industry. Section 5(3) of The Regulations said (with limited specific exceptions that don't apply to Mr F's booking):

"...a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period."

The emergency period started on 26 March and continued over the period of Mr F's booking.

Taking into account the provisions of The Regulations, I see no basis on which Mr F's hotel was legally permitted to provide him with the accommodation he'd booked. In that context it's entirely reasonable to consider Mr F's request for a refund as being made because the contract between the parties was frustrated. The hotel wasn't able to perform its contractual obligation to accommodate Mr F.

Tesco appears to acknowledge this position in response to the investigator. So it's really not clear why the bank has taken the stance it has in saying the hotel isn't liable to refund Mr F in such circumstances. Where a contract is frustrated – that is, unforeseen circumstances have made it impossible to perform – the usual remedy is that the parties are released from their contractual obligations. So the hotel wouldn't be obliged to fulfil Mr F's booking, and he would be restored to his original financial position by having his money back.

Tesco has said Mr F paid using a MasterCard credit card. So I've looked at what the bank said about whether chargeback offered the opportunity of recovering his money. Having done so, I don't believe the bank considered the situation correctly, primarily because of its fixed position that Mr F cancelled the booking.

The MasterCard card scheme rules say that where goods or services aren't received, the card issuer can submit a claim on behalf of the cardholder. In addition, MasterCard issued specific guidance in May 2020 in response to claims arising from the Covid-19 pandemic. Given Tesco issued its response to Mr F's claim in September 2020, it should have had regard for this guidance.

The MasterCard guidance suggests that in the circumstances at play in Mr F's case, a chargeback right exists when services are cancelled due to government restrictions, and that a voucher or similar alternative can only be offered when so provided in the agreement or by the government legislation. While I note the hotel offered Mr F a voucher, Tesco hasn't provided anything to suggest that Mr F's agreement with the hotel entitled it to do so. And the UK government didn't impose on businesses to provide vouchers in lieu of a refund.

Given the specific guidance, the hotel's cancellation policy doesn't appear to be something that the card scheme would have accepted as a valid response to a chargeback claim – it's not cited in the card scheme rules as a valid second presentment – and the issues of a frustrated contract wouldn't be fatal to recovery via chargeback. If anything, they would seem to suggest a refund would fall due.

Taking all of this into account, I see no reason to find that, had Tesco instigated a chargeback (as I am satisfied it should have done), this wouldn't have resulted in Mr F

recovering his money. His claim was received within the applicable timescale. It follows that I find there were deficiencies in the way Tesco approached Mr F's claim that led to him being treated unfairly. This unfair treatment has resulted in both financial loss and material distress and inconvenience to Mr F, for which the bank must compensate him.

Putting things right

I'm satisfied that it's more likely than not that Tesco's poor handling of Mr F's claim prevented him from recovering his payment as he should have done. The bank should compensate Mr F for this loss by paying him £295.20.

Mr F has been unfairly deprived of the use of his money since the point at which his claim should rightfully have been met. Allowing two months as a reasonable period for dealing with the chargeback appropriately, the bank should pay interest on that £295.20 calculated annually at 8% simple from 19 June 2020 to the date it pays this settlement.

I've thought carefully about Tesco's payment of £50 compensation, made in recognition of delays in reaching the outcome it did in respect of his claim. While our investigator felt this a fair sum, I don't think it adequately reflects the additional distress Mr F experienced due to the poor approach Tesco took to considering the relevant evidence in his claim. I've decided the bank should pay him a further £100 to recognise that additional distress.

My final decision

My final decision is that I uphold this complaint. To settle it, Tesco Personal Finance PLC must, within 28 days of receiving Mr F's acceptance of it, take the following steps:

1. pay Mr F £295.20
2. pay interest on the sum in 1. calculated at 8% simple per year, from 19 June 2020 until the date it pays this settlement. If Tesco Personal Finance PLC deducts tax from this interest, it should provide Mr F with an appropriate tax certificate
3. Pay Mr F £150 (inclusive of £50 already paid) in recognition of the distress and inconvenience he experienced due to its handling of his claim

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 August 2022.

Niall Taylor
Ombudsman