

The complaint

Mr S complains that Tesco Personal Finance PLC trading as Tesco Bank has unfairly refused a chargeback claim.

What happened

In October 2021, Mr S purchased a rental car voucher for his upcoming trip abroad through an online car hire comparison site, who I'll refer to as "D". When he arrived to collect the car from the rental company – who I'll refer to as "G" – he was told he needed an international driving licence, which he didn't have. He asked for a refund, but this wasn't forthcoming. He called D for assistance, but they offered no support.

As he'd paid using his credit card, Mr S contacted Tesco Bank to see if it could help. He said the information on D's website just said he needed to have a "valid licence" – which he has. He acknowledges that on the voucher it sets out G's terms and conditions which say an international licence is required, but he hadn't noticed this and it wasn't provided until after purchase in any event.

Tesco Bank said it couldn't raise a chargeback because to do so, it would need to establish a breach of contract between Mr S and D. It wasn't persuaded there had been one as it was satisfied the requirement for an international licence had been made clear at the point of sale.

Mr S was unhappy with this decision, so he raised a complaint. This was referred to Tesco Bank's dispute team who requested information on several occasions, despite Mr S having already provided it. Tesco Bank apologised for its handling of the complaint and paid £50 compensation. But it maintained its decision not to raise a chargeback. So Mr S brought his complaint to us.

Our investigator didn't uphold the complaint. He was satisfied Tesco Bank had acted correctly and fairly in the circumstances and he didn't think it needed to do anything more. As Mr S didn't agree, the complaint was passed to me to decide. And in October 2022 I issued the following provisional decision.

My provisional decision

Chargeback

The chargeback process enables the card issuer – in this case, Tesco Bank – to settle disputes between a customer and a merchant, provided that the circumstances of the dispute fall within the scheme rules.

The rules are set by the card scheme operator, whose symbol is on the card. And it's for Tesco Bank to review the evidence and decide whether the claim falls within them. If it doesn't, or if Tesco Bank thinks the claim is unlikely to succeed, then it may decide not to raise it. There's no automatic right to a chargeback, nor is it a guaranteed method of getting a refund.

In this case, Tesco Bank has considered whether there's a claim which would fall within the chargeback rules and that would be likely to succeed. And it decided there wasn't. I've thought about whether this decision is fair, based on the evidence I've seen. And I think it is. I'll explain why.

There is a chargeback code for *"goods or services not received"*. I don't think this code is applicable here, because Mr S did receive the voucher from D. I appreciate he wasn't able to hire the car from G, but the dispute is with D as that's who Mr S paid.

Another chargeback code for this claim could be *"goods or service were either not as described or defective"* where it would need to be established that *"the merchant did not honor the terms and conditions of the contract with the cardholder"*. The rules define this as *"including, but not limited to, 100 percent money back guarantee, written promises, or return policy"*.

I've looked at D's website. And whilst I appreciate it may have changed since October 2021, I can see that where it displays the available cars to hire, it shows the symbol of the applicable rental company for each search result. Next to that symbol is a link to the terms and conditions, which pops up in a box. The link to G's terms and conditions displays the following information:

"International Driving Licence:

Please note that if you do not have an EU driving licence you will need to bring an international driving licence along with your original licence to rent the car."

This is the same information that is displayed on page two of the voucher.

Mr S says D's website only said that a "valid licence" is required. But I haven't seen anything to reflect this. Again, I'm aware that the website could've been updated since Mr S purchased this voucher but I've been unable to ascertain what the website looked like back then, and I can only consider the complaint on the information I have available. Currently, under D's FAQ's, it says:

"What are the driving licence requirements?

You will need to take your driving licence with you to pick up your hire car.

Please note that provisional licences and photocopies are not accepted.

If you do not have an EU licence you will also need an international driving licence to rent a car."

Based on what I've seen, I'm persuaded the information made available by D is accurate. I don't know whether this is the same information shown to Mr S at the time of booking, but in the absence of any evidence to show me otherwise, I'll have to assume it was most likely the same.

I've also thought about whether Mr S was unfairly refused any right to a refund given that he couldn't make use of the services he'd paid for. G's terms and conditions on D's website says:

"Cancellation policy:

To obtain a refund of a prepaid booking you must cancel it at least 48 hours before the start of your rental using the links contained in the voucher or through the "My Booking" section of our website. No refunds will be made if the booking is cancelled after the collection time stated on the rental voucher. No refund will be given if you do not collect the vehicle."

On page three of the voucher, it says:

“Cancellation policy:

This is a special offer and therefore non-refundable. It is not possible to cancel or modify this booking. No refund will be given if you do not collect the vehicle.”

Based on this, I don't think Mr S was entitled to a refund in these circumstances. And therefore, I don't think there was a reasonable prospect of success for a successful chargeback.

Section 75

As Mr S paid D using his credit card, he also has potential recourse under section 75 of the Consumer Credit Act 1974 (CCA). I can't see that Tesco Bank has considered this claim under section 75, therefore I've looked at what should've happened if they had done so.

Section 75 of the CCA allows consumers who have paid for goods or services on a credit card to claim against their credit provider for any breach of contract or misrepresentation on the part of the supplier of the goods or services. I've thought about whether Mr S' claim meets the technical requirements, and I'm satisfied it does. I say this because the amount in dispute is over £100 and not more than £30,000, and there is an established debtor-creditor-supplier (DCS) relationship with D – although not with G.

So I've thought about whether there is enough evidence to show D had breached the contract with Mr S or misrepresented the services it was offering. The Customer Rights Act 2015 (“CRA”) is relevant legislation here.

Regarding the supply of services, it says:

“Every contract to supply a service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if... it is taken into account by the consumer when deciding to enter into the contract.”

It goes on to say:

“Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.”

For clarity, I haven't considered whether G's terms / driving licence requirements were fair or not – this is because D aren't responsible for what the terms are and Mr S doesn't have an established DCS with G so section 75 doesn't apply.

As I've explained above, I'm satisfied the driving licence requirements were available on D's website. But I'm not persuaded they were made prominent enough. I say this because whilst there is a link to the terms and conditions next to the applicable rental company's symbol on the search results page, it is very small and almost unnoticeable. In addition, once you've clicked onto a search result, the page you're taken to doesn't display the terms or any link to them. You can then go on to purchase the voucher and at no time does the website prompt you to read anything more before taking payment.

So I'm not persuaded D has performed their service with reasonable care and skill because vital information that Mr S would've taken into account when deciding to enter into the

contract wasn't displayed prominently or brought to his attention prior to the sale. So I think it should've been established that a breach of contract occurred here.

Whilst I do think they're clear and prominent on the voucher itself, this would've only been provided to Mr S after purchase and as it's non-refundable, Mr S wouldn't have been able to recover this money even if he had noticed it prior to his trip.

Conclusion

From the information I've seen, I don't think Mr S has shown that he has a valid claim under the chargeback rules which would likely succeed. But I do think there's a claim under section 75 which should've been successful.

Responses to my provisional decision

Mr S has accepted my provisional decision. He's provided a screenshot of the part of D's website which only refers to a "full driving licence".

Tesco Bank didn't respond.

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.

The screenshot provided by Mr S supports my view that a claim under section 75 should succeed. I say this because D hasn't exercised reasonable care and skill when performing its service as vital information hasn't been made clear or prominent enough for Mr S prior to the point of sale.

As such, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons I've explained, I uphold this complaint and direct Tesco Personal Finance PLC trading as Tesco Bank to:

- Pay the claim under section 75 to the value of £542.74,
- Refund the foreign exchange transaction fee of £14.92.
- Pay 8% simple interest per annum on the above two amounts, to acknowledge that Mr S has been without this money – or with a debt on his credit card – for a year.
- Pay compensation of £50 for Tesco Bank's failure to consider this claim under section 75. This is on the basis that Mr S has been put to avoidable distress and inconvenience by Tesco Bank's failure to explore all avenues to recover his money.

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

Sheryl Sibley
Ombudsman