

The complaint

Mr G is unhappy with the way Tesco Personal Finance PLC ('Tesco') handled his claim for a refund of a payment he made using his Tesco credit card account.

What happened

In December 2019, Mr G paid a travel agent ('T') £4,237.65 for a holiday to Australia, which was due to depart on 9 July 2020. It included international flights, domestic flights and accommodation. He also had to pay a £116.53 foreign transaction fee. In total, he paid £4,354.18.

The holiday was cancelled by T due to the Covid-19 pandemic. It offered to refund the cost of the international flights and 2 nights' accommodation in Dubai. However, it only offered a credit voucher for the domestic flights and accommodation in Australia.

Mr G emailed Tesco on 11 July 2020 to request a full refund. When it didn't respond, Mr G emailed Tesco again on 29 July 2020. He referred to his email of 11 July 2020 – and included in full the content of his earlier email. He asked for a letter of 'deadlock' so that he could refer his complaint to our service.

Tesco emailed Mr G on 7 August 2020 to say it hadn't received his email of 11 July 2020. Mr G replied the same day by forwarding the email he sent Tesco on 11 July 2020. He provided more information to support his claim by email on 16 August 2020.

Mr G referred his complaint to our service on 21 October 2020.

On 22 December 2020, T refunded £3,820.95 (and a foreign transaction fee of £105.07). Mr G contacted us to let us know and to amend his claim against Tesco to the outstanding balance of £428.16.

One of our investigators upheld Mr G's complaint. She concluded that Mr G had a valid 'chargeback' right, and that Tesco could and should have initiated a chargeback. In the circumstances, our investigator didn't think T would have been able to present a valid defence to the chargeback. As it didn't initiate a chargeback, she said Tesco unfairly deprived Mr G of the opportunity to get a full cash refund, and recommended it pay Mr G the outstanding balance.

Tesco disagrees. It said it only had Mr G's testimony, which it says, 'isn't enough to prove [T] has done something wrong in the service promised to him'. And it's referred to T's terms and conditions, which say: 'Cancellation fees are likely to be incurred on all confirmed reservations or bookings.' It says this 'suggests and supports that the refund [Mr G] received is less the fees [T] mentioned in their T&Cs at the time'. And it remained of the opinion that 'the evidence [Mr G] provided Tesco was not enough to satisfy the likelihood of a successful Chargeback claim and we can't agree that one should be honoured'.

As Tesco disagrees with our investigator's recommendations, the complaint has been passed to me for a final decision.

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.

A 'chargeback' is one way for a credit card provider to reclaim money from a supplier's bank when a consumer doesn't get the goods or services he paid for. It isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. The process is subject to the rules of the scheme – which, in this case, are set by Mastercard – and a strict criteria and time limits apply.

The card provider isn't required to initiate a chargeback just because the consumer asks it to – but I think it's good practice for one to be attempted when there's a reasonable prospect of success.

In this case, I think Tesco should have initiated a chargeback. And if it had, I think it's likely it would have succeeded and Mr G would have received a full cash refund. I'll explain why.

First, on balance, I'm satisfied that Mr G emailed Tesco on 11 July 2020 to request a full refund. He sent the emails of 11 July 2020 and 29 July 2020 to the same email address – and Tesco clearly received the email of 29 July 2020. And he forwarded his email of 11 July 2020 to the same email address on 7 August 2020. I don't know why Tesco can't find the email – but I'm satisfied it was sent to Tesco.

I'm also satisfied that Mr G emailed Tesco on 16 August 2020, and attached e-tickets, an itinerary from T, and emails sent to, and received from, T regarding the cancellation and the request for a refund. He sent his email to the email address that Tesco told consumers to use if they wished to 'raise a dispute/Chargeback or Section 75 claim (including those related to Covid-19)'. Again, I don't know why Tesco can't find the email – but I'm satisfied it was sent to Tesco.

Second, our investigator referred Tesco to the relevant section of Mastercard's 'Chargeback Guide' from May 2020, which sets out what's required to initiate a chargeback for 'Goods or Services Not Provided'. To initiate a chargeback, Tesco needed a '[c]ardholder email, letter, message or Dispute Resolution Form', which included:

- 'A description of the cardholder's complaint in sufficient detail to enable all parties to understand the dispute'; and,
- 'A reasonably specific description of the goods/services purchased'.

The email Mr G sent Tesco on 11 July 2020 – and which he forwarded to Tesco on 7 August 2020 – provided Tesco with the information it needed to initiate a chargeback. So I don't accept Tesco's argument that it 'wasn't enough information for [its] Dispute Team to raise a dispute'. In response to our investigator's recommendation, Tesco said it only has one chance to raise a chargeback and it wanted to collect as much information and evidence as possible to 'defend a successful claim'. However, this dispute is very straightforward – and I think Tesco could and should have initiated the chargeback using the information Mr G provided in his initial email. In any event, Mr G provided the information and evidence that Tesco requested – even if Tesco says it didn't receive it – and it's on this basis that I've made my decision.

Third, on balance, if Tesco had initiated a chargeback, I don't think T would have been able to show that the dispute was invalid or otherwise defend the chargeback.

In response to our investigator's recommendation, Tesco used an online tool to obtain a copy of T's terms and conditions that it says applied at the time. It's referred us to the terms and conditions about 'cancellation fees' and 'refunds', which say:

'Cancellation fees

3. Cancellation fees are likely to be incurred on all confirmed reservations or bookings. Further, some tickets may be non-refundable or non-transferable. It is important to check the position with us before you confirm arrangements and/or before you cancel your confirmed reservations.

...

Refunds

7. If you cancel your travel arrangements after paying for the same no refund will be available to you until after we receive the monies from the Principal involved. In most cases, fees will be payable for cancellations and in some instances, you may not be able to claim a refund.'

Tesco says this 'suggests and supports' its view that the refund Mr G received includes a deduction of certain fees that were payable on cancellation, which were mentioned in T's terms and conditions at the time. I disagree. It's clear to me that these terms and conditions refer to what happens when the consumer cancels the holiday – not what happens when the travel agent and/or the Principal cancels the holiday. To suggest, as Tesco does, that T or the Principals can retain a cancellation fee when they've cancelled the holiday by relying on these terms and conditions alone is wholly unconvincing.

Alongside its detailed rules, Mastercard helpfully issued guidance during the pandemic. The guidance it issued at the start of April 2020 makes it clear that there is a chargeback right when the 'cardholder prepaid for services (e.g. flight or hotel reservation) and the cardholder was notified that the merchant will not be able to provide the services'. And it makes it clear that this includes situations 'when they are cancelled by a merchant due to government restrictions, insolvency or other exceptional circumstances'.

There are two exceptions. First, there may not be a chargeback right if the 'merchant has a right to provide the cardholder with reasonable alternatives based on the terms and conditions properly disclosed to the cardholder at the time of the purchase'. Second, there may not be a chargeback right if 'the merchant is required by the government to impose a voucher or other reasonable alternative on the cardholder in lieu of a refund'.

Tesco hasn't referred me to anything in the terms and conditions that permit T or a Principal to offer a credit voucher instead of a cash refund for any part of the holiday – or government legislation or regulation that requires it. I therefore haven't seen anything that suggests T would have been able to successfully defend a chargeback if Tesco had initiated one.

It is now too late for Tesco to initiate a chargeback. As I'm satisfied, on balance, that Mr G would have received a full cash refund if it had initiated one when it should have done, I think Tesco should pay Mr G £428.16 – which is the difference between the amount he paid and the refund he's received.

My final decision

For the reasons I've given, I uphold this complaint and direct Tesco Personal Finance PLC to pay Mr G £428.16 with simple interest at 8% per year from 7 August 2020 until he

receives the money.

If Tesco thinks it needs to deduct tax from the interest element of this award, it should provide Mr G with a certificate of tax deduction if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 December 2022.

Christopher Reeves
Ombudsman