

## **The complaint**

Miss C complains about Tesco Personal Finance PLC trading as Tesco Bank's ("Tesco Bank") refusal to help her obtain a refund of a payment she made using her Tesco Bank credit card or alternatively to reimburse her itself.

## **What happened**

Miss C booked a five night stay in private accommodation via an agency I will call "B". She paid in full for her stay using her Tesco Bank credit card.

The accommodation Miss C booked was a house. The house was described on B's website as a small family home in an idyllic location. There was an accompanying photo of a clean clutter free living room. When Miss C arrived at the house she immediately noticed several issues including:

- Mouse droppings in the fridge,
- Food left in cooking utensils and on the cutlery and rusty cutlery,
- Food on the floor,
- A missing door lock,
- The property was visibly dirty for example with a thick layer of dirt visible on white walls,
- A shattered glass clock on the floor,
- Stained sofa cushions,
- Stained bed linen,
- Dead insects in the wardrobe,
- Broken wardrobe,
- Broken heater,
- Broken tv on the floor,
- Light bulb missing in bathroom,
- Dirty oven with food residue inside,
- Dirty microwave with food residue inside,
- Burning smell from electrical appliance when switched on.
- No certificates showing that mandatory gas and electricity checks had been carried out.

Due to the issues listed above, Miss C set about cleaning the house. In addition, Miss C contacted the supplier of the house and complained, she got nowhere. Therefore, Miss C complained to B. B refunded £44.44.

Unhappy with these responses and the state of the house Miss C left the property and booked a hotel for the remainder of her stay. She also complained to Tesco Bank. Miss C

had paid £544.44 in total to rent the property for her stay and Miss C wanted a full refund of the remaining balance, that is £500.

Tesco Bank looked into Miss C's complaint. Tesco Bank indicated that there were potentially at least, two routes it could have used to get Miss C her money back. It could have looked at initiating a chargeback (I'll talk about this more below) or it could have looked at a claim against itself under section 75 of the Consumer Credit Act 1974 ("Section 75").

However, after investigating her complaint, Tesco Bank declined to uphold her complaint via either route. Tesco Bank came to this decision for several reasons which are set out below.

Tesco Bank's view was that essentially Miss C's complaint was about the quality of the accommodation, and this, in Tesco Bank's view, was subjective and therefore provided no proper basis for it to seek a refund for her or reimburse her itself.

Moreover, Miss C had supplied it with a number of photos to support each of the complaint points, but it was not able to verify if the photos were actually taken at the property. On this basis it did not agree that it could rely on them.

Tesco Bank also pointed out that the reason the supplier had said it was not going to give her a refund was because a) she'd not given it a fair chance to clean up b) she wanted to charge her electric car at the house without the supplier's permission.

Moreover Tesco Bank thought that Miss C was just being too particular about hygiene in any event. To support its view it pointed out that other customers had not mentioned poor hygiene in their reviews of the property.

Tesco Bank also highlighted that Miss C had stayed for three nights, which in itself suggested she wasn't so upset as she claims about the cleanliness of the property.

Miss C responded to say that she had tried to contact the supplier at the time, and she had information to prove this. Moreover, she does not have an electric car.

Dissatisfied, Miss C complained to this service.

One of our investigators looked into Miss C's complaint. She did not recommend upholding it.

Tesco Bank appeared to accept this recommendation, Miss C did not. Miss C provided detailed responses which I've summarised below.

Miss C says that B ought to have provided her with certain information by law and because it did not this was a breach of contract.

Moreover, in Miss C's opinion cleanliness is not a subjective matter in this case. Rather when a property is rented there is a reasonable expectation of a basic level of hygiene which the property did not reach. Further, the level of cleanliness shown in the marketing material and the actual standard in the property were so far apart this was a misrepresentation.

Miss C rented the property during the pandemic. She underlined that hygiene was all the more important in the context of the pandemic and the enhanced cleaning measures required when spaces were being shared, as in this complaint.

Further, Miss C sent in decisions from this service for other complaints which Miss C thought were so similar to her complaint that it would be inconsistent for us not to uphold her complaint too.

Miss C had sought to rely, in part, on Section 75. This provision only applies if certain conditions are met. Our investigator had come to the conclusion that these conditions were not met. Miss C pointed out that Tesco Bank had not raised this issue at all though and therefore she did not think that we should have done either.

Miss C sent us information about reviews from other customers about the property which she indicated backed up her version of events.

Finally, Miss C said that B had only refunded the £44.44 due to sharp practice from the supplier. Miss C wanted to leave a review about her stay on B's website. That is only possible if there has been a stay. So the supplier told B that she did not turn up and stay at the property to prevent her from being able to write a review, accordingly, thinking she was a no-show B had refunded her £44.44.

Miss C asked that an ombudsman take a fresh look at her complaint.

I issued a provisional decision. This is what I said in that provisional decision about what I'd 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.*

*First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.*

*Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.*

*Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Tesco Bank had two routes open to it to get back Miss C's money, a process known as chargeback, or a claim against itself under section 75, I'll look at both options.*

#### *Chargeback*

*As Miss C paid for services using her credit card and wanted a refund, I've thought about whether Tesco Bank dealt with her request fairly. The chargeback process is relevant in this case. This is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules. Here these are the rules of scheme operator Mastercard.*

*Although the process involves card issuers and merchants and Miss C is neither it could still potentially have helped her. This is because in certain circumstances the process provides a way for Tesco Bank to ask for a payment Miss C made to be refunded. Those circumstances include where there is a valid chargeback reasons. Here I think that the valid chargeback reason would be the goods and or services aren't supplied or as described/misrepresented by the company Miss C paid i.e B.*

*A chargeback doesn't guarantee a refund. B's bank could have put forward a defence to any chargeback claim. If the chargeback is defended, Tesco Bank could pursue the chargeback further and ultimately ask the card scheme provider to arbitrate on the outcome.*

*Chargeback is a tool which is available as a means of resolving disputes. There will be times where it is not only fair and reasonable to use it to support a customer, but to pursue it in a particularly robust way, as dictated by the circumstances of the case. I think this is one of those instances and I'll explain why below.*

*Tesco Bank tells us that cleanliness in the context of a property for rent is something that could not be a valid chargeback reason because it is too subjective. But I don't agree I think it is self-evident that a certain level of basic hygiene is implicit in such circumstances. For example, I struggle to accept the notion that Miss C was being unduly picky because she did not find it acceptable that the fridge contained mouse droppings.*

*Further, the photos showed that the very basic level that Miss C was entitled to expect was not met. I know Tesco Bank had misgivings about whether the photos were of the property. I think these misgivings were misplaced. Given the specificity of her complaints and the photos that back it up and the timeframe in which Miss C produced the photos I think it is more likely than not they are photos of the property. In addition, the property owner did not seem to dispute the photos were photos of the property. For this reason too I think the photos document the property as it was when Miss C first arrived.*

*Moreover, the fact that Miss C left the property and moved into a very basic budget hotel room instead suggests to me that the state of the property was as she describes it. It would have been odd otherwise for her to have moved from a house in a idyllic location to one room in a budget hotel. And in turn I think the state of the property Miss C documented shows the property was not as described and or misrepresented.*

*I don't think it undermines Miss C's point that she stayed in the property for three nights. From what I've seen she tried to make the best of it, tried to get the supplier or B to help her, and cleaned the place herself. I don't think this should be held against her. But ultimately she left the property before the end of her stay.*

*Further still the photograph of the property on B's website was part of the description and a representation. I think the photograph was very different from the actual reality of what I am persuaded Miss C found when she walked into the property. The description was so at variance with the reality that I am persuaded for this reason too that the property was not as described and or misrepresented.*

*Moreover, I am persuaded that the supplier was well aware that it had not met the standard required. I say this because I have no reason to doubt what Miss C says about the supplier's actions that prevented her from leaving a review. I also note that the reason the supplier gave for not refunding Miss C's money was not seemingly that the property was clean enough. Rather the supplier said it had not been given a chance to clean up by Miss C. It also mentioned an electric car. These are not defences to a claim that the property was not as described or misrepresented. I realise these are the supplier's reasons not B's defence but I think the fact that the supplier was not able to come up with better reasons was telling. I don't find it likely B could have come up with better reasons. I am persuaded that all of this shows, that on balance, there would have been no credible defence to the chargeback if it had been attempted.*

*As well as basic level of hygiene I think Miss C was also entitled to expect that the property and the electrical and gas items inside it met basic safety standards and this should have been certified. These are legal requirements which are demonstrated via objective tests which should be documented. I think it is implicit in the description of the property and in fact that it was listed on the site that it should be safe, properly maintained and have the paperwork on site to prove it. I am persuaded by what Miss C says about these standards not being met. This too would be a reason for saying the goods were not as described and or misrepresented.*

*Tesco Bank did not go down the chargeback route. That was its choice to make. But for the reasons I set out above I am persuaded that it acted incorrectly and if it had raised a chargeback ultimately it would have succeeded in part. I say in part because given Miss C did stay, albeit under protest for three nights I think she would not have succeeded in getting her money back for those nights given the chargeback rules. But she would have got a refund for the nights she paid for but did not stay.*

*It follows that she should be reimbursed by Tesco Bank for those two nights (£544.44/5 = £108.89 per night) therefore it should pay her £217.78 (=£108.89 x 2).*

*Section 75*

*Miss C paid B by credit card and because she used this type of credit she might have the protection of Section 75. Section 75 says, amongst other things, that in certain circumstances if the debtor has, in relation to a transaction financed by a credit agreement, any claim against the supplier in respect of a misrepresentation or a breach of contract, then she has a like claim against the credit provider.*

*To be clear, I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in deciding what's a fair way to resolve Miss C's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law. Therefore, I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Miss C pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts and operates differently from them.*

*However, Section 75 does not apply in all circumstances. One of the conditions for a successful claim under it is that there must be a valid relationship in place called a debtor-creditor-supplier relationship. The difficulty for Miss C is that Section 75 has very specific requirements in order for there to be a valid debtor-creditor-supplier arrangement in place. In these particular circumstances, when I look at what arrangements that were in place I am unable to say whether such a relationship exists. I think it is appropriate that I look at the qualifying conditions to make a claim under Section 75 before I look at the substance of the complaint. My role requires me to look at the complaint in the round. It would be inappropriate for me to make findings that bind Tesco Bank taking into account Section 75 if I did not first establish if Section 75 even applied.*

*This means all of Miss C's wider arguments about breach of contract and misrepresentation in the context of Section 75 fall away. I have no proper basis for asking Tesco Bank to do anything further in relation to this part of the complaint.*

*For completeness I'll mention the decisions from our service that Miss C wanted me to look at and which she relies on. I am not bound by my colleagues' decisions in those complaints, because ombudsmen's decisions are not binding precedents in the way that the courts' decisions are. Rather, I am required to form my own view of this individual complaint, rather than to follow the views of others in other complaints."*

My provisional decision was as follows:

*"My provisional decision is that I require Tesco Personal Finance PLC trading as Tesco Bank to:*

- If Miss C has not already paid off the £500 balance on her credit card account, it should rework Miss C's credit card account as if she had never paid the £217.78 to B.*
- If Miss C has paid off the £500 balance on her credit card account, make a payment to her of £217.78 with interest at the rate of 8% simple per year. The interest to run from the date Miss C made the payment to the date of settlement.*

*If Tesco Bank considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Miss C can reclaim the tax if she is able to.*

*Miss C should refer back to Tesco Bank if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation."*

I invited both Miss C and Tesco Bank to respond to my provisional decision should they wish to do that. Both of them responded. I summarise their responses below.

Miss C's initial response was that she had no further information to add to my provisional decision.

Tesco Bank thanked me for my provisional decision, but it told me it disagreed very strongly with my reasoning and conclusions. Therefore it asked me to consider its objections and indicated it hoped I would reconsider the decision.

It pointed out the approach this service takes in relation to chargebacks is that it only expects a financial business to proceed with a chargeback provided there was a reasonable chance of success. Tesco Bank considers this to be a fair and reasonable standpoint. It said I had not explicitly said this in my provisional decision, nonetheless it assumed I took the same approach.

Further, Tesco Bank added that it has "*a huge experience and insight in what Chargebacks work and what ones do not.*"

*We are also fully aware that any chargeback attempts are robustly defended not only by the supplier, but the acquirer bank. It is for this reason that it's not enough to say that a chargeback will succeed purely on the basis that the basic conditions for a 1<sup>st</sup> chargeback can be met or that we should pursue one because a consumer is particularly unhappy. It is important to note that Chargeback success hinges on the quality of documentation being provided by the consumer.*

*Furthermore, Tesco Bank will always process a chargeback where we think we have a good prospect for success; There is no benefits to us in not doing."*

It indicated the chargeback reason "Goods or Services were Not as Described or Defective" was the only chargeback reason that it might potentially have relied on here. However, it did not agree that a chargeback based on this reason would have been successful. Tesco Bank's stance is that B would have defended the chargeback. Its reason for saying this was because if B had truly wanted to provide Miss C with a refund it would have done so already. Therefore there would have been a 2<sup>nd</sup> chargeback and for that to succeed an expert's report would have been required. And there is no expert's report.

In summary Tesco Bank reiterated it did not agree that the chargeback would have succeeded. It considered it had given "*quite a concise and thorough explanation as to why we believe a chargeback wasn't worth pursuing which I believe should be sufficient to see this complaint in our favour.*"

Tesco Bank thought it was significant I had come to a different conclusion to our investigator. Which in itself indicated as far as Tesco Bank is concerned, that I had decided this complaint incorrectly. Further, it suggested I look at three separate final decisions which in its opinion all contradicted my provisional decision.

Miss C explained further why she had remained in the property. Under normal circumstances she would not have done. But she had been greatly delayed on her way to the house and arrived late. On arrival she had to go out immediately on an urgent visit. The whole purpose of her stay was to allow her to make these visits. Plus she had complied with B's booking conditions and gave it a chance to sort things out for her and she had been promised alternative accommodation was being sorted out for her.

Miss C asked that Tesco Bank reflect on whether in her case it had taken sufficient action to help her its customer.

### **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made

by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I thank both Miss C and Tesco Bank for their responses. It has been particularly helpful that each of the parties took the time to set out their views on my provisional decision, so that I have been able to gain a fuller understanding of their respective positions and concerns.

It is correct that I did not use the particular wording that Tesco Bank mentions about this service's general approach to chargebacks. However, I think I did make this point sufficiently clear using my own words. However, I recognise that Tesco Bank has laid emphasis on this point, so I'll reconfirm, in this individual complaint and in general I consider it is good practice for a financial business to consider carrying out a chargeback if its customer asked it to do this provided that there is fair chance the chargeback will be successful.

I accept that Tesco Bank has "*a huge experience and insight in what Chargebacks work and what ones do not.*". I'm not questioning Tesco Bank's possession of this experience or insight, rather I'm not deciding the outcome of a chargeback when I look at a complaint like this. I'm considering instead what amounts to a fair way to resolve this matter. Sometimes that means, like here, I will see things differently from the way the financial business does.

I think in this instance Tesco Bank has perhaps misunderstood my starting point. I did not find that Tesco Bank ought reasonably to have carried out a chargeback simply because Miss C was particularly unhappy or because she met the basic requirements for a 1<sup>st</sup> chargeback.

It seems all the parties agree that the chargeback reason Goods or Services were Not as Described or Defective would most likely have applied here. So I've thought again about whether I think a chargeback might have succeeded in this instance based on this chargeback reason alone.

In particular, I've thought about what Tesco Bank has said about the likelihood that B would have raised a defence and that the defence would have succeeded. I've considered what Tesco Bank has said, and I see it differently. I'm not persuaded that B would have defended the chargeback in the circumstances. I can't see what defence it would have had. Moreover, the card scheme operator may reserve the right to ask for an expert's report where appropriate. The wording Tesco Bank sent me indicates that the card scheme operator may do this not that it will always do this regardless of whether it is appropriate or not. It would seem somewhat outlandish to ask for an expert's report on such an open and shut matter. As far as I can see up until now B has never denied that the property was in the state Miss C says she found it in, and that state was well below the standard she was entitled to expect. Moreover, the photos Mrs C took appear to tell their own compelling story. So, even if I am mistaken, which I could be, about whether a defence would have been raised I am persuaded it could have been overcome.

I recognise Tesco Bank disagrees in very strong terms with my conclusions about the likely success of the chargeback. I also recognise that its stance is that its reasons are so overwhelming I must find in its favour. However, I have set out here and in my provisional decision why I have come to a different conclusion to it.

I'm obliged to make my own decision and look at a complaint afresh when it comes to me. It follows, I can therefore come to a different conclusion to that reached by our investigator, should I consider that is appropriate based on the information I have.

As to the final decisions Tesco Bank asked me to consider. I'll repeat I am not bound by my colleagues' decisions in those complaints, because ombudsmen's decisions are not binding precedents in the way that the courts' decisions are. Rather, I am required to form my own view of this individual complaint, rather than to follow the views of others in other complaints. That said, I would be expected to follow our general approach. I don't agree that the reasoning in those decisions mean I should set aside all my previous reasoning.

I've not been persuaded by the responses objecting to my provisional decision that I should set aside all of my previous reasoning. It follows, I have come to the same conclusions for the reasons as set out in that provisional decision and in this final decision.

### **My final decision**

My final decision is that I require Tesco Personal Finance PLC trading as Tesco Bank to:

- If Miss C has not already paid off the £500 balance on her credit card account, it should rework Miss C's credit card account as if she had never paid the £217.78 to B.
- If Miss C has paid off the £500 balance on her credit card account, make a payment to her of £217.78 with interest at the rate of 8% simple per year. The interest to run from the date Miss C made the payment to the date of settlement.

If Tesco Bank considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Miss C can reclaim the tax if she is able to.

Miss C should refer back to Tesco Bank if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 15 February 2023.

Joyce Gordon  
**Ombudsman**