

The complaint

Mr C has complained about the way Tesco Personal Finance PLC handled his request for money back in relation to flights he'd paid for using his credit card.

What happened

In October 2019 Mr C paid £5,945.50 for flights for a party of 25 people. The flights were scheduled for May 2020, but Mr C says due to Covid-19 they were cancelled. The airline offered a one-year credit voucher, which Mr C accepted and rebooked flights for May 2021. Mr C tells us these were also cancelled. Mr C says the airline offered him another credit voucher, but he asked for a cash refund. The airline refused and so Mr C contacted Tesco in June 2021 to request his money back.

Tesco responded to say it couldn't dispute the amount under the chargeback scheme because the claim was received outside the time limits of the scheme operator – 540 days.

Tesco considered the claim under section 75 of the Consumer Credit Act 1974. It said Mr C, his spouse and children (under 18) would be covered. But it said other members of the party wouldn't be because the necessary relationship for a claim to be considered under section 75 didn't exist for them. Mr C complained about the response and referred his complaint to the Financial Ombudsman.

One of our investigators looked into things and upheld the complaint. She agreed the chargeback was brought out of time. But she didn't think Tesco handled the section 75 claim fairly. She said Mr C was considered the 'lead passenger' and that he was effectively acting as an agent for the whole party. She agreed with Tesco's agreement to refund Mr C for him and his immediate family members. But she also thought as the lead passenger, or as the airline calls it, the group booker, Mr C had accepted the terms for the whole party, which indicated he was contracting for all the passengers. So she thought the necessary relationship for a claim to be considered under section 75 did exist. She also thought the claim was within the relevant financial limits.

Moreover, our investigator said it wasn't in dispute that both return flights for 2020 and 2021 were cancelled by the airline. So she thought there was a breach of contract. She noted Mr C would have been due a refund off the back of the 2020 cancellation if he'd asked for it. But she acknowledged he'd accepted a voucher. Our investigator went on to consider the terms and conditions for the voucher. And she noted it didn't mention anything about what would happen if the airline cancelled flights booked under a voucher. So our investigator thought that, to put things right, Tesco should rework Mr C's account as if he'd not paid £5,945.40 for the flights. And if that resulted in a credit balance, she recommended Tesco add interest to the refund.

Mr C agreed, but Tesco didn't. Tesco said it didn't think the necessary relationship existed for the other party members not named on the Tesco credit agreement. It didn't think Mr C being the group booker changed that. Tesco also said that the breach of contract relating to the original flights was remedied when the airline provided a voucher.

I issued a provisional decision that said:

I first want to say I'm sorry to hear Mr C was impacted by Covid-19. And I want to thank him for taking the time to refer his complaint to the Financial Ombudsman.

I'm considering whether Tesco has acted fairly and reasonably in the way it handled Mr C's request for getting his money back. So I've had to think about the specific card protections that are available. In situations like this, Tesco can consider assessing a claim under section 75 or raising a chargeback.

Section 75

Section 75 enables Mr C to make a like claim against Tesco for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met in order for section 75 to apply.

As our investigator pointed out, there needs to be a valid 'debtor-creditor-supplier' (DCS) agreement. In this case the debtor is Mr C, Tesco is the creditor, and the airline is the supplier. But Tesco has said the passengers not in Mr C's immediate family break the DCS agreement.

I've thought about the terms and conditions I've been supplied relating to the role of the group booker – Mr C. They define the group booker as a person who is at least 18 years of age or a business entity (e.g. a travel agent) who makes a Group Booking and who acts as agent for all Passengers in the Group Booking;

The terms and conditions go on to say:

The Group Booker will be responsible for the Group Booking and accepts these Group Terms as an agent on behalf of all the Group Passengers on the Group Booking. The Group Booker will be responsible for receiving and relaying any and all communications/correspondence (including changes, amendments and cancellations) from us or our suppliers concerning the Group Booking to all Group Passengers named in the Group Booking.

By making a Group Booking, the Group Booker agrees and acknowledges that they have the consent of each Group Passenger to disclose their personal data and passport details to us and to receive any refund and, where applicable, any compensation due and payable under the Group Booking in accordance with the General Terms.

The Group Booker also agrees and acknowledges that any of the Group Passengers on the Group Booking may make subsequent changes to it, having passed through the requisite data protection security questions and confirmed to us that they have the Group Booker's consent to make such changes. Provided we have acted reasonably and in good faith upon the answers to our data protection security questions, we shall not be liable for having made such changes if, without our knowledge, the Group Booker's consent had not been so given.

It's not in dispute that Mr C was acting as an agent for all the passengers in the group booking. I find there is a DCS agreement between Mr C, Tesco and the airline. Mr C made the booking and had the overall contract with the airline. The loss he is claiming is his. There's nothing in the contract that prohibits Mr C from claiming the full amount of the refund. The relevant terms I've set out above in fact say that the group booker can receive a refund or compensation due on behalf of the group. I don't therefore think the DCS agreement is broken.

I've gone on to think about whether there was a breach of contract or misrepresentation. It doesn't seem to be in dispute that the 2020 flights were cancelled. So I think there was a breach of contract. And having reviewed the terms and conditions I've been supplied it looks like Mr C was able to receive a full refund. But Tesco has said the breach of contract was remedied when Mr C accepted a one year-voucher.

By accepting the voucher for future services, I think Mr C and the airline agreed to new terms and conditions for the original transaction. So I've thought about what the terms say in relation to the voucher. The general terms say:

- *Vouchers are non-transferable, non-refundable and cannot be exchanged for cash.*
- *Vouchers are not combinable and only one voucher can be redeemed per booking. Vouchers cannot be redeemed after the expiry date.*

I've also looked at the frequently asked questions about the vouchers. But, like our investigator has pointed out, I can't find any terms in relation to what would happen if flights booked using a voucher are also cancelled. So even though the terms and conditions say the voucher is non-refundable, Mr C wasn't able to use it because the airline cancelled the flights. Mr C has said he's not received any refund or used the voucher since.

Therefore, on the face of it, the voucher was used to remedy the initial breach of contract in 2020. But Mr C wasn't able to use it. So I don't think the remedy extinguished the initial claim for breach of contract. Looking at things overall, on a fair and reasonable basis I don't think it's fair he's lost out. And I therefore think Tesco should put things right in line with what our investigator recommended, by reimbursing Mr C the full amount.

Chargeback

For completeness I've thought about chargeback. Chargeback isn't a legal right or a guaranteed way of getting a refund. The rules are set out by the particular card scheme. There wasn't a requirement for Tesco to raise a chargeback, but if there was a reasonable prospect of success, I'd consider it good practice for it to have done so.

Tesco has referred to the chargeback being raised out of time by Mr C as it wasn't made within 540 days of the original transaction date. But, for cases like this, the Covid-19 guidance from the card scheme that is relevant says a chargeback may be considered within 120 calendar days of the voucher or merchant branded gift card's expiration date. Mr C's voucher was valid until 1 June 2021. So I think Mr C did raise his claim in time – he contacted Tesco in June 2021. Moreover, the Covid-19 guidance also says where a customer accepts a reasonable alternative for future service there may be a chargeback right if the reasonable alternative cannot be used as described. That seems to be what's happened here.

Taking all this into account, I don't think the way Tesco handled the chargeback claim looks fair. It looks like there was a reasonable prospect of success via the chargeback route as well. And if the chargeback was successful, Mr C would have received a full refund.

Neither party gave any further comments.

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.

Seeing as neither party has added anything new for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision.

My final decision

My final decision is that I uphold this complaint and direct Tesco Personal Finance PLC to:

- Rework Mr C's account as if £5,945.50 had been refunded from the point Tesco declined his claim, less any refunds it has already made in relation to the claim. If reworking the account results in a credit balance, Tesco should add 8% simple annual interest* from the date the credit balance would have arisen, to the date of settlement.

If Tesco considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It 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 21 March 2023.

Simon Wingfield
Ombudsman