

The complaint

Mr T complains that Tesco Personal Finance Plc has treated him unfairly when it declined to refund him fully for a holiday booking.

What happened

In January 2020 Mr T paid for a package coach holiday for himself and also fifteen family members and friends on his Tesco credit card. This package was supplied by a Company I'll call 'Firm L' and was due to take place in October 2020. The Pandemic took hold and Mr T was offered a voucher. Before Mr T could gain the benefit of the voucher Firm L collapsed. So, left with no holiday and no refund, Mr T took his dispute to Tesco.

Tesco considered the matter and didn't take Chargeback any further due to the matter being outside of the time limit rules. It also considered a claim under Section 75 of the Consumer Credit Act 1974. It offered Mr T a refund equivalent to his and his spouse's portion of the costs but didn't offer him anything in relation to the other fourteen travellers in the group. Mr T thought this was unfair and so has brought his complaint to this service.

Our investigator upheld Mr T's complaint and told Tesco that it should pay the amount Mr T spent on his card for the package holiday, namely £3,649. Tesco didn't agree and so this complaint came to me to decide.

In February I issued a provisional decision saying Tesco should pay the full amount. Both Mr T and Tesco have responded to my provisional 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.

In response to my provisional decision Mr T said he was very pleased with it, accepted it and noted that he'd declined the partial refund that Tesco had offered him.

Tesco said in response to my provisional decision "*We think we've provided sufficient explanation behind our decision, and we believe it to be correct. However, at this stage we have nothing new to add.*" I consider this a disappointing response from Tesco. In my provisional decision I had set out my analysis of the key aspects around the arrangements here and explained why I considered Tesco's position to be erroneous. I specifically asked Tesco to provide a detailed legal analysis if it didn't agree. Yet it has chosen not to do so for reasons unclear, whilst implicitly acknowledging it had opportunity to do so.

As neither party has raised any material arguments against my provisional position I see no persuasive reason to deviate from the position set out in my provisional position. Accordingly Mr T's complaint is successful for the reasons below as was set out in my provisional decision (in italics).

Section 75

Here I must consider what Tesco should do. To do this, I have to decide what I think is fair and reasonable, having regard to, amongst other things, any relevant law. In this case, the relevant law is S75 of the Consumer Credit Act 1974 (the "CCA") which says that, in certain circumstances, if Mr T paid for goods or services on his credit card and there was a breach of contract or misrepresentation by the Supplier, Tesco can be held responsible.

Tesco offered a refund to Mr T of £456.12 in relation to his, and his spouse's, share of the total cost of the trip. So it is clear that Tesco accept that the qualifying criteria for a liability under S75 is in place here. But it contends the span of that liability by stating that its liability doesn't extend to the other members of the party who Mr T paid for. It argues that those individuals have separate contracts between each of them and Firm L. Tesco has said:

"The terms you've referred to confirms that Mr T is a lead Booker - nothing more. He is the contact point between the supplier and each of the individual travellers - for practical reasons, and it's not entirely unusual for this to happen in bookings like this. Each individual traveller's package is itemised within the invoice, creating 16 individual contracts. Each individual traveller has their own agreement with the supplier, Tesco only have a relationship with Mr T and his partner, therefore it is only for that portion we're liable under Section 75. Although under PTR (Package Travel Regulations) each traveller is due a full refund, Tesco are not liable to cover this where the DCS doesn't exist."

Firstly I should start off by saying that Tesco's arguments here are unpersuasive for the following reasons. Whether there are individual contracts created here or not it doesn't necessarily follow that would mean that there isn't a wider contract that Mr T entered into including the other members of the party which Tesco could be responsible for. Such situations are not mutually exclusive. Secondly Tesco says it only has "a relationship with Mr T and his partner therefore it is only for that portion we're liable under S75". However in this case Mr T is the card holder and account holder solely. This is not a joint account, so it doesn't, at least directly, have a relationship with Mr T's partner in relation to this account. So Tesco, by offering for Mr T's partner is implicitly acknowledging that its responsibility carries beyond solely its customer and presumably through the relevant law with regard to joint affairs. Thirdly it goes on to say it's not liable where "DCS doesn't exist" but clearly the qualifying criteria are met for a liability under S75 otherwise it wouldn't have implicitly accepted this by making an offer. So it is clear to me that Tesco's arguments here are unpersuasive.

So does Tesco's liability here extend to the other travellers?

In order to decide on this the relevant law needs to be considered in light of the arrangement made here to establish whether Tesco are liable.

Mr T alone handled the booking and paid for all of the booking on his Tesco card, so it seems he contracted with Firm L to purchase all the bookings here. Firm L's terms and conditions recognise that one passenger must book tickets for others as 'Lead Booker' (see the definition "we will only deal with the lead booking name") and requires:

"You must be at least 18 years old at the time of booking & possess the legal capacity & authority to book as the lead name & travel on holidays with us & take up the offers advertised by us if they are still available. You are responsible for ensuring the accuracy of the personal details or any other information supplied in respect of yourself & any other person travelling on the booking & for passing on any information regarding the booking or any changes made in relation thereto, to all persons travelling on the said booking, including but not limited to information on schedule changes or copies of booking confirmations".

So, as Mr T was the designated “lead booking name”, there can be no doubt that he contracted with Firm L as agent on behalf of himself and the other party members. And I note that Tesco so far have not argued on the point of agency in its arguments to this service.

So whether Mr T, as the person who made the booking, acting as agent on behalf of the others retained a right to sue for breach of the others’ contracts with Firm L would be a matter of interpretation of the contract in place here. That is because an agent may, or may not, have a right to sue, depending on what the parties have agreed.

So the question arises whether, on the true interpretation of the contract between Mr T and Firm L, whether it was agreed he could retain a right to sue Firm L in respect of all of the bookings (not just his own). And here the terms of Firm L are clear in the contract:

“Whether you book alone or as a group, we will only deal with the lead booking name in all subsequent correspondence, including changes, amendments & cancellations.”

So it is clear to me that Mr T as Lead Booker and acting as Agent for all the travellers not only retained the right to sue on his own behalf but also contractually was the only person entitled to liaise with Firm L in relation to “cancellations”. And the terms go on to say in the situation where Firm L cancels a booking that:

“We reserve the right to cancel your holiday in any circumstances but if we cancel your holiday you can either have a refund or accept a replacement holiday from us of equivalent or closely similar standard & price (if one is available).”

Accordingly I have established that Mr T was entitled to book as agent for the other travellers, had express contractual rights to deal solely with Firm L regarding cancellations and that a full refund was available in these circumstances. So It naturally follows that as Firm L didn’t provide the refund there is a breach and that Mr T is entitled to claim on behalf of the other travellers for the entire cost. And under S75 Tesco are jointly and severally liable for breaches by Firm L. Accordingly I find that Tesco hasn’t considered Mr T’s s75 claim to it fairly. And thus it should remedy this unfairness.

For the above reasons and because Tesco has provided no persuasive arguments to the contrary it is my final decision that Mr T is successful in his complaint.

Putting things right

Accordingly I direct Tesco to:

- Refund the £3,649 cost of the holiday to Mr T’s credit card account, backdating this to 6 July 2021 - being the date I think Tesco should have settled his claim.
- Reconstruct Mr T’s credit card account to reflect that the refund was given on this date, ensuring that any associated interest or charges are reversed.
- If, after doing so, this shows Mr T would have been in credit for any periods, Tesco should pay 8% annual simple interest on such amounts from the date he would have been in credit until the date Tesco settles this matter.

My final decision

I uphold this complaint about Tesco Personal Finance Plc, and it must redress the matter for the reasons given in the manner described above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or

reject my decision before 13 April 2023.

Rod Glyn-Thomas
Ombudsman