

## The complaint

Mr R complains that Tesco Personal Finance PLC trading as Tesco Bank re-debited the amount it had refunded him in response to his chargeback claim.

## What happened

Mr R travelled abroad in August 2022. Before travelling he paid to hire a car and bought premium insurance for this. He says that on arrival at the airport he handed over his documents and told the adviser he had insurance. He says he was told he needed to pay a refundable deposit for the car and a full tank of fuel. Mr R says he confirmed with the adviser that the amount he was paying was fully refundable and that there was no insurance involved as he already had this in place, and he says this was confirmed. Mr R paid the amount he thought was the refundable deposit but after the holiday he only received a partial refund. When he contacted the car hire company he was told he had purchased damage insurance.

Mr R raised a claim with Tesco Bank as he had made the payment using his Tesco Bank credit card. Tesco Bank refunded him £324.69 but in January 2023 this amount was re-debited. Mr R raised a complaint saying he was misled over the payment for the insurance and that this issue has caused him upset and distress.

Tesco Bank issued a final response dated 20 February 2023. It said that when Mr R raised his chargeback claim the claim amount was refunded to his account and the merchant is then given 45 days to respond to the dispute. It said the merchant challenged the claim and provided a copy of an invoice Mr R had signed agreeing to pay the charges applied. It said that based on this evidence and as the insurance was provided to Mr R, it was unable to show the merchant had breached the contract and as Mr R had authorised the payment it couldn't proceed with his claim.

Our investigator said that he couldn't say Tesco Bank had handled the chargeback claim incorrectly as evidence was provided that the transaction had been authorised. However, he said that he hadn't seen evidence that Mr R's claim had been considered under section 75 of the Consumer Credit Act 1974.

Section 75 requires a breach of contract or a misrepresentation to be proved in order for a consumer to obtain a refund. Our investigator said Mr R's testimony indicated a possible misrepresentation. He noted that Mr R had purchased insurance before arriving at the airport and had asked about the charges and it was confirmed they weren't for insurance and were refundable. Given this he thought, on balance, the charges had been misrepresented to Mr R and recommended Mr R be refunded £323.75. He also said that Mr R should be paid £75 compensation for Tesco Bank not considering his claim under Section 75.

Tesco Bank didn't agree with our investigator's view. It said for it to accept a claim under Section 75 it would need to have seen evidence to demonstrate a breach of contract or misrepresentation. It said there was no breach of contract as the services had been provided. Regarding a misrepresentation, it said it wasn't known what had been discussed between Mr R and the agent. It said the merchant had provided a copy of a contract signed

by Mr R accepting the charges and that this showed the breakdown of the charges including the amount which was a deposit amount and that this amount had been returned. It said the most likely situation was that the information about the charges was presented to Mr R but there was a misunderstanding rather than any deliberate intention by the merchant to mislead Mr R into paying for items he didn't need.

### **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.

Mr R contacted Tesco Bank to claim back a payment he made using his Tesco Bank credit card in regard to a hire car. He said when the adviser discussed the payment with him he checked that he wasn't paying for insurance (as he already had this) and that the amount he was paying was a refundable deposit. Tesco Bank dealt with the claim as a chargeback and refunded the payment amount to Mr R while it contacted the merchant about the payment. As the merchant defended the payment and provided evidence that Mr R had authorised the payment the amount was re-debited from Mr R's account. In this case I find that Tesco Bank followed the usual process for the chargeback, and I cannot say it was wrong to re-debit the money when the claim was defended.

However, in this case I think it would have been reasonable in this case for Tesco Bank to have also considered Mr R's claim under Section 75. Section 75 allows a consumer to make a like claim against a finance provider in cases where there has been a breach of contract or a misrepresentation.

I agree that there wasn't a breach of contract as it appears that the services Mr R paid for would have been available to him had he needed them. The outstanding issue is therefore whether the services Mr R paid for were misrepresented to him.

Tesco Bank has said that we cannot know the conversation that took place at the airport when Mr R was discussing the payment with the hire car adviser. This is true but Mr R has provided his testimony of events and given his consistency and the other evidence provided I find it reasonable to rely on the testimony he has made. That said, given the conflicting information provided in this case, I am making my decision based on the balance of probabilities, that is what I consider to most likely have happened based on the evidence provided and the wider circumstances.

Mr R paid for car insurance when he booked his car hire and has said he told the adviser this when he went to collect the car. Given this, I find that the adviser should have been aware that Mr R had insurance in place and therefore didn't need to purchase additional insurance products.

I have looked at the document that Mr R signed and while the details are not in English there is information about the charges. The additional charges of €381.40 cover items listed as super relax cover, environmental contribution, smart return and mega relax cover. There is then a separate deposit amount. Given the information in the contract and as Mr R said he had told the adviser he had insurance in place, I find it reasonable to accept he would have asked about these charges and wouldn't have agreed to any charges relating to additional insurance. Mr R has said he was told the charges weren't for insurance and were refundable. While I cannot say for certain what was said, I find, on balance, it more likely than not that Mr R would have only agreed to the charges on the basis that he was told they weren't for insurance and were refundable.

Based on the evidence provided I find, on balance, that the charges were misrepresented to

Mr R and that he agreed to pay these based on the misinformation he received. Because of this I find that he should be put back in the position he would have been had the misrepresentation not happened which would mean he would only have paid the refundable deposit amount. Therefore, Tesco Bank should refund Mr R £332.14 being the amount he paid on 20 August 2022 (£409.71) less the refund he received on 2 September 2022 (£77.57).

Additional to the refund of Mr R's payment I also agree that he should be paid compensation of £75 for the distress and inconvenience he has been caused by his claim not being considered under Section 75.

### **Putting things right**

Tesco Bank should:

- Refund Mr R £332.14 (being the amount he paid on 20 August 2022 (£409.71) less the refund he received on 2 September 2022 (£77.57)).
- Pay Mr R £75 compensation for not considering his claim under Section 75.
- Rework Mr R's credit card as if this transaction hadn't happened. If Mr R is in a credit balance at any stage due to the card being reworked then that credit amount should be paid to Mr R along with 8% simple interest\* on this credit amount.

HM Revenue & Customs requires Tesco Bank to deduct tax from any award of interest. It must give Mr R a certificate showing how much tax has been taken off if he asks for one.

### **My final decision**

My final decision is that I uphold this complaint. Tesco Personal Finance PLC trading as Tesco Bank should take the action set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 December 2023.

Jane Archer  
**Ombudsman**