

The complaint

Mr T complains that Tesco Personal Finance PLC, trading as Tesco Bank, has treated him unfairly in relation to transactions on his credit card which paid a website for flights.

What happened

In March 2022 Mr T used his Tesco Personal Finance PLC credit card (Tesco for short) to make payments for international flights through a marketplace type website ('the Website'). These payments were made to the Website which then arranged flight tickets between an airline (hereon 'the Airline' - a wholly separate company to the Website) and Mr T and fellow travellers. There were three bookings made, one for Mr T and Mrs T and children, one for a relative ('the Relative') and another booking was for a couple ('the Couple'). In each case these were bookings for flights only, these were not package holidays. These flights were for differing dates between the three bookings but enabled all travelling to be in the same country together for a period of time, as it was in essence a group holiday, albeit with differing travel dates between the bookings and differing passengers on the bookings.

In early July 2022, the Airline informed Mr T that the flights had been cancelled. After hearing this Mr T looked to get replacement flights and liaised with the Website, albeit Mr T was and is unhappy with the service provided and the alternate flights suggested by the Website. In the end three replacement bookings were made, mirroring the groups of people travelling as described but for significantly increased cost due to changing pricing and proximity to the dates of travel when these were booked. So Mr T complained to the Website about the increase in costs but didn't get to a resolution which he found acceptable. So he took his complaint to Tesco.

Once Tesco considered the matter fully its final position was that it had raised a chargeback for the original bookings which was successful, meaning that the costs of the original bookings were all refunded. Tesco also considered consequential losses under Section 75 of the Consumer Credit Act 1974 (S75 for short) and refunded the alternative flight costs for the one booking which included Mr T, Mrs T and the children going with them, less the costs of the original booking.

But Tesco said the Debtor-Creditor-Supplier agreement (DCS for short) required for successful claims under S75 wasn't in place for the other two bookings, so it wasn't able to refund the increase in costs of these replacement bookings. Mr T wasn't happy with this, so he asked for our Investigator to issue an assessment on the matter.

Our Investigator felt Tesco didn't have to do anymore. And Mr T remains unhappy and so this complaint comes to me for a 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.

As it stands the original three bookings have been refunded fully through chargeback. This isn't in contention, and as raising a chargeback is good practice and has led to full refunds here I'm satisfied Tesco has treated these bookings fairly in relation to its approach to chargeback.

The replacement booking for Mr T, Mrs T and children has been refunded by Tesco less the cost of the original booking. So in essence Mr T, Mrs T and the children got what they originally booked at the price they originally paid (notwithstanding the difficulties faced in the process of getting to that point and the differences in flights between original booking and the replacement booking). As Mr T hasn't lost out on this booking I think Tesco's position is more than fair considering the factual matrix here. So this booking isn't in contention either.

The focus for Mr T and why he contends Tesco's and the Investigator's positions are with regard to the other two bookings, namely for the Relative (booking reference ending 362) and the Couple (booking reference ending 985). Accordingly I'll only address these two bookings in this decision to any depth as these are the only issues still in contention between the parties.

For clarity's sake I shall explain the factual position here. The Website's terms make clear that by using its services consumers must agree to its terms. And in essence those terms are as follows in this particular scenario. The Website acts as an introducer to flights and as a booking agent of those flights but isn't responsible for the provision of the actual flights themselves (as those are the responsibility of the Airline providing those flights). So consumers who book flights through the Website clearly have two contracts in place, one with the Website for the booking of the flights and surrounding services the Website provides, and an entirely separate contract between the consumer and the Airline for the actual provision of the flights that are booked. Having considered the arguments made by both Mr T and Tesco it isn't overly clear to me that this key distinction has been fully grasped and the consequences thereof either. So when the Airline cancelled the flights the terms of the contracts between Mr T his fellow travellers and the Airline around such circumstances came into play, namely that all such flights should be refunded. And such refunds were achieved through the successful chargebacks that took place. So Tesco didn't do anything wrong here.

The Website's terms (which were agreed to when these bookings were made) make clear that the Website isn't responsible for the delivery of the flights-the Airline is. This is explained in its '*General terms and conditions for booking plane tickets (section) 1 service description*'. So when the Airline cancelled the flights that didn't mean the Website had breached its contracts with Mr T. It meant the Airline had breached the terms of the contracts it had with Mr T and fellow travellers across the various bookings. In the terms quoted above in section 4.4 it goes on to say that the Website '*will assist you in getting the amount of your plane ticket back (not any subsequent compensation, which you would have to directly ask of the airline) by acting in your name and on your behalf with the airline*'. And from Mr T's own admission the Website did assist him and indeed suggested alternate flights (albeit not as quickly as he'd have liked). Mr T says the Website has to organise alternate flights for him. This isn't the case here for flights only and the terms he agreed to. No such responsibility falls on this Website in this case. Mr T is correct in that some situations where the tickets are purchased directly from an Airline (not the case here) or package holidays (not the case here) there is a responsibility for alternate flights to be sourced but not for flights only agreements such as this. So I'm not persuaded that the Website breached its contract with Mr T here in relation to the bookings made.

Tesco has said the DCS arrangement, a pre-requisite requirement to be established before S75 claims can be successful, isn't in place here for the other bookings. So it didn't need to consider whether the Website breached the contract or not. Its clear that the Relative and

the Couple had contracts with the Airline for their flight tickets. And it's clear in the original bookings Mr T paid the Website to arrange these flights. As the Website didn't breach the contracts regarding these bookings there is no reason for Tesco to consider the matter further. And in any event it's clear the Website's terms define its contracting parties as itself and "*Users who access, consult the Website and/or utilise the Comparison Service or avail themselves of the Services of the Company are defined as "Customer"; "Customers"; "You"*". So the Relative and the Couple who did have contracts with the Airline didn't have contracts with the Website for the services the Website provided. And although Mr T paid for the original bookings it's likely he didn't have a contract with the Airline in respect of the bookings for the Relative or the Couple as he wasn't a passenger on those bookings with the Airline-he simply funded those purchases. That isn't enough for Tesco to have to treat him as being party to those contracts with the Airline. So I agree with Tesco in relation to its position regarding the contracts between the Relative and Couple and the Airline-there is no DCS arrangement in place, so Tesco didn't have to consider the matter further.

Lastly I should add that I'm not persuaded the cost of the replacement bookings flows from a breach (as I'm not persuaded that the Website breached its terms) nor that it would be fair for Tesco to bear such costs had there been such a breach by the Website. I'm not persuaded what happened here are actual consequential losses as set out in the relevant law such as in *Hadley v Baxendale* or subsequent case law or legislation. I think these further costs were as a consequence of the wish to still go on holiday and the decision to make the replacement bookings rather than arising naturally from any breach (not that there was a breach by the Website here).

So, all in all, having considered the matter and everything Mr T has said, I'm not persuaded Tesco has to do any more than it already has. So unfortunately for Mr T his complaint does not succeed.

My final decision

For the reasons set out above, I do not uphold the complaint against Tesco Personal Finance PLC, trading as Tesco Bank. It has nothing further to do in respect of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 February 2024.

Rod Glyn-Thomas
Ombudsman