

The complaint

Mr A complains about a claim he made to Tesco Personal Finance PLC trading as Tesco Bank ('TB').

What happened

The parties are familiar with the background to this complaint so I will only summarise the details. It reflects my informal remit.

Mr A paid for a holiday rental booking for £1,223.80 using a booking platform ('the supplier') and paying with his TB credit card.

Mr A says there were issues with the accommodation and it was unsafe for him and his family. However, he was unable to get a refund from the supplier or the landlord of the property and made a claim to TB.

TB considered the matter under Section 75 of the Consumer Credit Act 1974 ('Section 75') but it did not uphold the claim. It said that the requirements for a valid Section 75 claim were not present.

Our investigator upheld the case and directed TB to refund Mr A. She agreed with TB that there wasn't a valid Section 75 claim, however she thought it should have attempted a chargeback. And she thought said chargeback would likely have succeeded.

TB disagrees. In summary it says:

- It made the decision not to progress the chargeback because this would have been a subjective claim – and wouldn't have been successful without suitable supporting documents like an independent report.
- The landlord responded within a reasonable time to confirm they would send someone to review the issues with the property, and there needed to be a reasonable opportunity for it to resolve the issues. It is unable to agree that the timeframe for the landlord's response was unreasonable or that the issues could have been addressed immediately as it would require a skilled tradesperson to attend.

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.

I have considered the submissions by the parties but I will only comment on what I think is key to resolving this matter fairly. This also reflects my informal remit.

It is important to note here that TB is not a supplier of accommodation services. So when deciding if it acted fairly I am focusing on its role as a provider of financial services only.

Because Mr A used his credit card to pay for the booking I consider the chargeback scheme and Section 75 are particularly relevant as they are avenues TB could reasonably have explored in order to recover a refund for him.

Section 75

Section 75 allows Mr A in certain circumstances to hold TB responsible for a '*like claim*' for breach of contract or misrepresentation he has against a supplier of goods or services paid for using his credit card.

However, for Section 75 to apply Mr A also needs to have a relevant agreement with the supplier of goods or services paid for using the credit card. This is referred to as the 'debtor-creditor-supplier' agreement. In this case TB has pointed out that the relevant agreement between the debtor (Mr A) and supplier is not in place – which means Mr A doesn't have a valid Section 75 claim against it.

I agree with TB on this point. In coming to this conclusion I note the following:

- The supplier's contract says that its agreement is with its registered members who make bookings for accommodation with it using its website;
- Mr A was not the registered member of the website who was making the booking with the supplier (it was a family member); and
- Mr A is not named as a party on the booking confirmation in any capacity – indicating he does not have an agreement with the supplier for accommodation.

Overall, despite funding the purchase and staying at the property I am not persuaded Mr A has a contractual relationship with the supplier here. So I don't think the requisite 'agreement' is in place here for him to have a Section 75 claim against TB for its actions. I also note that as Mr A didn't pay the landlord for services using his TB credit card (or have an apparent contractual agreement with it in any event) he doesn't have a claim against TB in respect of the actions of the landlord either.

It follows, that I don't think TB was acting unfairly in declining the Section 75 claim here.

Chargeback

Chargeback is another way of potentially recovering funds paid using a credit card when a dispute arises. It is not guaranteed to succeed but it is often good practice to pursue one where there is a reasonable prospect of success.

Chargeback is run by particular card scheme rules. In this case I note the MasterCard scheme appears to apply so it is that which I have focused on here in deciding what is fair.

I note that discussions to date between TB and our investigator have been in respect of the reason code relating to goods or services being '*either not as described or defective*'. Noting what Mr A said to TB about the dispute I agree that this is the most relevant reason code applicable to the situation here.

TB says it didn't raise a chargeback under this reason code because it didn't think it would succeed. But I don't think that is fair, particularly as Section 75 was not a route Mr A could have pursued further and noting the strength of Mr A's evidence provided to TB (which I go into more below).

TB has indicated it didn't raise the chargeback because of the subjective nature of a dispute like this. However, just because a dispute has a subjective element (as will be inherent to issues around quality of goods or services anyway) this alone does not reasonably prevent TB from raising a chargeback.

Whether the evidence is compelling enough to win a dispute is another matter entirely, and I note that TB has pointed to the lack of independent expert evidence here. However, I note the following:

- Expert or professional reports are not mandatory for a successful chargeback under this reason code – it is clear these are 'optional';
- while I note TB has said that MasterCard 'typically' will not accept a chargeback from photo evidence alone I don't see this supported by the rules which mention various forms of evidence being submissible and no mandatory requirement for certain types of evidence in cases like this;
- this dispute is not a complex one– Mr A's main claim centres around the property being unsafe due to loose/deteriorating floorboards and rusted nails sticking out the floor– matters that can be sufficiently evidenced by alternative means such as photos and testimony; and
- Mr A has provided compelling photos showing broken, deteriorated and distorted flooring, protruding floorboards and rusted nails – which looks extremely unsafe and unacceptable to any reasonable non-expert (Mr A has said he felt the property was structurally unsafe and was worried someone would fall through the floor and the photos support this concern); and
- Mr A's photos are backed up by credible and compelling chat logs with the supplier from the time he discovered the issues – where he describes the extent of the problems with the property and how unsafe it made him and his family feel along with tripping accidents that had already occurred as a result.

I note the severity of the issues is not only illustrated by the compelling photos and chat logs but also Mr A's strength of feeling in leaving the property with his family the following day to seek alternative accommodation.

TB has indicated Mr A did not give the supplier time to sort the problem out. But I don't agree. The supplier agreed this case was urgent due to safety issues identified and gave the landlord 30 mins to 1 hour to respond or it would issue a refund. However, even if the landlord did respond to the supplier within this time I can't see where this was communicated to Mr A who appears to have been left waiting. It appears he only found out it had responded the following day when he had already left the property with his family.

Due to the safety concerns an extremely urgent response was required here and that doesn't appear to have occurred. Mr A left the property with his family the day after raising the issue with the supplier and after not hearing from the landlord within the timeframe the supplier had set for it to get back. I don't think this is unreasonable and I don't think it could be deemed a failure to reasonably attempt to resolve things with the supplier. However, and in any event, even if the landlord *had* communicated with Mr A sooner I don't see how the serious issues with the degraded flooring would have been reasonably resolvable during Mr A's holiday without causing significant inconvenience. So I don't think TB's point about repairs is fatal to a potential chargeback attempt here.

While I accept the outcome of a chargeback is never certain, here I think TB's reason for not raising one is not fair. And while I don't know for sure what the merchant response or possible arbitration outcome would have been I have to make my decision on the balance of probabilities. After carefully thinking about this matter and noting the strong evidence presented by Mr A to support his case I consider it fair to conclude that by not raising a chargeback TB has (on balance) deprived Mr A of a refund.

It follows that it is fair that TB need to put things right for the money Mr A has likely lost through its failure to explore the chargeback process. Our investigator has suggested that a fair resolution would be to re-work the credit card as if the chargeback had succeeded when TB initially appear to have declined it (on 13 July 2023). She also said that it would be fair for TB to refund for 6 rather than the full 7 nights at the property (as Mr A's family had stayed one night). Mr A agreed with this. Overall, I think it is a broadly fair way to put things right in the circumstances.

I am sorry to hear about Mr A's claim that family members were injured in the property, however, is worth pointing out here that I am not considering any claim for personal injury and it isn't something that forms part of a chargeback claim handled by TB. If Mr A is concerned about how accepting my decision might impact any potential claim for personal injury he should seek legal advice before accepting it.

Putting things right

TB should refund Mr A £1,049 (£1,233.80 pro-rated to reflect 6 rather than 7 nights stay) to his card in accordance with my direction below.

My final decision

I uphold this complaint and direct Tesco Personal Finance PLC trading as Tesco Bank to:

- Re-work Mr A's credit card as if it had refunded £1,049 of the transaction to it on 13 July 2023; and
- if said re-working results in a credit balance refund this to Mr A with simple interest at 8% yearly calculated from the date of said credit balance to the date of settlement.

TB should provide a tax deduction certificate to Mr A in respect of any tax it chooses to deduct from Mr A's interest award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 April 2024.

Mark Lancod
Ombudsman