

## The complaint

Mr M complains that Tesco Personal Finance PLC, trading as Tesco Bank, has not treated him fairly in relation to a purchase he made using his Tesco Bank credit card.

## What happened

Mr M booked a cruise through a cruise travel operator, C, using his Tesco Bank credit card. He said the deal he booked was advertised as all-inclusive stating that an open bar, Wi-Fi, excursion credits and speciality dining package were included in the price. On checking the invoice he noticed there was no mention the cruise was all-inclusive. C confirmed the cruise Mr M had booked did not include these extras.

Mr M said he had a screen shot from when he made the booking showing it clearly said the extras were included. After receiving no response to his complaint from C Mr M brought his complaint to Tesco Bank.

In its final response Tesco Bank said the particular scenario Mr M outlined with his booking wasn't covered under Chargeback so it referred the complaint to the Section 75 team. The complaint wasn't upheld by Tesco Bank but it did apologise for the lack of contact during the complaint process and awarded Mr M £100 by way of an apology. Mr M remained unhappy and brought his complaint to this service.

Our investigator concluded that Tesco Bank hadn't done anything wrong. Mr M didn't agree and asked for a decision from an ombudsman.

I issued a provisional decision on 5 February 2024. I said:

*Tesco Bank had two possible routes for obtaining a refund for Mr M, a claim under the Chargeback process and a claim under Section 75.*

*Tesco Bank initiated the Chargeback approach in the first instance. Chargeback is a transaction reversal made to dispute card transactions and obtain a refund if there is a problem with the product. It's important to say that Chargeback is not a legal right, there is no automatic right to it, nor is it a guaranteed method of getting a refund. The card scheme operator checks the nature of the problem against the possible Chargeback reasons to see whether the claim will be successful. If the credit card company feels the claim won't be successful it doesn't have to raise a Chargeback.*

*Tesco Bank told this service that as Mr M intended to use the service he paid for – the cruise - his particular issue wasn't covered under the Chargeback scheme. This is because Mr M intended to use the service he bought and didn't want it cancelled. Given this information it would be unlikely that the Chargeback would be successful with the card scheme provider. I'm satisfied Tesco Bank acted fairly and reasonably regarding Chargeback.*

*The other way that Tesco Bank could have used to refund Mr M would be to raise a Section 75 claim. Section 75 of the Consumer Credit Act 1974 (the 'CCA') protects*

consumers who buy goods and services on credit. It says in certain circumstances the finance provider, in this case Tesco Bank, is legally answerable for any misrepresentation or breach of contract by the supplier, in this case C.

To be able to uphold Mr M's complaint I would need to be satisfied there's been a breach of contract or misrepresentation by C and that Tesco Bank's response to Mr M's claim under Section 75 wasn't fair or reasonable. But I'm not determining the outcome of Mr M's claim under Section 75 as that would be for a court to decide. I'm deciding whether Tesco Bank acted fairly when it dealt with Mr M's claim.

Was there a breach of contract?

The contract was created when Mr M paid the deposit. He bought a cruise with full board (though not with the extras he thought he had purchased). And he raised the complaint with C prior to the contract being executed. So I'm satisfied there wasn't a breach of contract.

Was there misrepresentation?

A misrepresentation is an untrue statement of fact made by the supplier that induces a consumer into entering a contract. The statement Mr M is relying on is the cruise advert online which says:

*"Includes open bar, Wi-Fi, excursion credits and speciality dining package"  
and the price says "from £880 per person"*

When he received his invoice for the cruise it was for full board and the above extras were not included in the price he paid and so he had to pay extra. Mr M very helpfully provided two videos he took showing how he made the booking using similar examples. I've watched both. I have also visited the website but was not able to recreate the examples, likely due to the passage of time and changes to the booking process.

The extras advertised on the examples are not the same as those Mr M saw on his original advert but are very similar. On the first video there are four cruises advertised, two of which have the extras written in red bold font.

When Mr M clicked on the "more info" button a screen popped open called "Just the cruise". On this page it says: "Price includes: Luxury accommodation, all meals inc breakfast, lunch, dinner and snacks. Range of stunning restaurants, lounges, and onboard entertainment."

Mr M then clicked on "take a look". On this page a full description of the cruise is outlined. The cruise price says:

*"Includes: Cruise Extras: includes premium beverages, Wi-Fi, excursion credits and speciality meal" (in bold red)* There is also a full itinerary listed. I note that on this screen it appears to be the case that the extras are included.

Mr M clicked "continue with booking". He is then taken to a page which says "your holiday includes..." On this page there is no mention of any extras. There also isn't any option to include or exclude extras.

Mr M "proceeds to checkout" and lands on the booking page with the same information as the previous screen with no extras mentioned. But I also note there is no mention of "full board" either.

*While the examples Mr M provided were just so, examples, I am persuaded that it's possible this is how the booking proceeded for Mr M's cruise. Not all the cruises on the front page listed the extras in bold red which could be interpreted as not all cruises have those extras included in the price. And through the booking process there were no options to remove or add extras. I consider that at a minimum this is confusing. And I'm also persuaded that it was reasonable for Mr M to believe that those extras were included in the price he paid at the end of that booking process and I'm minded to say that there was a false statement of fact.*

*Did the statement induce Mr M into entering a contract he would otherwise not have entered?*

*Where evidence is unclear, missing or conflicting, I'll look at what's available and the surrounding circumstances to decide what I think is most likely to have happened.*

*Mr M has told this service that without a doubt the reason he chose this specific cruise was because it was advertised as including all the extras for the price shown. He said "we are not wealthy people by any means so when we do go on holiday we like to go "all inclusive" so we don't have to worry about any unexpected expenses on top."*

*I'm not disputing what Mr M has said. And I acknowledge he's provided invoices from previous cruises with these extras included. But it doesn't automatically follow that the statement saying these extras were included induced him into buying the cruise above other features of the holiday. And Mr M hasn't provided any evidence that this was the persuading feature. Other features would include but not limited to the cruise itself, destinations, itinerary, available dates, duration. Mr M purchased a cruise holiday and it's possible there were other elements, including those I've listed, to the holiday which had equal or more weighting in his decision to book. I say this because when Mr M realised the extras were not included he didn't cancel the holiday, and he paid for the extras.*

*When Mr M brought the claim to Tesco Bank it asked him:*

- 1. Do you still intend to use the booking? To which Mr M responded "Yes. I just want them to honour the deal they advertised at the time of booking."*
- 2. Have you asked the merchant at any point to cancel? To which Mr M responded "No, I just wanted them to honour the deal they advertised at the time of booking."*

*Mr M told this service he didn't cancel because he may incur fees and he thought he would be refunded through a claim. But his response to the questions also suggests there were other features of the holiday that were important to him because he wanted to keep the booking. And so, subject to any further information I might receive, I'm not persuaded I've enough evidence to safely conclude or think it likely that the statement of extras being included induced Mr M into entering a contract he would otherwise not have entered. So I'm minded to say that Tesco Bank hasn't treated him unfairly when it dealt with his Section 75 claim.*

*Customer service*

*Mr M also complained about Tesco's customer service when he made his claim. Tesco has accepted the complaint was poorly handled and paid Mr M £100 in compensation. I think this is fair and reasonable in the circumstances.*

Tesco Bank responded that it had no further information to add. Mr M didn't respond 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.

I didn't receive any further comments or evidence, so I see no reason to depart from the conclusions in my provisional decision.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 March 2024.

Maxine Sutton  
**Ombudsman**