

The complaint

Mr P complains about the way in which Tesco Personal Finance PLC handled his complaint when he complained about holiday accommodation and services.

What happened

Mr P booked a two-night break in the UK with a provider which I'll call "W". He and his wife were to stay in one chalet, his grown-up daughter in another, between 9 and 11 October 2023.

Mr P was not happy with a number of aspects of the accommodation. His concerns included:

- an uncomfortable bed;
- a poorly-positioned bathroom mirror;
- a shower which did not work;
- poorly-positioned electrical sockets;
- only having one room key;
- the age of the room; and
- poor sound-proofing.

Mr P complained at the time to W, but no solution was offered. He and his family left after one night. W refused a refund for the second night, and so he referred the matter to Tesco Bank. Because he had paid for the stay with his credit card, Mr P said that it was equally liable with W to provide a refund.

Tesco Bank declined Mr P's request and so he referred the matter to this service, where one of our investigators considered what had happened. He did not recommend that the complaint be upheld. He did not think that Tesco Bank had acted unfairly by not seeking to pursue a chargeback claim. And he was not persuaded that there was an actionable misrepresentation, such that Mr P had a valid claim under section 75 of the Consumer Credit Act 1974 ("section 75").

Mr P did not accept the investigator's assessment and asked that an ombudsman review the case.

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 will make some general observations about my role in making this decision.

I believe I should stress at the outset that it is not for me to reach any decisions about the actions of W. Whilst W's actions are important factual background (which I must of course take into account), Mr P's complaint is about Tesco Bank, and I can only consider his complaint about that business.

I should also mention that Mr P believes that W (and Tesco Bank) declined his claim because he has previously complained about W. I have however considered only Mr P's concerns arising from his stay with W in October 2023. The fact that he has raised complaints in the past does not mean that this complaint is either justified or not justified. And I make no comment on the general standard of service or accommodation provided by W.

Finally, I have not commented on each and every point Mr P has made, or on each and every piece of evidence has provided. That is in keeping with the role of this service as an informal dispute resolution service. I have however considered all the evidence very carefully before reaching my decision.

Section 75

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between Tesco Bank, W and Mr P are present in this case, and the transaction falls within the relevant financial parameters. I have therefore considered Mr P's dealings with W.

Mr P has made it very clear that the accommodation he was provided with did not meet his expectations. It does not however follow that it did not meet the description given to it by W or that it was not of a satisfactory standard – which, under the Consumer Rights Act 2015, goods and services provided to consumers should be. I do not believe that any of the allegations made by Mr P – even if I were to conclude that they were true – properly amount to a breach of contract which could give rise to a claim in damages.

Mr P has suggested that a claim on W's website that its chalets offer “... *a great, comfy night's sleep* ...” amounts to an actionable misrepresentation, because he and his family found the beds uncomfortable and the chalets noisy. I am afraid I don't agree. I think a court would be just as likely to conclude that that claim was little more than an advertising puff. It's not a claim which can be objectively measured.

Be that as it may, it is not for me to say whether Mr P does in fact have a claim against W. Nor is it for me to decide whether he has a claim against Tesco Bank under section 75. What I must do is decide what I consider to be a fair resolution of Mr P's complaint about Tesco Bank's decision to decline his claim. In the circumstances, however, I think it that was a reasonable decision to take.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Tesco Bank) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback

(if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is however primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods have been paid for but not delivered. It can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

In this case, Tesco Bank took the view that a chargeback claim was unlikely to be successful, so did not make one. It is not for me to speculate on the likely outcome of a chargeback claim, had one been made. However, given the nature of Mr P's concerns, I think that Tesco Bank's view that it would probably fail was a perfectly reasonable one to take. The claim had already been declined, and there was no reason to think that it would not have been defended through the chargeback process as well.

Accordingly, I think that Tesco Bank's handling of Mr P's claims was fair and reasonable in all the circumstances.

My final decision

For these reasons, my final decision is that I do not uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 December 2024.

Mike Ingram

Ombudsman