

## **The complaint**

Mr S complains that Tesco Personal Finance PLC, trading as Tesco Bank ('Tesco'), failed to pay out on a claim he made to it about the quality of, and misrepresentation of, a hotel room which he paid for with credit it provided.

## **What happened**

In March 2023 Mr S paid for a hotel room using his Tesco credit card. He did so as a result of being unhappy with the original hotel room he and his wife had been assigned on holiday (and paid for via another supplier). Mr and Mrs S say they spoke to the hotel reception to complain that their first room was too noisy. The hotel accepts it then took them to view an alternative room, which they accepted and paid for. However, they say that the new room was just as noisy as the first, and that the hotel therefore misrepresented its quietness when taking payment for it.

The hotel refuted that, noting that Mr and Mrs S had viewed the room, "...*had a good look at the location...*", and apparently commented that they were "...*happy with...where it was situated.*" And so it denied that there had been any misrepresentation which induced Mr and Mrs S into paying for the room.

Mr S therefore contacted Tesco to make a claim, which it declined, essentially on the same basis as the hotel, noting that any street noise was outside of the hotel's control, and that Mr and Mrs S had not returned to the hotel reception after they moved rooms to complain about a lack of improvement in noise levels. Unhappy with that response, Mr S brought a complaint to us.

Our investigator considered how Tesco had acted in light of its responsibilities under Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, she did not uphold the complaint and concluded, in summary, that she did not have persuasive information to show that there had been a misrepresentation which induced Mr and Mrs S to pay for the room in question.

Mr S doesn't accept that and asked an Ombudsman to look into things.

## **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.

Section 75 enables Mr S to make a claim against Tesco for breach of contract or misrepresentation by the supplier of the hotel room. I'm satisfied that the necessary requirements are in place for him to be able to make a claim under Section 75. So I then have to consider whether there has been a breach of contract or misrepresentation by that supplier.

There are two essential questions for me in this case to decide whether a misrepresentation under the legislation. Firstly, whether I think the evidence suggests it is more likely than not

that the hotel misled Mr and Mrs S about the room in question as being quieter than the first room Mr and Mrs S had stayed in. Then I also have to be satisfied that it was that misinformation which induced them into paying for the second room. Ultimately, I don't think the evidence does support those conclusions, and so won't be upholding this complaint. I'll explain why.

Misrepresentations under this legislation *can* be made by omission – that is, by what a supplier does not make clear when it ought to. Either deliberately or otherwise. Mr and Mrs S have not said that the hotel staff explicitly told them that the new room would be quieter. So clearly omission is a relevant consideration, and I have thought about it very carefully in this instance. I don't doubt Mr and Mrs S's testimony that they expressed their concerns about noise levels in the first room they were assigned when they approached the hotel reception. I also understand that viewing the alternative room suggested by the hotel staff during the day would clearly not have demonstrated unequivocally what the ambience and noise levels might be like at night. Given that the new room was shown by the hotel staff, and its location – a key issue in terms of noise level – apparently a feature of that viewing and worthy of comment, I don't think there is any real evidence to conclude that there was any wilful or deliberate omission by the hotel. And even if I could be persuaded that there had been an unintentional omission (which I am not), I cannot conclude that it was that omission that induced Mr and Mrs S into paying for the second hotel room.

To be able to reasonably conclude that it was a misrepresentation about the noise levels in the room in question which led Mr and Mrs S to pay for it, I would need an evidential basis to say that was the pivotal issue in question for them when they made their decision. Given that they have never disputed the fact that they did not, in fact, complain about the noise levels in that second room, it would be irrational for me to conclude that quietness was their primary motivation when agreeing to pay the hotel for it. They have told me they tried to change hotels, but couldn't get any availability elsewhere. So I accept they weren't happy with the hotel in the round. But that isn't enough to persuade me that any hypothetical omission of information amounted to a misrepresentation under the relevant legislation.

Mr S has provided video evidence demonstrating the noise levels in the second room. I have watched it, at maximum volume as requested, and music and other holidaymakers can clearly be heard. But ultimately that doesn't mean that I can change my conclusions about whether noise levels were their primary motivation in agreeing to pay for that room.

Although I am sorry to hear of Mr and Mrs S's disappointment with their holiday, I don't think there is persuasive evidence here of a misrepresentation by the supplier which induced them to pay for the second hotel room. As a result, and with Section 75 in mind, I don't think it would be fair or reasonable to conclude that Tesco should refund them that cost.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint and Tesco Consumer Finance Ltd doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S and Mr S to accept or reject my decision before 10 December 2024.

Siobhan McBride  
**Ombudsman**