

The complaint

Mrs H complains about the outcome of a claim she made to Tesco Personal Finance Limited ("Tesco") in respect of a cruise.

Mrs H is being represented in this complaint, but for ease of reference I'll refer to Mrs H throughout.

What happened

The background to this complaint is well-known to both parties. So, I don't propose to go into detail about this. I will though summarise the key parts.

Mrs H booked a 24-day cruise for her and her husband with a company I'll call "P" in March 2023. The cost of the cruise was £3,918 and Mrs H paid for this using her Tesco credit card. The embarkation date for the cruise was 23 September 2023.

On 16 August 2023, she called P to ask for information about visa requirements for the cruise. She says P told her that she needed an ESTA to comply with US travel requirements and told her that her husband didn't require one. However, Mrs H's husband was refused entry onto the cruise ship by immigration because he needed an ESTA.

Mrs H says she called P who were unhelpful. So, she called her daughter who advised her to apply for an ESTA there and then and that this should come through quickly enough to allow her husband to be allowed on to the ship. Mrs H says P told her that if her husband got his ESTA confirmation through by a specific time, they would be allowed on. But he wasn't able to get the ESTA in time before the ship left.

A couple of days later, Mrs H spoke to P who told her that her cruise had been cancelled. P then told Mrs H that she and her husband could go on the cruise if they were able to travel to the US and board the ship there. So, Mrs H booked flights to the US, and both boarded the ship there.

Mrs H sent a letter of claim to Tesco in November 2023. In it, she said P had:

- misrepresented that her husband's paperwork was acceptable for the ship when it wasn't.
- misrepresented at the embarkation terminal that nothing could be done about this, which was incorrect as others had successfully applied for an ESTA at the terminal and boarded the ship.
- had breached the contract by saying the cruise had been cancelled when they had no right to do that.

Mrs H explained to Tesco that she spent £2,126.48 in travelling to the US to save losing the entire cruise. She said she was entitled to a full refund of this, the cost of the cruise and damages for distress and inconvenience. Mrs H said her claim was for a total of £9,044.46

plus interest although she said she was prepared to accept £4,500 in full and final settlement of her claim.

Tesco considered Mrs H's claim under section 75 of the Consumer Credit Act 1974 (s.75) but didn't think it should succeed. They told Mrs H that they couldn't establish a breach of contract or misrepresentation by P as their terms stated the onus was on Mrs H to bring the correct travel documentation.

Mrs H complained to Tesco about the outcome of her claim, but they didn't uphold this. They said that P's misrepresentation about the entry requirements happened after Mrs H entered the contract with them. Tesco though offered Mrs H £100 as they accepted they hadn't clearly explained their rationale for the declined claim to her.

Mrs H remained unhappy and referred her complaint to our service. Our investigator didn't recommend that it should be upheld. In summary, she felt Tesco was correct to say they weren't liable for misrepresentation because the representation about the required travel documents was given after she'd entered the contact with P. Our investigator also felt there was no valid claim for a breach of contract as P's booking confirmation stated that passengers were responsible for ensuring they had the correct travel documentation. And she said that P had provided the portion of the cruise from the US onwards to Mrs H and so had provided the services to her as set out in the contract.

Mrs H didn't agree and so her complaint has been passed to me to decide.

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'm looking here at the actions of Tesco and whether they have acted fairly and reasonably in the way it handled Mrs H's requests for help in getting her money back. This will take into account the circumstances of the trip and how P has acted, but there are also other considerations such as their own obligations under relevant law and legislation.

There are two main ways a bank can help a customer recover money paid to a supplier. It can try to recover the money from the supplier under a process known as chargeback. Or it can assess whether its customer has a valid claim under s.75.

Here, Tesco didn't attempt a chargeback. I don't propose though to review if that was a fair decision or not. I say this because Mrs H asked for consequential losses to be refunded to her in addition to the amount she paid for the cruise. Chargeback would only restrict Mrs H to a potential refund of the cost of the cruise. So, I don't think chargeback would have helped her to reclaim what she feels is due even if Tesco had chosen to raise one.

The more viable route for Mrs H to claim a refund in this situation was under s.75 as that provides an avenue to potentially recover some or all of the cost of the goods and services provided to her by the supplier and consequential losses she has suffered, both of which she has asked Tesco to pay to her. S.75 provides that, subject to certain criteria, the borrower under a credit agreement has an equal right to claim against the credit provider if there's a breach of contract or misrepresentation by the supplier of goods and services. I'm satisfied that all the necessary criteria for Mrs H to make a s.75 claim was met.

Firstly, I'm very mindful that Mrs H had an extremely upsetting and unpleasant experience with the cruise. I'm really sorry to hear about this and from reading her submissions about what happened, I have no doubt that this had an enormous impact on her. I do though, as I've said above, have to consider whether Tesco acted fairly and reasonably in relation to her s.75 claim. Tesco can't be held liable for all of P's actions; only what constitutes breach of contract and/or misrepresentation.

Mrs H has said that P misrepresented her husband's travel requirements to her and misrepresented that she had to get the required visa for her husband by a certain time on the day of embarkation.

Broadly speaking, for there to have been a misrepresentation, there had to be a false statement of fact which induced Mrs H to enter the contract with P. As our investigator has pointed out though, the representations that Mrs H says were false happened after she had entered the contract with P. So, it can't be said that those representations, whether false or not, induced her into the contract.

I have no reason to doubt what Mrs H has said about those representations and it's quite possible that P did give her wrong information. However, for Tesco to be held equally liable under s.75, what constitutes a misrepresentation would have to be in line with what I have set out above. And in my view that hasn't been met.

As a result, I don't find that Tesco can be held liable for the misrepresentations made by P that Mrs H has alleged.

I've also considered whether P breached their contract with Mrs H.

The express terms and conditions of the contract were set out and referred to in Mrs H's confirmation of booking and on P's website. The confirmation says:

"BEFORE YOU SAIL – GENERAL INFORMATION

3. It is the guest's responsibility to check with their travel advisor, the government authorities for the countries visited.....to determine/verify visa.....requirements. Princess assumes no liability for a guest's failure to do so. Failure to present required travel documents, visas...at cruise check-in will result in denial of boarding without refund of the cruise or cruise/tour fare".

P's website currently shows that their terms were updated in 2025. So, these weren't relevant or applicable when Mrs H booked the cruise in 2023. I have though looked at an archived version of P's website from 2023 which was from the time Mrs H was booking. In the absence of a full set of terms and conditions from either party I believe this to be a good indication of the terms that applies in this case.

The terms set out under 'visas' on the pre-cruise section of the website that:

"IMPORTANT: Visa and documentation requirements vary by destination and change from time to time without prior notice. Guests should check with the consulate of each country they will visit or a visa service to verify current regulations. It is the guest's responsibility to have proper travel documentation. They should reconfirm visa requirements with the consulate 14 to 30 days prior to the cruise.

The following information is provided as general guidance for U.S. and Canadian passport holders. Because governmental travel requirements change periodically, you must check with your Travel Advisor or the government authorities for all countries you will visit to determine or verify the actual requirements at the time of sailing. Princess assumes no responsibility for advising guests of such requirements".

Here, Mrs H's husband didn't have the necessary travel documents to transit through the US, so P complied with their own terms as set out in the confirmation of booking and denied him boarding. As such, I can't say there was a breach of contract by P not allowing Mrs H's husband to board. And the necessary information about what travel documents Mrs H and her husband needed, and their liabilities and responsibilities in respect of this, were made available to her prior to booking.

Ultimately, the necessary information was made available to Mrs H, before she booked the cruise, and there's nothing within P's terms and conditions to say information needed to be provided in a specific way. I of course understand that Mrs H acted on what she says P then said to her. But their terms do set out that it was the responsibility of the 'guest' to check with the consulate of each country what the correct travel requirements were. And P's terms also denied liability for any refunds or costs that arose from this not being done.

I've finally considered the alleged breach of contract from P subsequently telling her that the cruise was cancelled. However, Mrs H was able to rejoin the cruise at a later point as P allowed her to do so. So, I don't find that P breached their contract as the service was provided to her, albeit not in full. But I haven't found that that arose because of a prior breach of contract by P.

While I know this will be very disappointing to Mrs H, for the reasons I've given above, I don't find that Tesco acted unfairly or reasonably when they declined Mrs H's s.75 claim. I really do sympathise with Mrs H as she now finds herself out of pocket. It may be that she has an action against P through the courts, which includes the potential unfairness of P's terms. But that is far from clear and something Mrs H may wish to take advice on.

My final decision

For the reasons I've explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 8 May 2025.

Daniel Picken
Ombudsman