

The complaint

Mr T complains about the way Barclays Bank UK PLC trading as Tesco Bank (Tesco Bank) dealt with a claim he raised for money back in relation to a hotel stay he'd paid for using his Tesco Bank credit card.

What happened

In July 2024, Mr T booked a room for six- night stay in a hotel in Turkey through a supplier I'll refer to as E. I can't see that he booked any other travel services through E at the same time. Mr T used his Tesco Bank credit card to pay in full which amounted to £251.86. The room was booked on a non-refundable basis in the event of cancellation. He was due to stay in the hotel between the 10 and 16 December 2024.

Shortly before travel, Mr T subsequently cancelled his booking. He had suffered from a medical issue and his doctor had strongly advised against travel. He sought a refund from E, but E refused to provide him with a refund explaining that the booking had been made on a non-refundable basis, and E had contacted the hotel to request if they'd agree to a refund on this occasion and it hadn't agreed to offer one. So, there was nothing further E could do.

Mr T then contacted Tesco Bank to pursue the claim, firstly to try and get his money back through a chargeback dispute and later to make a claim under section 75 of the Consumer Credit Act 1974 (s.75).

Tesco Bank didn't provide Mr T with a refund. It said Mr T had made the booking on a non-refundable basis, that it didn't think he had any rights to claim a chargeback and there had been no breach of contract or misrepresentation on the part of the merchant for a successful s. 75 claim.

Mr T was unhappy with Tesco Bank's stance and referred the matter to us. He reiterated that he cancelled due to serious medical issues, and he didn't think it was fair for Tesco Bank and E to enforce such a strict no refund policy, and in the interest of good faith and exceptional circumstances, it should refund him the amount he paid.

Our investigator didn't think the complaint should be upheld. He explained that Mr T had clearly made the booking on the basis that it was non-refundable. He didn't think that Mr T had satisfactorily demonstrated a breach of contract such that Tesco Bank ought to have treated his claim differently

Mr T disagreed and explained that he felt the non-refundable term breaches the unfair contract terms provisions in the law such as the Consumer Rights Act 2015 ("CRA") and Tesco Bank hadn't acted in good faith. Our investigator explained he'd already considered the law, but his view remained unchanged.

So, as Mr T hadn't accepted the investigator's conclusions the complaint has been referred to me to make a 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.

Firstly, I'd like to reassure Mr T, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of his complaint in this decision as I'm required to decide matters quickly and with minimum formality.

Chargeback

It may be helpful to explain that each credit card provider acts under specific chargeback rules that may be different with other credit scheme providers. The rules are very specific and detailed and usually there's little room for discretion – and they are simply applied to a case as they are.

I understand Tesco Bank looked into raising a chargeback for Mr T, but based on the circumstances of his dispute, decided it didn't have any grounds to raise a chargeback on Mr T's behalf. So, Tesco Bank decided not to pursue the chargeback any further. The rules allow Tesco Bank to claim refunds (whether full or partial) on very specific grounds such as services having been cancelled or refused by the merchant for example. Having looked at the rules, I cannot see a ground that would enable Tesco Bank to raise a chargeback under the circumstances raised by Mr T. So, like our investigator, I don't think Tesco Bank's response to the dispute was unreasonable under the scheme rules.

Section 75

I'm sorry to hear that Mr T has been so unwell and I have no doubt that this has been a difficult time for him. I sympathise with his position. But it may be helpful to explain that I need to consider whether Tesco Bank – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr T's claim. It's important to note Tesco Bank isn't the supplier. S.75 is a statutory protection that enables Mr T to make a 'like claim' against Tesco Bank for breach of contract or misrepresentation by a supplier paid using a Tesco Bank credit card for the provision of goods or services.

But I want to explain from the outset that I can only consider Mr T's complaint on that narrow basis – that is, whether it was fair and reasonable for Tesco Bank to respond to his claim in the way that it did. S.75 is a limited claim, and Tesco Bank isn't responsible for everything E might have done. It is only liable to offer a remedy if Mr T can establish with evidence that there has been a breach of contract or misrepresentation on the part of E.

There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met, and Tesco Bank has also agreed that s.75 applies.

Tesco Bank explained that Mr T bought the hotel room on a non-refundable basis, that he would've been offered an option to purchase a refundable room as well as a non-refundable room, with the latter being discounted in price. This was all clearly explained during the booking process. E's terms also didn't allow for consumers to cancel the booking due to ill health. So, it didn't feel there was any misrepresentation or breach of contract that means it's now liable to offer Mr T a full refund.

I can see on Mr T's booking form that the room is clearly marked as non-refundable in red, and the terms submitted do not have any provisions for consumers to cancel due to ill health. So, it doesn't look like, on the face of it, that there has been any breach of the contractual terms that applied to this case.

Mr T has however mentioned he feels a strict no refund policy is inherently unfair under the law. The CRA gives courts and certain regulators the power to determine whether a term is unfair and, as mentioned above, I understand Mr T feels a strict no refund policy is unfair. I'd like to clarify that our service isn't one of those listed in the CRA to make such determinations, but I must have regard for (among other things) relevant law when dealing with a complaint.

My understanding is that the term that makes the hotel booking non-refundable in the event of cancellation by a consumer wouldn't be deemed unfair simply because it exists as asserted by Mr T. But the courts would look at the circumstances that existed at the time of booking and whether it caused a significant imbalance in the rights and obligations of the parties to the detriment of the consumer. As explained by our investigator, Mr T had the option to book a refundable room but chose not to. As mentioned by Tesco Bank, the non-refundable room was discounted in price (albeit by a small amount). I can also see no reason why he couldn't have booked rooms at other hotels that had different refund policies. These are just some of the circumstances that existed when the term was agreed to by Mr T and could affect the conclusion a court might reach in respect of whether the term might be deemed unfair.

So, I don't think it's sufficiently clear that the term would be deemed unfair and therefore E couldn't rely on its no-refund policy to deny Mr T a refund on this occasion. Accordingly, I don't think there's sufficient evidence that there has been a breach of contract or misrepresentation by E – which are the only situations that would make Tesco Bank liable to offer a refund. And it is for Mr T to provide evidence that there has been a breach of contract to support his claim.

Consequently, I don't think Tesco Bank was acting unreasonably when it declined Mr T's breach of contract claim under s.75. I would like to clarify that I am not saying that a court might not find the term unfair like Mr T believes, but based on the current position I can't properly say that it would. Therefore, in my view, I don't think Tesco Bank has treated Mr T unfairly in the way it responded to his claim.

I would add that I appreciate Mr T is extremely unwell. But neither the chargeback rules nor s.75 claims have provisions regarding exceptional circumstances or ill health. I don't doubt that Mr T cancelled for genuine reasons and sympathise with his position. But the reasons for his cancellation don't alter the fact that, his claim against Tesco Bank, can only be upheld if there is a breach of contract or misrepresentation on the part of E – and nothing I've seen supports the conclusion that E has breached the contract or misrepresented matters to him.

With this in mind, I don't think there are grounds for me to compel Tesco Bank to refund Mr T the full cost of the hotel. I appreciate Mr T will be disappointed with my findings and I am sorry I haven't been able to help him any further. I should, however, point out Mr T doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts and ultimately it's for the court to determine if any terms in a contract are unfair.

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 T to accept or reject my decision before 28 August 2025.

Asma Begum

Ombudsman