

The complaint

Mr H complains about a claim he made to Tesco Personal Finance Limited (Tesco) in respect of a holiday resort not being as described.

What happened

In June 2023, Mr H paid £3,611.62 using his Tesco credit card for a packaged holiday which was to take place between 15 and 25 July 2023. He booked the holiday online through a travel agent who I'll call F. Once he arrived at the hotel, he was unhappy with the following not being as he expected:

- The transfer time had been advertised as taking 65 minutes but actually took 1 hour 20 minutes on the outbound journey and 1 hour 40 minutes on the inbound journey.
- The superior double room was described as having a sofa bed, however there was only an armchair.
- The main restaurant had a dress code.
- The aqua park was described as onsite, but it was actually at a neighbouring resort.
- The resort was described as having a lazy river which was a deciding factor in choosing this hotel for Mr H, and the resort did not have a lazy river.
- The aqua park was said to have a space bowl water slide which it did not have.
- There was supposed to be an inflatable assault course next to the funfair which was not present.
- The description said there would be an indoor pool and hot tub, and although these were there, they were only available to use in the winter months which had not been made clear.

Mr H has said that his wife has a disability which severely limits her mobility. The lazy river is a water activity that she can participate in and was crucial to their decision to book this resort. He has also said that the aqua park not being onsite meant it was more difficult for his wife to get to due to her disability. Mr H has further mentioned that the use of a hot tub helps to relax his wife's muscles and the lack of availability of this facility was a big disappointment.

On return from the holiday, Mr H raised a complaint with F. He had relied on information it provided about the resort and made the booking, and on finding the resort to be not as described he was unhappy. Mr H said he would have chosen another resort which suited his needs better if he had been given accurate information about the facilities. F offered him £650 in cash or £800 in vouchers as a remedy. He asked for this offer to be sent to him in writing and did not receive a response. Unhappy with this, he brought his claim under Section 75 of the Consumer Credit Act 1974 (Section 75 CCA) to Tesco who agreed there had been some misrepresentation and offered him the £650 which F had previously offered.

Mr H brought his complaint to our service. He asked for a full refund of the amount he paid towards the holiday. He disagreed with Tesco's stance that he had made use of some of the package so was not entitled to a full refund. He also disagreed that he was able to move his family to another resort or back home after realising the facilities were not as described due to his wife's particular limitations and he has a young child. Our investigator reviewed the

complaint and found the amount offered by Tesco to be fair in the circumstances of the complaint.

Mr H disagreed and asked for an ombudsman to consider the complaint. So, the complaint was passed to me to decide, and I issued a provisional decision which said:

“Section 75 of the CCA allows – in certain circumstances - for a creditor (Tesco) to be jointly and severally liable for any claim by the debtor (Mr H) of breach of contract or misrepresentation made by a supplier of goods and/or services (F). Both Tesco and Mr H accept that this was a package holiday arranged through F, and under The Package Travel and Linked Travel Arrangements Regulations 2018 – Part 4, Regulation 15(1-2), F is contractually liable to Mr H for performance of the travel services.

It is clear, and neither party is disputing, that misrepresentations were made, and these misrepresentations induced Mr H to enter the contract. Mr H has provided sufficient evidence to demonstrate the information he relied on to make the booking, and that some of the information turned out to be false. It is also not in dispute that the lack of promised facilities fell some way short of Mr H's expectations. Mr H booked a holiday, the main object of which is relaxation and enjoyment. His family has particular needs and the lack of facilities that Mr H specifically wished to include on his holiday to meet those needs would've seriously curtailed his enjoyment of the holiday. So, I will focus on the appropriate quantum to put things right for Mr H.

The description on F's website talked of the a la carte restaurants excluding wearing shorts or swimwear. It is not unusual for there to be requirements surrounding dress at meals at a five-star hotel and F did not specify the dress code for the main restaurant in its description. I don't have the specifics of why the transfers took longer than the suggested 65 minutes but can see it did say “approx. 1 hr 40 min travel time” at the bottom of the airport transfer details. I understand the room was described as having a sofa bed but there was only an armchair. There was a trundle bed in its place which Mr H had removed so although the description was not entirely accurate, I find the general principle of an additional bed being present had been met. I am therefore not minded to give these matters much importance when considering quantum.

There are certain things which would have caused Mr H loss of enjoyment on his holiday. The lack of aqua park on site and having to travel across hotel grounds and a road to access the park would have had more of a significant impact on Mr H than it would on others due to his wife's disability. Mr H is both plausible and persuasive when he speaks of his intentions behind booking a resort with a lazy river. I find that he would not have booked this holiday package if he had known a lazy river was not present at all. I find the same with the hot tub which could only be used during the winter months.

There is no exact science to measuring Mr H's likely loss here. Mr H has asked for the full amount of what he has paid, whereas Tesco has offered £650. What constitutes a suitable remedy needs to take account of the extent to which Mr H lost out on the relaxation and enjoyment that was the object of the holiday, while recognising that the package itself included aspects that were not impaired, such as the flights and other hotel amenities that were available for Mr H to use. I have considered what Mr H has said about wanting a full refund at length but am not persuaded that he should be entitled to all the money back for these reasons. I also need to consider the opening times of the water park which mean even if the facilities were present or as described, he would only have had access to the aqua park and lazy river for four hours of the day.

Having thought carefully about all of the above, I'm minded to propose that Tesco pay Mr H £1,445. I consider this a fairer remedy and an appropriate sum to reflect the

misrepresentations made, the overall holiday experience and its impact on Mr H.”

Both parties to the complaint responded to the provisional decision. Mr H said:

- The core misrepresentations were the lazy river, onsite water park and indoor pool/hot tub. As the decision to book the holiday was based solely on these amenities, the flights and other hotel services become irrelevant, and the experience was nullified.
- The relevant legislation and case law supports putting him back in the position he would have been in if accurate information had been provided. Due to the emotional and financial hardship incurred, interest should also be considered.
- Mr H had saved for several years to book a holiday that was not as he expected resulting in significant financial loss and emotional distress. Due to his wife's mobility challenges, the holiday was a once-in-a-lifetime opportunity which the family has been deprived of.

Tesco said:

- An offer of 40% of the cost of the holiday is disproportionate to the overall holiday as the aqua park was only open for four hours a day.
- The water park is no greater distance from the hotel than its own main pools and amphitheatre, and it is not unusual for large hotels to share amenities.
- The holiday included flights, accommodation, and an all-inclusive package which was utilised for the duration of the stay.
- The terms and conditions of F confirm that a customer should inform F without delay if they have a complaint whilst away, and notify the hotel and F's resort representative. It does not appear this was done.

Mr H has asked for an increased award whilst Tesco continues to find the original £650 offered to be fair. Having considered what both parties have said, I am now issuing my final 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.

The starting point when considering quantum in a complaint such as this one, is putting the customer in the position they would have been in if the false statement which induced them to enter the contract had not been made. In this case, I do not find Mr H would not have booked a holiday, but that he would have booked a different hotel. As Mr H has had a holiday, finding the balance on what feels fair and reasonable to put things right is more complex than simply returning all the funds he paid towards the holiday as he did in fact, have a holiday.

Mr H has benefitted from flights, accommodation, other hotel amenities and an all-inclusive package, as Tesco points out. These were part of the package he booked and although I agree he would likely have booked a different hotel, I do need to consider that he stayed for the duration of the hotel and derived some enjoyment from these. I understand Mr H feels strongly that he derived no enjoyment from these as this was the not the holiday he was promised, but I don't find this makes a difference to my consideration of his having stayed and experienced a holiday. So, I do not agree that more is needed by way of a refund. I can accept however that interest can and should be added to the compensation amount – but only on the difference between what was offered by Tesco and what I have found to be an appropriate amount to put things right in the circumstances.

When reaching an amount that feels fair, I have carefully considered that this misrepresentation adversely impacted Mr H and his family more than it might others. Mr H has told us that he had saved for years to be able to book the holiday. But more importantly, that the lazy river was the only water activity his wife could participate in due to her disability, and that as it is a progressive condition, she is unlikely to be able to participate in the same way if and when they manage to go on holiday again. It is not unusual for large hotels to share facilities but if Mr H been given information about the whereabouts of the water park clearly, I find that he likely would have considered further whether this hotel suited the needs of his family.

I can see Tesco is concerned that a complaint wasn't raised at the hotel itself. I am mindful that Mr H has told us travel would have tired his wife and young child out and they were in no condition to be moved again once they reached the hotel, which is entirely plausible in the circumstances. Mr H also told us within his original submissions that he spoke to the representative of F at the hotel and was told to lodge his complaint once he returned home. So I don't agree terms were breached or that this makes a difference here.

So having considered the further submissions made by both parties, I am reaching the same outcome as outlined in my provisional decision and for the same reasons, with the addition of interest.

My final decision

For the reasons explained above I intend to uphold Mr H's complaint and direct Tesco Personal Finance Limited to take the following actions:

- Pay Mr H £1,445
- Pay 8% simple interest per year* on top of the difference between the amount Tesco offered and the amount I have asked it to pay (£795), calculated from the date Mr H was first offered the £650 by Tesco to the date the refund is made.

*If Tesco Personal Finance Limited considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also provide him with a tax deduction certificate if he requests one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 June 2025.

Vanisha Patel
Ombudsman