

complaint

Mrs B complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to her all of the money that she paid for some holiday accommodation. Her complaint is made against Tesco Bank under section 75 of the Consumer Credit Act 1974.

background

Mrs B used her Tesco Bank credit card to pay for a two week holiday to be taken in July and August 2015. The accommodation provided was not of an acceptable standard. Mrs B and her family stayed in the accommodation for the first week as no other affordable accommodation was available for them – but they paid an additional £489 to move to different accommodation for the second week. Mrs B complained to the holiday company which offered her £150 compensation. She then complained to Tesco Bank under section 75. It agreed that the accommodation wasn't acceptable and offered to refund £750 to her (which was the cost of one week's accommodation) and it paid her £70 compensation because of issues with the way that it had dealt with her complaint. Mrs B did not accept its offer and complained to this service.

The adjudicator recommended that this complaint should be upheld. He concluded that Mrs B booked two weeks in a resort and the accommodation was misrepresented to her. He also concluded that Mrs B stayed at the resort for the first week because she had no other choice but to do so. He said that the holiday company had calculated that the cost of the accommodation for the two weeks was £1,500 – and it was his view that that amount should be refunded to Mrs B. He said that Mrs B had received a benefit from the money that she had paid to change accommodation so she should pay for that. And he concluded that the compensation offered by the holiday company was for its actions and shouldn't be deducted from the amount that Tesco Bank should pay to Mrs B.

Tesco Bank has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- Mrs B will financially gain from the adjudicator's recommendation as she would've incurred costs for alternative accommodation;
- standards of service and level of enjoyment are very subjective terms when considering whether a breach of contract or misrepresentation has occurred and what liability this might incur;
- Mrs B should receive compensation rather than a full refund; and
- the holiday company has offered £150 compensation to Mrs B.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

All parties seem to agree that the accommodation wasn't acceptable. The holiday company has offered to pay £150 compensation to Mrs B (and it calculated that as being 10% of the total accommodation cost of £1,500). But it's my understanding that Mrs B hasn't accepted the holiday company's offer and that £150 hasn't been paid to her. Tesco Bank has offered to refund £750 to Mrs B but the adjudicator recommended that Tesco Bank should refund £1,500 to her.

Mrs B paid for alternative accommodation for the second week of her holiday – she received the benefit of that accommodation and it is fair and reasonable that she should bear the cost of it. But she did not use the booked accommodation for that week – so received no benefit from it. She did stay at the booked accommodation for the first week of her holiday. But given the problems with the quality of the accommodation and the services provided, I consider it to be unlikely that she enjoyed the experience or benefitted from it.

So I find that it would be fair and reasonable in these circumstances for her to receive a full refund of the amount that she paid for the booked accommodation. Mrs B paid £1,500 for the booked accommodation and I find that Tesco Bank should refund that amount to her. I do not consider that Mrs B will gain financially from this.

my final decision

My decision is that I uphold Mrs B's complaint. In full and final settlement of it I order Tesco Personal Finance plc, trading as Tesco Bank, to refund £1,500 to Mrs B's credit card account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 April 2016.

Jarrold Hastings
ombudsman