

complaint

Mr H complains that Tesco Personal Finance Plc won't refund a payment made on his credit card to a secondary ticket selling website ("the Website") for four tickets to a concert.

background

In November 2018 four tickets were purchased through the Website to attend a concert in 2019 using Mr H's Tesco credit card. The total cost charged to his card was just over £1096.

Mrs H (who is also representing Mr H in this complaint) was the account holder with the website. Mr H was the account holder for the credit card and Mrs H was an authorised user of that credit card account. Mrs H received the tickets in time and went to the concert with family. Mr H didn't intend to go to the concert and didn't go when the concert happened.

As soon as Mrs H got the confirmation of purchase of the tickets she complained. She says she thought that the tickets cost about £70 each so she was dismayed to see she'd been charged £1096. She believes that the website lied about the price or that some sort of computer glitch led to the purchase costing a lot more than she says she wanted to pay.

Mr H complained to Tesco who looked into the matter, but it didn't think it could help. This was because it didn't think it could pursue a chargeback because it didn't have a reasonable prospect of success in its view. It also thought a Section 75 claim under the Consumer Credit Act 1974 should be unsuccessful because there was no breach of contract or misrepresentation as far as it could see. So it didn't think it could do any more for Mr H.

Mr H didn't think this was fair, so he and Mrs H brought their complaint to our service. Our investigator looked into the matter. Overall, she didn't think Tesco had acted unfairly by declining Mr H's request for a refund. Mr H didn't agree. So the complaint has been passed to me to decide.

my findings

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

I should make very clear that this decision is not about the secondary ticket selling Website, which isn't a financial service provider and so doesn't fall within my remit. Nor is it about the original purchaser of the tickets who then decided to sell the tickets through the secondary ticket selling Website (which Mrs H then bought). I can see from Mr H and Mrs H's representations to the Investigator after her assessment that they are (understandably) focusing on the behaviours of the website. However whatever issues there maybe with the website's behaviours over time it doesn't necessarily follow that Tesco has treated Mr H unfairly. And the question of whether or not Tesco has treated Mr H fairly is the only question I can decide upon in this decision. This is an important distinction which I hope I've made sufficiently clear.

authorising the transaction

Mrs H accepts she selected these tickets and entered the card details into the website in order to purchase these tickets. She says she didn't agree to the price she was charged. This service has built up a knowledge of the website's processes over a number of years.

Tesco also supplied screenshots of the website process to buy tickets for the same concert that Mrs H bought the tickets for at the time.

I've considered both these sources of evidence of the website's processes. And I'm satisfied that when purchases were made on that website at this time that the total cost was shown prior to the purchase being made. So I don't think the website misrepresented the price to Mrs H when she bought the tickets. I think the total cost is shown before the payment is authorised.

So I think Mrs H properly authorised the transaction and Tesco correctly applied this charge to Mr H's account.

could Tesco challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute about a transaction, as Mr H does here, Tesco (as the card issuer) can attempt to go through a chargeback process.

Indeed, we're aware of cases, with some similar features to this one, where a chargeback has been successful. But I should add that card providers and indeed merchants may decide to refund the cardholder for a variety of reasons including goodwill, commercial pragmatism and other reasons along with outcome of the chargeback being successful through the actual chargeback process. So the cardholder receiving a refund doesn't necessarily mean that card issuers should refund every transaction similar to this one.

I don't think Tesco could've challenged the payment on the basis Mr H didn't properly authorise the transaction, given the conclusions on this issue that I've already set out.

Tesco is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. The supplier (the Website) would then receive that chargeback request and may agree to refund the payment or may contest the chargeback. If it contests, then Tesco should consider this and then if it still feels the chargeback is warranted then it can take the chargeback further and ultimately to the scheme provider (not Tesco) who will then make an independent determination on the matter. So Tesco isn't solely responsible for the decision whether to refund or not when going through the chargeback process. And it can decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success.

When Mr H first spoke to Tesco it pointed out at that stage it couldn't raise a chargeback as Mrs H had ordered the tickets and at that point there was nothing persuasive to suggest that the tickets wouldn't be supplied. So I think Tesco treated Mr H fairly in that position it had taken. Latterly it has said that Mr H got tickets to the event so there is no persuasive evidence of any failure here by the website concerned. And Mrs H accepts that they attended the concert and got in, hence using the tickets that were purchased.

So considering what it knew, all in all, I don't think Mr H has lost out due to Tesco's approach to chargeback here.

how about the Consumer Credit Act 1974?

The transaction was made using Mr H's Tesco's credit card. Under section 75 of this Act, in certain circumstances, he has an equal right to claim against Tesco as he does against the

supplier (the Website) if there's been a breach of contract or misrepresentation by the supplier. In summary section 56 has the effect of making Tesco responsible during the "antecedent negotiations" leading up to Mrs H entering into the agreement. In essence this means Tesco can be held responsible for the things that were done or said during the sales process before agreement was reached.

For a valid claim under this legislation there must be a debtor-creditor-supplier arrangement in place. This is often referred to as the 'DCS relationship' or simply 'DCS'. This means there needs to be the necessary three-party relationship. This often looks like:

- A debtor (who makes repayments to the creditor for the borrowing for the purchase)
- A creditor (who has to send the borrowed amount direct to the supplier)
- A supplier (who has to provide what was purchased to the debtor)

This means the person who paid for the goods, the debtor, should have a contractual relationship with the company who supplied the goods, as well as with the credit provider, the creditor. But this isn't the case here. It was Mr H's credit card account that was used to pay for the transaction (through Mrs H being an additional card holder) but it was Mrs H's account on the website purchasing the tickets.

Mrs H says the credit card account is a joint account, but it isn't. Mrs H is allowed to spend on the credit card account but only Mr H is liable for the repayments. So it's not a joint account. It's Mr H's account which Mrs H is allowed to spend on it.

And Mr H isn't the purchaser of the tickets and he wasn't due to go and didn't go when the concert happened. So in essence he is a fourth party in this situation.

I've reviewed the Website's terms and conditions which explains that in order to be able to use its services account holders must agree to its terms. It also says they will not allow customers to buy tickets unless they have registered with their service. In this case it was Mrs H's account that was used to complete the purchase, so it is Mrs H who entered into the contract with the website as she registered with them and also agreed to their terms when she completed the purchase.

Accordingly I'm satisfied that there isn't the necessary DCS relationship present to make Tesco responsible under this legislation. And thus it is fair that Tesco isn't responsible for any failings by the Website. So Mr H's complaint here fails.

As an aside I should add that for the reasons already given I'm not persuaded by Mr H's and Mrs H's main complaint point that they didn't know the full amount that the tickets cost. I think the total cost was shown before the transaction was completed.

For the sake of completeness I'll address some of the other arguments that have been made.

Mrs H points to online comment about the website, legal processes and a vast array of other relevant argument about the website. And clearly much has changed since those times about ticket selling websites such as this. But all of that doesn't change the fact that I can only consider whether Tesco has treated Mr H fairly in its decision not to refund the cost of the tickets. And it can only be liable if the transaction wasn't properly authorised, it didn't go through the chargeback process properly or if DCS is made out that there was a breach of contract or misrepresentation. And for the reasons given I don't think any of these are the case here.

In summary this is a decision about what Tesco is responsible for. I think that Mr H hasn't lost out here as I think Tesco made a fair decision in not taking the chargeback issue further. I'm satisfied the necessary relationship (DCS) isn't in place here so Tesco cannot be held liable for any breach or misrepresentation by the Website. And I think Tesco correctly applied the cost of the tickets to Mr H's credit card account. So I don't think I can fairly require Tesco to refund Mr H for the tickets.

my final decision

For the reasons set out above, I do not uphold this complaint against Tesco Personal Finance Plc.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to let me know whether she accepts or rejects my decision before 3 September 2021.

Rod Glyn-Thomas
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