

complaint

Mr S complains that Tesco Personal Finance PLC, trading as Tesco Bank, will not refund to him any of the money that he paid for a holiday. His complaint is made against Tesco Bank under section 75 of the Consumer Credit Act 1974.

background

Mr S used his Tesco Bank credit card in June 2015 to pay £4,292.23 for a holiday. The holiday was in July and August 2015 and Mr S had some issues with the holiday. He complained to the hotel, the holiday company and then to Tesco Bank under section 75. The holiday company offered to pay him £300, which was then increased to £600. He wanted a refund of £1,865 because of the issues with the holiday. He was not satisfied with Tesco Bank's response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. She considered that the issues about which Mr S complains are mainly customer service issues and are subjective. She didn't consider that there had been a breach of contract or misrepresentation by the holiday company. She concluded that the holiday company's offer to pay £600 to Mr S as a goodwill gesture covered any loss that he had incurred as a result of any misunderstanding about the vegetarian in-flight meals.

Mr S has asked for his complaint to be considered by an ombudsman. He says, in summary, that: he followed the holiday company's terms and conditions regarding 'in resort/hotel' problems - but they failed to address any of the issues raised; he has provided e-mails which he says show that the holiday company had agreed to provide vegetarian in flight meals; and he is entitled to compensation for his loss of enjoyment.

my findings

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

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr S's complaint about Tesco Bank under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the holiday company.

I can understand Mr S's disappointment about the issues that he experienced with his holiday. But the quality of a holiday is largely a subjective matter. What one person considers to be satisfactory, another might not. And I am not persuaded that there is enough evidence to show that there has been a breach of contract or misrepresentation by the holiday company. Mr S might be entitled to receive compensation for his loss of enjoyment if there had been a breach of contract or misrepresentation. But - as I find that there has not been a breach of contract or misrepresentation - I do not consider that he is entitled to any such compensation in these circumstances.

Nor am I persuaded that there has been a breach of contract about the vegetarian in-flight meals. There has clearly been a mis-understanding but I find that the holiday company did not agree to provide vegetarian meals to Mr S. In any event, the amount of compensation to

which he would be entitled for any such breach of contract would be less than the payment that he has been offered by the holiday company.

As I find that there has not been a breach of contract or misrepresentation by the holiday company, it would not be fair or reasonable for me to require Tesco Bank to refund any money to Mr S. The holiday company has offered to pay £600 to Mr S as a gesture of goodwill. Mr S should contact the holiday company if he now wishes to accept its offer.

my final decision

For these reasons, my decision is that I do not uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 19 February 2016.

Jarrold Hastings
ombudsman