

complaint

Mr T complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to him the money that he paid to rent a holiday villa. His complaint is made against Tesco Bank under section 75 of the Consumer Credit Act 1974 and the chargeback rules.

background

Mr T used his Tesco Bank credit card in August 2016 to pay £3,238.75 to an online booking agent for a holiday villa. He also paid a foreign exchange fee of £89.06. He says that the holiday villa wasn't as described and that there were numerous faults with it. So he complained to the villa owner, the management company and the booking agent about the faults. He then complained to Tesco Bank under section 75 and the chargeback rules - but he wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. She said that Mr T had agreed to the booking agent's terms of use which say that: the booking agent can't be held liable in any instance where the quality and condition of the property aren't what was expected; and any disputes between a consumer and supplier aren't the responsibility of the booking agent. She said that Tesco Bank didn't raise a chargeback as there wasn't a reasonable prospect of success – and she thought that it acted fairly and reasonably by not raising a chargeback in this instance. And she said that Mr T made the payment to the booking agent - and not to the supplier – which broke the direct link between the debtor, creditor and supplier, so Tesco Bank cannot be held liable under section 75.

Mr T says that he's unhappy with the investigator's recommendation and would like his complaint investigated further.

my findings

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

There's no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there's a reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made. But in these circumstances there was no reasonable prospect of a successful claim. The booking agent's terms of use say that it can't be held liable if the quality and condition of the property aren't what was expected and that it isn't responsible for disputes between a consumer and the supplier. And its obligation was to pass Mr T's payment to the villa supplier – which it had done. So I don't consider that there was any requirement for Tesco Bank to make a chargeback claim in these circumstances – or that it acted incorrectly in not doing so.

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's been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier. In this case Tesco Bank is the debtor because it has provided credit to Mr T, Mr T is the creditor because he's used that credit to pay for a villa booking and the supplier is the villa supplier. But Mr T's payment was made to the booking agent – not to the villa supplier. So there's no direct relationship between Tesco Bank and the villa owner – and Tesco Bank has no liability under section 75 for any breach of contract or misrepresentation by the villa supplier.

For these reasons, I find that it wouldn't be fair or reasonable in these circumstances for me to require Tesco Bank to refund any money to Mr T – or to take any other action in response to his complaint.

my final decision

So my decision is that I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 July 2017.

Jarrold Hastings
ombudsman