

## **complaint**

Mrs C complains about Tesco Personal Finance PLC's refusal to give her the refund she has requested.

## **background**

In July 2017 Mrs C's daughter with Mrs C's permission used her mother's credit card supplied by Tesco PF to book an appointment with a government body. Mrs C's daughter thought she had booked this appointment directly with the government body, she had not. Rather, unknown to her, she had actually booked the appointment via a third party who I shall call "P".

After receiving Mrs C's payment P booked the appointment with the government body on Mrs C's behalf. It appears that P's website whether through design or chance, at first glance at least, could have been mistaken for the government agency's website. This is because both P and the government agency had very similar names and due to the services P offered. There was no need for Mrs C to have used P the appointment could just have been booked directly with the government body. Without realising who she was agreeing to pay, Mrs C paid P £153 to book the appointment.

However, later on Mrs C decided to cancel the appointment. She contacted the government body for a refund. After some to and fro the government body explained what had happened. It charges £128 for the type of appointment that Mrs C had wanted. It had refunded the £128 to P as that is where the payment to it had come from. It also explained that P charges £25 as an administrative charge to book the appointment, which is why Mrs C had ended up paying £153 for an appointment that costs £128.

Mrs C could not get a refund from P. When she contacted it, she got no response. Therefore, because she had paid by credit card Mrs C asked Tesco PF for a refund.

Tesco PF looked at two routes for getting Mrs C's money back.

First Tesco PF looked to see if it could carry out a chargeback. Chargeback is a process which allows customers to ask for a transaction to be reversed if there is a problem with goods or services that they have paid for. The finance company has to raise the chargeback on behalf of its customer. A customer though has no automatic right to require a financial business to raise a chargeback. Nonetheless Tesco PF was willing to do this. The rules for chargebacks are not set by Tesco PF, but by an international organisation which facilitates payments between different banks in the same and different countries. But under these chargeback rules Mrs C had left it too late to ask Tesco PF to help her. As a result, it was out of time to raise the chargeback on her behalf. Tesco PF has no leeway to alter these rules.

Next, Tesco PF thought about whether it could raise a claim under section 75 of the Consumer Credit Act 1974 ("section75"). The general effect of section 75 is that if a consumer has a claim for misrepresentation or breach of contract against the supplier he can also bring that claim against the finance provider who financed the contract with the supplier provided certain conditions are met. However, when Tesco PF got down to the nitty-gritty of the complaint it decided it couldn't use this provision to help Mrs C. It said this for two reasons, it had not seen the terms of the contract between Mrs C and P on that basis it did not know if there had been a misrepresentation or a breach of contract it just could not

tell. Further, it pointed out from its perspective the supplier here was actually the government agency. It, the government agency, was going to have an appointment with Mrs C. But Mrs C had not paid the government agency, she'd paid P. This is a difficulty for Mrs C it thought because for section 75 to come into play there needs to be a particular type of relationship in place between Mrs C, Tesco PF and the supplier. This relationship is known as a debtor-creditor-supplier relationship. However, it seemed to Tesco PF there was no relevant debtor-creditor-supplier relationship here, because of the payment to P.

Dissatisfied with this response Mrs C came to our service.

One of our investigators looked into Mrs C's complaint. He recommended that Mrs C's complaint should be upheld in part. He made this recommendation because he concluded that section 75 was relevant law in relation to this complaint. He had to take account of relevant law when deciding what was fair and reasonable. Our investigator considered that there was a valid debtor-creditor-supplier arrangement in place between Mrs C, Tesco PF and P. This was because Mrs C had contracted with P to make an appointment for her with the government agency. Moreover, she had paid P directly for this service. So, it was indeed the supplier for the purposes of the debtor-creditor-supplier relationship needed under section 75.

Further, our investigator thought that the terms and conditions that had been on P's website in July 2017 had been incorporated into the contract. The terms and conditions indicated that if the government agency gave a refund, it P would in turn, give a refund to its customer. But although the government agency has refunded Mrs C's money to P, P had not passed on this refund to Mrs C. Our investigator thought this was a breach of contract. On that basis he thought it was fair and reasonable to recommend that Tesco PF refund £128 to Mrs C, to put this right.

That said, our investigator also thought that the terms and conditions made it clear that P was able to keep its administration charge even in these circumstances. Moreover, P had carried out the service it was paid for, that is to book the appointment. For all of these reasons our investigator did not recommend that Tesco PF had to refund the £25.

It appeared that Mrs C accepted this recommendation. However, she did suggest the government body was at fault too as she thought it should have refunded the £128 to her and cut out the middleman, P. She indicated this would have been the right approach as her stance is that P had acted in bad faith.

Tesco PF rejected our investigator's recommendation. In short, it didn't agree that the contract could be construed in the way our investigator read it. Accordingly, Tesco PF asked that an ombudsman review Mrs C's complaint.

### **my findings**

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

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mrs C has expressed dissatisfaction with the actions of the government agency. It is not a party to this complaint. I have no power to make any findings about it or tell it to do anything. So, whilst I appreciate Mrs C holds it to blame for some extent, I am going to make no further comment on this point as it will get us nowhere.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Both parties agree that Mrs C paid P £153, that the third party agency refunded £128 of that £153 to P and that P did not pass that refund on to Mrs C. Mrs C's position is that she is entitled to that refund, Tesco PF says she categorically is not. So, I've thought about is there any reason why Tesco ought to fairly and reasonably give Mrs C her money back since P has declined to do so.

When I think about what is fair and reasonable I take account of relevant law. I think section 75 is relevant law here as it covers contracts paid for by credit cards such as this one.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. Rather, in deciding what's a fair way to resolve Mrs C's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law, as I have already said. Therefore, I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mrs C pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts.

Section 75 says, amongst other things, that in certain circumstances if the debtor has, in relation to a transaction financed by a credit agreement, any claim against the supplier in respect of a misrepresentation or a breach of contract, then she has a like claim against the credit provider.

One of the prerequisites for raising a claim under section 75 is that there needs to be a valid debtor-creditor-supplier relationship. Earlier in this complaint Tesco PF's stance was there was no such relationship here. It appears now though that Tesco PF has accepted there is a valid debtor-creditor-supplier relationship. However, just in case I am mistaken, and Tesco PF is still arguing this point, I'll deal with it. The end supplier was the government agency that's what Tesco PF is or at least was previously relying on, but I think that is not the point. Using finance provided by Tesco PF, Mrs C paid P to provide a service, i.e. to book the appointment. That being so I think the parties have the type of debtor-creditor-supplier relationship which gives Mrs C the protection of section 75. It makes no difference that ultimately it was the government agency not P that was going to have the appointment with Mrs C. It follows that I think I can move on to looking at misrepresentation and breach of contract.

I realise that Mrs C seems to have very strong feelings about the behaviour of P. However, I can make no findings against P, again this is because I have no jurisdiction to cover P's behaviour. That said, I can look at whether it misrepresented itself thereby making Mrs C

enter into the contract with it. Some businesses do deliberately set out to pass themselves off as government agencies in order to benefit financially from the confusion they cause, I have no doubt that Mrs C did think she was dealing first hand with the government agency, but why did she think this? I've taken a look at the P's website and in particular its homepage as at July 2017. I've focused on the homepage as this is the page that Mrs C's daughter was most likely to have seen. I do find it suggestive that P chose to use a name which is very similar to the name of the government agency. However, on the homepage albeit at the very bottom of it, P did say:

*"We are not affiliated with [name of government agency] from which similar information is available at gov.uk. We are an independent service provider"*

That information about who P was, was on the homepage it was not hidden away in small print on some other page on the website which Mrs C's daughter might not have reasonably been expected to scroll to. It's a fine line, but, on balance, given that P did disclose its status, fairly prominently that is on its homepage, I don't think it is fair or reasonable to find that it misrepresented itself. It follows I don't agree that Tesco PF must put things right because P misrepresented itself.

Next I looked at breach of contract. We don't have a copy of the contract between Mrs C and P. But we do have a copy of the terms and conditions which were on the website at the relevant time. I am satisfied that these were incorporated into the contract.

In summary the terms and conditions say no refunds will be given after receiving an appointment reference. But the clause goes on to say this is only because the government agency does not refund booking fees after this point *"therefore we are unable to return this fee"*. The clear implication of this, I find, is that if the government agency does give a refund, as it did here, then the booking fee will be refunded by P. Tesco PF seems to reject this reasoning as it seems it is relying only on the first part of the sentence that talks about no refunds being given after the booking reference is allocated. But I think the clause is meant to be read and understood in its entirety.

Further I am, taking account of relevant law, I think this clause is capable of having different meanings and I am permitted to give the reading that is most favourable to the consumer. That is the meaning I have preferred above.

For all of these reasons, it follows that since P did not refund Mrs C it has not kept to the terms of the contract. That being so, I find it is fair and reasonable that Tesco PF must refund Mrs C £128 plus interest.

I don't agree that Tesco PF must also refund the £25. Much as Mrs C suggests that P was a rogue trader, it did book the appointment for her for which it charged the administration fee. That being the case, I find I have no proper basis for saying Tesco PF must refund this money too.

For completeness I looked at chargeback. I'm satisfied that Mrs C was out of time to ask Tesco PF to do the chargeback. Even if she had been in time it is unlikely she would have got back any more than I am awarding now, so I don't see that Mrs C has lost out. And even if she had lost out due to no chargeback being raised, which she has not, that would not be something that Tesco PF was responsible for, as it did not cause her to miss the chargeback deadline.

Finally, I would like to take this opportunity to apologise to both parties for how long it has taken this service to reach this stage. I thank both Mrs C and Tesco PF for their patience.

**my final decision**

My final decision is that Tesco Personal Finance PLC must give Mrs C a refund of £128 plus interest on that refund at the rate of 8% simple per year. The interest to run from the date of payment until the date of settlement

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mrs C can reclaim the tax if she is able to.

Mrs C should refer back to Tesco PF if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 4 July 2021.

Joyce Gordon  
**ombudsman**