complaint

Mrs C complains that Tesco Personal Finance PLC rejected part of her claim under Section 75 Consumer Credit Act 1974 in respect of a holiday.

background

Mrs C booked and paid for a holiday for herself, her husband and their two adult children. The travel company went into liquidation and she made a chargeback claim which was paid in full.

She managed to book another two rooms at the same hotel, but one of these was an upgrade and as both were more expensive she made a consequential loss claim under Section 75. Tesco upheld her claim but said it looked to reimburse costs on a like for like basis. The original booking included a similar suite and it offered to refund the increased cost of that room which was £612.41. However it considered the other room was an upgrade on the original and refused to cover the increased cost.

It also said that one room had been occupied by Mrs C’s adult children and as there was no connection between them and the bank it believed the required debtor-creditor-supplier link had been broken. Mrs C had paid an additional £2,270.82 for the holiday and refused Tesco’s offer.

The complaint was investigated by one of our investigators who recommended that it be upheld. She noted that Mrs C paid the agency to book two hotel rooms for her. The contract was for it to supply the service of booking the rooms for Mrs C. How she intended to use those rooms isn’t material to the agency’s contractual obligation to make that booking. As it failed to book the hotel rooms, there had been a breach of contract.

The investigator considered that as a result of this breach Mrs C had incurred the extra cost of the alternative booking. She accepted that Mrs C initially booked two junior suites and when she rebooked the rooms, she booked one junior suite and one prestige junior suite. However these were the only rooms available and had to be booked as a result of the agency failing to do so. As this is a direct consequence of the breach of contract she believed the extra costs should be covered.

Given Tesco had accepted that there was a debtor/creditor/supplier link as it reimbursed Mrs C for the initial holiday booking she considered it should cover the cost of the children’s room.

Tesco didn’t agree and said that section 75 only covered situations where the customer benefits from the purchase. In this case the customer booked two rooms but only benefited from one room.
Had the Mrs C booked the other room for friends, it would not be looking to uphold as this would be considered a gift, therefore just because it is family there is no reason to change the decision.

my findings

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

My role isn't to decide whether or not Section 75 applies here. Rather, I'm required to decide what, if anything, Tesco should do to resolve this complaint. In doing that, I must decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. Relevant law includes Section 75.

I consider that Tesco are looking at this issue too narrowly and so have missed the key point. Mrs C booked a holiday for her family which comprised two hotel rooms. Her children weren't paying for their room. It was her choice to take them on a family holiday. I am satisfied that Mrs C derived benefit from having her close family with her on holiday. The fact that the children would also derive some benefit from it doesn't prevent Mrs C also obtaining benefit from the contract she entered into.

I appreciate that Tesco feel it is only obliged to compensate Mrs C on a like for like basis, but she tried to book similar replacement rooms in the same hotel and could get only one junior suite and so had to book a slightly better suite. It wasn't open to her to book identical rooms to those she originally booked. That was a direct consequence of the failure of the agency and I am satisfied that the additional costs she incurred were consequential losses for which she should receive recompense.

my final decision

My final decision is that I uphold this complaint and I direct Tesco Personal Finance PLC to refund £2,270.82 to Mrs C. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 23 January 2017.

Ivor Graham
ombudsman