

## **The complaint**

Ms N complains that Tesco Personal Finance PLC trading as Tesco Bank didn't do enough to help her to recover money she'd paid on her credit card for a holiday she couldn't take.

## **What happened**

Ms N arranged holiday flights for herself and her family through an online booking agent "G". She paid for the flights using her Tesco Bank credit card. Unfortunately, shortly before the holiday a member of the group became ill. Their condition was contagious so Ms N called G to see if the flights could be rearranged or refunded. G referred Ms N to the airline "P".

P told Ms N she could get a refund if she supplied a doctor's certificate to show the passenger was unable to fly. Ms N paid £60 for the doctor's certificate. However, P then said it was unable to assist directly and referred Ms N back to G, through whom she submitted her doctor's certificate. G told Ms N it could not guarantee a refund. However, Ms N heard nothing further from P or G and turned to Tesco Bank to see if it could help.

Tesco Bank said it couldn't refund or otherwise assist Ms N without clear evidence that she was entitled to a refund. P hadn't confirmed that Ms N was entitled to this; only that it would consider refunding. It suggested Ms N refer to the retailer to resolve the dispute.

Ms N was unhappy with Tesco Bank's investigation and stance. She said she'd paid by credit card for protection and had followed the steps P and G had requested to submit her medical evidence. Tesco Bank acknowledged there'd been shortcomings in its service. It had initially referred Ms N back to the retailer, and the bank hadn't returned Ms N's calls. It offered her £75 in recognition of this. However, Tesco Bank wasn't minded to change its position on whether Ms N was due a refund of her transaction, and so she contacted us with her complaint.

Our investigator didn't think the bank was liable to compensate Ms N further. He felt there was insufficient evidence to demonstrate that Ms N was contractually entitled to a refund, as might be required for a successful breach of contract claim. And he considered Tesco Bank had acted reasonably in declining to submit a chargeback claim based on the card scheme requirements.

Ms N didn't accept the investigator's conclusions and asked for this review.

## **What I've decided – and why**

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

I can understand why Ms N is frustrated with the situation she's found herself in through no fault of her own. It seems that because she booked her flights through G rather than directly with P, her submissions and request for a refund also have to be made to P through G, rather than directly with the airline. There are provisions within G's terms and conditions for

G to issue a voucher in the event of a customer cancellation, but this is subject to the purchase (at additional cost) of G's 'Cancellation Guarantee'. Ms N didn't purchase this.

Clearly there was an undertaking from G to forward to P Ms N's medical certificate and any other submissions. I don't know whether G failed to do so, or whether P received them but took no further action. There was a breakdown in communication that prompted Ms N to turn to Tesco Bank to see how it might assist. But that doesn't create an obligation on Tesco Bank to resolve the problem between Ms N, P and G.

Rather, it should prompt the bank to look at what it could do to help. In this case that would be to see whether it had any liability to Ms N for what had happened, and if not, to see whether it would be possible to assist by means of a chargeback.

I'm conscious Ms N has said she used her credit card because of the protection it afforded her. Using a credit card to make a purchase does, in certain situations provide some additional protection when buying goods and services. The mechanism for this is section 75 of the Consumer Credit Act 1974. Whilst section 75 isn't equivalent to say, a travel insurance policy, buying with this form of credit can enable a breach of contract or misrepresentation claim to be brought against the credit provider, rather than only being able to claim against the supplier.

For Tesco Bank to be liable to refund Ms N under section 75, she would need to be able to demonstrate that G – the party to whom she made her payment – either made a false statement of fact that induced her to enter into the contract with it, or that it breached its obligations under the contract.

One of the key problems in Ms N pursuing a section 75 claim against Tesco Bank is that if there was any obligation to rearrange the flights or refund Ms N's payment, it would arise either out of her contract with P or her discussions with that party, rather than any agreement or conversation she had with G. Because Ms N made her credit card payment to G rather than P, Tesco Bank wouldn't be liable to her under section 75.

The other mechanism by which Tesco Bank might assist Ms N is by raising a chargeback claim. It can only do this if the claim falls within the card scheme rules. If a valid chargeback right exists under the rules, and there is a reasonable prospect of a successful claim, I'd expect Tesco Bank to raise a claim. Not every dispute between a customer and a supplier is covered by chargeback. The closest fit under the MasterCard rules is that goods or services were not as described or defective, which includes a supplier failing to honour the terms and conditions of a contract. However, that rule does say that the cardholder must abide by the refund policy at the time of purchase.

The chargeback rule doesn't appear to allow for a claim on the basis that the supplier agreed to consider a refund outside of the terms agreed at the point of purchase, which is what Ms N says happened. That's not to say Ms N doesn't have grounds for complaint against P (and possibly G). It's that it doesn't appear she's able to claim her money through the chargeback process unless the contract agreed when she bought the flights entitled her to a refund in the circumstances in which she cancelled.

I can therefore see why Tesco Bank considered it necessary to request evidence to show that Ms N was contractually entitled to a refund, rather than P had later agreed to (or indicated it would be agreeable to) refunding Ms N. In the absence of such evidence, I don't consider Tesco Bank treated Ms N unfairly by declining to proceed with the chargeback claim.

The bank has previously acknowledged some service shortcomings. It offered Ms N £75 to reflect the distress and inconvenience those shortcomings caused her. I think that's a fair way for Tesco Bank to settle Ms N's complaint, and Tesco Bank should pay this sum to her if it hasn't already done so.

### **My final decision**

My final decision is that Tesco Personal Finance PLC trading as Tesco Bank should pay Ms N £75 in settlement of her complaint, inclusive of any sums it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 3 October 2023.

Niall Taylor  
**Ombudsman**