

The complaint

Mrs G complains about how Tesco Personal Finance PLC ('Tesco') handled a claim she made to it.

What happened

In August 2022 Mrs G used her Tesco credit card to purchase flights from a travel agent ('the agent'). She says the airline unfairly prevented her from boarding the flights and wants a refund.

Tesco considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It said that Mrs G was not allowed to board because she didn't meet the airline's Covid19 requirements. And it did not uphold her claim.

Mrs G's complaint about the way Tesco handled the claim was referred to this service. However, our investigator did not uphold it. In summary, he said:

- Mrs G did not comply with the published government health guidance for travellers to her destination which required her to be vaccinated or have a valid PCR test;
- there wasn't a successful Section 75 claim for breach of contract because both the terms of the agent and the airline refer to the customer being responsible for complying with travel requirements relating to health/Covid-19; and
- there wasn't the option for a successful chargeback claim either.

Mrs G disagreed so the matter has come to me for a decision. In summary, she says the government website explains you had to do a PCR test at the destination – so she should have been allowed to board. And the airline also could have let her make some use of the first leg of the flight even if she didn't use the connecting flight to the final destination where the restrictions were. She says she thinks the airline didn't want to help her as the flight was delayed 24 hours and it would have meant putting her family in a hotel.

I issued a provisional decision on this matter where I said:

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

I am sorry to hear about the upset Mrs G has had with the disruption to her travel plans. I know she has strong feelings about what has gone on but I won't be commenting on everything she has said. This isn't intended to be a discourtesy – it just reflects my role in resolving disputes informally. I will focus on what I think are the key matters here. Firstly, it is important to note that Tesco is not the supplier of flights. So it isn't generally responsible for the customer service Mrs G received from the airline. There are specific card protections which Tesco can consider in order to help Mrs G (being chargeback and Section 75) – it is those I have focused on here.

Chargeback

Chargeback is a way Tesco can help Mrs G recover money she has spent on her card. However, the chargeback scheme is limited by specific rules set down by the card scheme (in this case Mastercard) and it isn't guaranteed to get money back.

Mrs G's dispute doesn't really fit the chargeback rules available to Tesco. For example a common chargeback reason such as 'service not provided' is unlikely to have succeeded here because Mrs G was provided with the tickets and the flights were available. The issue here is more about her being denied boarding for health reasons related to Covid-19 – and that isn't really covered by a chargeback reason code. Because of this I don't think a chargeback had a reasonable chance of succeeding here. Therefore I don't think Tesco acted unfairly in not raising said chargeback.

Section 75

Section 75 in certain circumstances will allow Mrs G to hold Tesco liable for breach of contract or misrepresentation by a supplier of goods or services she paid for using her Tesco credit card.

However, in order for Section 75 to apply there are certain criteria that need to be satisfied. One of those is there needs to be the correct 'debtor-creditor-supplier' ('DCS') agreement for a valid claim.

I note here that Mrs G's dispute is essentially with the airline. It is the airline who she has an agreement with regarding the terms and conditions of carriage. And it is the airline she is saying should have let her board – but didn't. However, I don't think Mrs G has a valid claim against Tesco for any potential breach of contract by the airline because her card payment was made to the agent.

Because Mrs G's card payment funded the agreement with the agent she potentially has a claim against Tesco for any breach of contract by it. Because Mrs G has not provided us with an invoice it isn't clear if it is her which has the contract with the agent. However, even if it is Mrs G who had the agreement with the agent – I don't think the agent has likely breached its contract with her in any event.

In the absence of terms provided by Mrs G I have looked at the archived terms and conditions of the agent which appear to relate to the time of Mrs G's booking. Looking at the terms and conditions it appears that the agent simply agreed to arrange the booking and carry out administration in respect of changes and alterations. I don't think it is responsible for how the flight operates or the discretion of the airline in refusing travel to individuals. I also note that its terms warn Mrs G that in booking with it she acknowledges that suppliers will have implemented certain measures as a result of Covid-19 which she will need to comply with. So I think it would be difficult to argue that the agent had failed to act with reasonable care and skill in warning Mrs G about the possible measures she might face.

Because Mrs G's Section 75 claim is technically limited to the agreement she has with the agent and because the agent has not breached its agreement with her - I don't think it would be fair to hold Tesco responsible for what has occurred here.

However, in the interest of completeness even if I were wrong about the DCS issue above - I don't think that the airline clearly breached its own terms in any event. I understand Mrs G has not provided the terms and conditions that she got relating to her booking but I have

seen archived terms from the time (Aug 2022) which I consider it reasonable to rely on in the absence of other information. These state amongst other things:

1. General

You are solely responsible for complying with all laws, regulations, orders, demands and travel requirements of countries to be flown from, into or over, and with our regulations and instructions...

I have also seen that screen grabs of the airline website provided by Tesco from July 2022 which show it required unvaccinated travellers to the country in question to present a negative PCR test in order to be allowed to board for departure. The airline later wrote to confirm this was the policy in place at the time.

Mrs G has confirmed she was not vaccinated and it appears she did not have the PCR test. So it appears that in any event the airline was not in breach of contract in refusing Mrs G entry. And while Mrs G has presented her account as to why she thinks the airline refused her boarding and suggests that the airline should have provided flexibility in allowing her to travel some of the way ultimately I don't think these are breaches of the contract she had with the airline but customer service concerns. As I have already said – Tesco isn't responsible for general service issues.

I want to underline here that although I have mentioned the actions of the airline I maintain that Mrs G's Section 75 claim against Tesco doesn't cover this. It is about the agreement she has with the agent paid using her credit card. And as I have already said – it is quite clear that the agent isn't responsible for the decision regarding boarding.

While I empathise with Mrs G's situation I am looking at the actions of Tesco in handling the claim. With this in mind, and considering my reasoning above I don't think it acted unfairly in declining her claim.

I proposed not to uphold the complaint. I asked the parties for their comments.

Tesco said it had nothing further to add and agreed with the decision.

Mrs G did not agree with the decision. In summary, she:

- questioned when the airline updated its rules on travel as she never saw much information when she wanted to travel;
- points out the UK government website stated you could fly to the destination and take a PCR test on arrival; and
- thinks the airline would not let her party fly or be flexible in allowing them to fly some of the way because of the delays which meant it would have to put them up in a hotel.

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.

While I thank Mrs G for her response to my provisional findings I consider this to be broadly a repetition of things she has already told us, and which I have already considered in coming to my provisional findings (as set out above). So I don't think it is necessary for me to address these in detail. I still consider the findings in my provisional decision to be fair and

reasonable for the reasons I have already given,

I note Mrs G has suggested that at the time she flew the airline did not have the policy in place requiring travellers to be tested or vaccinated. I don't know for certain what the airline's policy was at the time but based on the information I do have it appears that it likely did require these things – the airline has also confirmed that was the case too. However, as I have already indicated in my provisional decision – this all falls away in any event– because even if I could accept that the airline had likely breached its contract with Mrs G (and I don't here based on the evidence I have) she does not have a valid Section 75 claim against Tesco for the actions of the airline. I have already explained my reasons for this in my provisional decision.

I am once again very sorry to hear the impact of the situation on Mrs G. But I am looking at what Tesco should fairly do here as a provider of financial services, rather than get into the wider arguments in respect of the pandemic and the possible motives of the airline. After considering Tesco's liability I don't think it fair for me to direct it to refund Mrs G.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 29 August 2023.

Mark Lancod
Ombudsman