

## **The complaint**

Mr G complains about how Tesco Personal Finance PLC trading as Tesco Bank (TB) handled his request for help to recover his money through Section 75 of the Consumer Credit Act 1974.

## **What happened**

Mr G booked a hotel room using his TB credit card. He chose the hotel and the room specifically for the view of the surrounding mountains explained and shown on the hotel's website.

Upon arrival at the hotel, Mr G found his view of the mountains was severely hampered by construction work at the neighbouring property. He asked the hotel if he could have an alternative room, but none were available. Because of this, Mr G checked out of the hotel and sought alternative accommodation in another town that met his requirements.

When he returned home he asked TB to help him recover his money, as the original hotel had charged him the full amount. TB explained to Mr G that they didn't think he had a valid claim under the chargeback scheme or Section 75 (s75) of the Consumer Credit Act 1974 as they didn't think the contract had been breached or misrepresented to him. They felt the mountains could still be seen, albeit only partially, and this fulfilled the hotel's obligations as their description of the room said Mr G would have a view of the surrounding mountains.

Mr G brought his complaint to our service. Our investigator upheld it. He felt there had been a misrepresentation of the hotel room and its view, which induced Mr G into booking it. Our investigator said that Mr G had checked straight out of the hotel once he'd seen his room and the views, which supported his argument that he wouldn't have booked the room had the correct information been available to him prior to booking. Our investigator asked TB to refund Mr G the total amount for the hotel stay, including any interest charges and foreign transaction fees. He said they should rework his credit card account and pay 8% simple interest on any periods of positive balance following that rework.

Mr G accepted this. TB didn't. They maintained they didn't feel the hotel room had been misrepresented as Mr G could see some of the mountains.

As TB didn't agree, it's been passed to me to decide.

## **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.

Having reviewed TB's final response letter and outcome response to Mr G they accept they have s75 liability in this case. And it's also my opinion that Mr G had a right to a chargeback claim to be raised in his case. I think the code '*Goods or Services Were Either Not as Described or Defective*' would have been the most suitable chargeback code for TB to have raised Mr G's claim for a refund. And I'm satisfied that, had TB assessed Mr G's claim

correctly, he would have had a very realistic prospect of success – either through the chargeback scheme or through s75. I'll explain why.

Mr G has explained his reasons, and provided evidence to support them, why he had booked the room that he did. It was clearly important to him that the room afforded him the views he was expecting from the information he had been provided with on the hotel's website. This is borne out by the fact he checked out of the hotel and sought alternative accommodation elsewhere as soon as he became aware the views he was anticipating were not as he had been led to believe prior to his booking.

TB have argued that they don't believe the hotel room and views were misrepresented to Mr G, as parts of the mountains were still visible. They have said that the description of the room explained Mr G would have a view of the mountains, and TB believe this has been fulfilled from the photos Mr G has provided. But a misrepresentation doesn't only include words and statements – photos can also be considered when looking at a misrepresentation. And there is no doubt in this case that the photos on the hotel website show an unobstructed view of the surrounding area and mountains. Whilst I accept the photos are described as samples on the website, I'm satisfied they should resemble the reality of the situation. In this case, they don't. Mr G's view of the mountains from his hotel room was completely hampered by the construction work at the neighbouring property. I'm satisfied TB should have taken the photos into account when considering the misrepresentation brought to them by Mr G. I find them extremely hard to argue against as they are very persuasive in suggesting the hotel room had been misrepresented at the time Mr G made his booking.

It's also worth noting, although it's not relevant to this decision, that the hotel website has now been amended to explain that the room Mr G booked only has a partial view of the surrounding mountains. The website also confirms there is ongoing construction work at the neighbouring property. Based on Mr G's testimony and the evidence he's provided, I have no doubt that, had this information been explained on the hotel website when he was looking into booking it, coupled with the fact that he checked out of the hotel as soon as he was aware the view from the room wasn't what he was expecting, he wouldn't have proceeded with the booking and would have found alternative accommodation that would have met his requirements.

As I'm satisfied Mr G would have had a good chance of success had TB assessed his claim properly, I think it's fair to ask them to refund the total amount of £1,023.44, plus any interest charges and foreign transaction fees, to Mr G. They should make this refund to his credit card account from the time they declined his claim by reworking his account and paying 8% simple interest on any periods of positive balance that come about as a result of the rework of the account. TB should also explain their workings to Mr G when they confirm their settlement to him in writing.

## **My final decision**

For the reasons above, I uphold this complaint. Tesco Personal Finance PLC trading as Tesco Bank must:

- Refund Mr G the total amount of £1,023.44. They should also refund any interest charges and foreign transaction fees.
- Pay Mr G 8% simple interest on any periods of positive balance that come about as a result of the reworking of the account, as outlined above.\*

\*If Tesco Personal Finance PLC trading as Tesco Bank consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr G how much they've taken off. They should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 March 2024.

Kevin Parmenter  
**Ombudsman**