

The complaint

Mrs N is unhappy with how Tesco Personal Finance PLC trading as Tesco Bank (TB) handled her request for help under Section 75 of the Consumer Credit Act 1974.

What happened

In March 2022 Mrs N used her TB credit card to pay for a cruise for her and her family through a company I'll refer to as V. At the time of booking, V were running a promotional offer of an additional \$200 per cabin to spend onboard. As Mrs N had booked two cabins she was expecting to receive \$400 to spend onboard in addition to any other onboard credits she had chosen or been given. In total, Mrs N was expecting to have onboard credits totalling \$900.

As the cruise was concluding Mrs N attempted to find out, via the cruise's app and by speaking to employees on board the ship, how much remaining credit she and the other travellers had to spend. It was confirmed to her that \$55 was left – which Mrs N used before the cruise ended.

However, when she received the invoices for both cabins she realised that she'd only been given \$600 onboard credits for the trip – meaning the information she'd received via the app was incorrect. Mrs N felt this was a breach of contract and raised it with V when she returned home. She was unhappy she hadn't received the total amount of credits to spend onboard.

V weren't able to help so Mrs N approached TB for some assistance. TB looked at her case under Section 75 (s75) of the Consumer Credit Act 1974 but didn't uphold it. They told Mrs N that the onboard credits were a promotional offer that had to be spent onboard, and there was no facility that allowed for a cash reimbursement of any amounts that weren't utilised during the cruise. They said that, as the credits were a promotional offer and not part of the contractual value of the trip, there hadn't been a breach of contract.

Mrs N brought her complaint to our service. Our investigator upheld it and said TB should reimburse Mrs N \$300 for the breach of contract. TB didn't agree. They said the promotional offers weren't part of the contractual value of the cruise, and therefore Mrs N wasn't entitled to a refund for the unallocated onboard credit. They also said the terms and conditions explained the credits had to be spent onboard, and there wasn't anything that confirmed any unused credits could be exchanged for a refund at the end of the cruise.

As TB didn't agree it was passed to me to decide. I issued my provisional decision on 24 June 2024. It said:

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

In this case the relevant law includes s75 of the Consumer Credit Act 1974. S75 in certain circumstances allows Mrs N to hold TB liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.

There are certain requirements that need to be met in order for s75 to apply – which relate to things like the cash price of the goods, or the way payment was made. After considering these factors I think the requirements are in place for Mrs N to have a valid s75 claim against TB. So, I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation which would reasonably have been available to TB at the time they considered the claim. And if so, what TB should fairly do now to put things right.

In Mrs N's case, TB have accepted that she should have received \$900 of onboard credits to spend during the cruise. And the booking confirmation Mrs N has provided also confirms that. I agree with this. However, this amount is slightly clouded as it seems both cabins were given an additional \$50 – referred to as 'sail with your friends' on the invoices I've seen, which, according to the promotional terms and conditions they weren't eligible for. And the invoices from the end of the cruise confirm that \$600 of onboard credits had been provided and used up (including \$50 from each cabin for 'sail with your friends'). It would appear that Mrs N didn't receive the \$400 promotional onboard credit she was expecting for both cabins, but both cabins have benefitted by \$50 each for the 'sail with your friends' credit. I'm satisfied this additional credit should be taken into account, leaving a shortfall of onboard credit of \$300. With that in mind, I'm satisfied that Mrs N didn't receive what she had expected and there has been a breach of contract in this case. TB's acceptance suggests they're of the same opinion.

The only thing I need to decide on is how to remedy this breach. This isn't straightforward as I'm not persuaded that Mrs N should receive the missing \$300 in cash. From what I've seen, the \$200 promotional onboard credits for each cabin were not added to the overall price of the cruise – by that I mean Mrs N didn't pay an additional \$400 for the cruise – so it wouldn't be fair to reimburse her that amount. She would find herself in a better position, which I can't say would be reasonable. And I also have to take into account the promotional offer and \$400 promised had to be spent on board the cruise – there isn't anything in the terms and conditions that suggest any unused onboard credit could be refunded into cash.

That said, I don't agree with TB's response that said that Mrs N didn't spend all the onboard credits she had been given, so she hasn't lost out as a result of not being given the additional \$300. I don't think what Mrs N used is relevant in this case. It's more to do with what she expected rather than what the travelling party used. And in any case, from what I've seen, the reason Mrs N and the other travellers didn't spend what they had been given was more to do with not being able to get the correct information from the app or on board the ship about how much onboard credit they had left, and she didn't want to risk over-spending and having additional charges against the credit card. I find that reasonable.

Mrs N has said that, had the \$300 additional onboard credit been available to her and the other travellers, she would have made sure it was spent before the end of the cruise. I don't disbelieve that. However, I am trying to remedy a hypothetical situation here and have to consider the possibility that not all the credit would have been spent. But I am satisfied that not having the additional onboard credit available has led to a loss of enjoyment for Mrs N, and I think she should be compensated for that.

Deciding how much to award in a situation like this isn't a science. But it's my role to decide cases informally and try to bring them to a resolution. In Mrs N's case I'm planning to ask TB to pay her £200 to reflect the loss of enjoyment she suffered as a result of the breach of contract.'

Mrs N responded and accepted the provisional decision. TB haven't responded.

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.

Mrs N has accepted my provisional decision and the award I've suggested. TB haven't responded. As neither party have provided me with any additional information to consider, I see no reason to depart from the findings in my provisional decision.

TB should pay Mrs N £200 to reflect the loss of enjoyment she suffered as a result of the breach of contract.

My final decision

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

- Pay Mrs N £200 for the loss of enjoyment she suffered as a result of the breach of contract.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 6 August 2024.

Kevin Parmenter
Ombudsman