

The complaint

Mr O complains that Tesco Personal Finance PLC won't make a partial refund for a package holiday cruise which didn't go to one of the ports he booked it for.

What happened

Between June and August 2022 Mr O used his Tesco credit card to pay for a package holiday cruise due to take place during November 2022. He paid a total for the package of £6188. He says he paid for this package cruise because it was due to spend three days in Qatar during the football World Cup and Mr O said he wanted to be there for that and go to the 'fan zones' and other associated events. The package included flights, accommodation, transfers, and the cruise. Mr O says once he'd flown out to the region, and had the use of the hotel, he then boarded the cruise ship only to discover through discussions with fellow passengers that the cruise was no longer stopping at Qatar but going to another port in another country for the three days it was due to be in Qatar. Mr O accepts he used the full package including the three days in another port and used the transfers, flights hotel and cruise. He tried to complain to the supplier of the package but it pointed to its terms and conditions and said it wasn't a significant change, that it had written to him beforehand to notify him of the changes, and in any event Mr O had used the whole package. So it didn't refund him.

So he complained to Tesco. Tesco looked into the matter and didn't refund Mr O for much the same reasoning as the supplier. Feeling that to be unfair Mr O brought his complaint to this service.

Our investigator looked into the matter. Overall, he felt that Mr O could make a claim under Section 75 of the Consumer Credit Act 1974 ('S75' and 'CCA' for short) to Tesco as a 'like claim'. The Investigator felt on balance of probabilities that the email informing Mr O of the changes to the cruise itinerary hadn't been sent to Mr O, that the changes were a significant change under the Package Travel and Linked Travel Arrangements Regulations 2018 (the 'PTR's for short) and that Mr O should be refunded by Tesco for three nights he was meant to be in Qatar but was in another port (approximately £1,160.25). Mr O didn't fully agree with the redress methodology but did accept the complaint being decided in his favour. Tesco didn't agree with the Investigator's position. So the complaint was passed to me to decide.

In July 2024 I issued a provisional decision which upheld the complaint and said Tesco should redress this matter by paying Mr O £484 plus 8% simple from when it rejected his section 75 claim until when it settles the matter.

Tesco responded saying it had nothing further to add. Mr O made a number of comments.

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 considered the positions of the respective parties in response to my provisional decision I'm not persuaded to deviate from the position I described in my provisional

decision. I shall address Mr O's comments under the heading of 'further comments' later in this decision. But for those reasons and the reasons already provided I am upholding this complaint and directing Tesco to fulfil the remedy I set out. I now repeat broadly my position from my provisional decision.

I should make very clear that this decision is not about the package supplier here which isn't a financial services provider and doesn't fall within my remit regarding either chargeback or Section 75. Whatever the issues there maybe with the supplier, and just because Mr O says he has lost out, it doesn't necessarily follow that Tesco has treated Mr O unfairly or that it should refund him. And this decision is solely about how Tesco treated Mr O in his dispute with the supplier.

I see little point in regurgitating every element of fact and argument here as broadly speaking the facts of what happened are not in contention. Essentially the parties agree on the following:

- that Mr O booked this package which included three days in Qatar originally.
- After the booking was made, but before the package was due to take place, the Qatari government changed the rules on who could enter the country around the world cup period.
- the supplier changed the itinerary of the cruise due to the change of entry rules by the Qatari government and replaced the stop in Qatar with a different port in a different country nearby.
- That Mr O was very keen to go to Qatar due to the football world cup.
- And that Mr O used the full package that was delivered albeit unhappy that he didn't get to go to Qatar for the world cup.

chargeback

There's no dispute that Mr O's Tesco card was used here. So I don't think Tesco did anything wrong by charging this transaction to his account at the point of purchase.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr O does here, Tesco (as the card issuer) can attempt to go through a chargeback process. Chargeback is a voluntary process which is decided simply on the terms of the dispute within the rules of the card scheme (not managed by Tesco). I don't think Tesco could've challenged the payment on the basis Mr O didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

The chargeback process is a straightforward dispute process which uses certain reason codes for disputes raised by consumers to be put to the relevant merchant by the card issuer. Here Tesco didn't raise a chargeback because it says that Mr O used the full package that was delivered. Bearing in mind the arguments of the supplier here (the merchant) and the reason codes available and what happened more broadly, I'm not persuaded on balance that a chargeback would have been successful. So Mr O hasn't lost out due to Tesco not raising a chargeback.

The CCA

The CCA introduced a regime of connected lender liability under Section 75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier").

A business such as Tesco can only be held responsible under S75 of the CCA if certain requirements are met *and* if there is breach of contract or misrepresentation of the contract

and Mr O has lost out as a result. I'm satisfied that the financial limits and Debtor Creditor Supplier pre-requisites of this legislation are met here (particularly since it's a package holiday). So in essence that leaves the crux of the matter to be:

Was there a misrepresentation or breach of contract here?

The only material change between what was originally planned on the itinerary when Mr O paid for this trip and what was delivered to him was the three days he was due in Qatar but was actually in a different country. As everything else was provided as planned its only these three days which are in contention here.

It is also clear at the point Mr O purchased the package the supplier planned for there to be this three day stop in Qatar and had arrangements in place to deliver that facet of this trip. Accordingly I'm satisfied that in this regard there was no misrepresentation made by the supplier that induced Mr O to purchase the package on the basis of a false premise. It was true when the statements and advertising were made.

Mr O has said his sole reason for purchasing the package was due to it having this three day stop in Qatar. I think it likely that a reasonable person who solely wanted to go to the world cup would have gone direct to Qatar and stayed there and not purchased a cruise around the surrounding destinations as well. So I think it likely that he intended to gain some enjoyment from the hotel stay and the cruise as well when making his booking with the most important part of the trip being three days around the world cup.

Lastly I should point out that the supplier has no responsibility or control over the Qatari government changing entry requirements in the run up to the world cup taking place. And considering the practical issues arising from such a change, I'm satisfied it had no realistic option other than to divert to another port and to offer alternative arrangements for those passengers with world cup tickets.

So did the supplier act as it should have in such circumstances?

The relevant PTR is regulation 11 which broadly states that the provisions of this regulation are implied as a term in every package travel contract and that the organiser must not unilaterally change the terms of a package travel contract before the start of the package, unless the contract allows the organiser to make such changes; the change is insignificant; and the organiser informs the traveller of the change in a clear, comprehensible and prominent manner on a durable medium. It is of note that there is no definition of what a significant change is within the PTR's.

The Supplier and indeed Tesco have pointed to the supplier's terms and conditions which Mr O agreed to on the basis there is some terms within that about what is a significant change in the supplier's opinion. I've considered these particularly the relevant section which is section seven. This states:

"Whilst we take responsibility for your booking as your Tour Operator, we have no control over changes as a result of unavoidable and extraordinary circumstances as defined below. If the change is insignificant, we will ensure that you are notified about it. Examples of insignificant changes include alteration of your outward/return flights by less than 12 hours, changes to aircraft type change of accommodation to another of the same or higher standard, changes of carriers."

It then goes on to give examples of what it considers to be significant changes to flights (section i), accommodation (section ii) and cruise itinerary (section iii) which gives as

examples “*Change of embarkation/disembarkation time by more than 12 hours*” and “*Missing two or more ports of call from your itinerary*”. But clearly these are clearly just examples not an exhaustive list as the wording in section i and ii is “*Significant changes include the following*”. This phrase isn’t present in section iii but I think it likely this is an omission on the drafter’s part otherwise section iii in its wording as quoted has no discernible meaning. I think considering the flow of the previous terms a court would consider these to also be examples of what the supplier considered examples of what it considers to be a significant change (but not an exhaustive list).

However I must note that this package was named in its advertisements as “*quest to Dubai and the World Cup*” and clearly from the adverts on the supplier’s website before the time Mr O purchased the package that there were two main aspects to the cruise namely “*Dubai*” and “*the World Cup*”. The Dubai part of the package was delivered to Mr O but the stop in Qatar wasn’t. So on balance I’m satisfied this change would be considered by a court in a claim against the supplier as a significant change and accordingly had Tesco considered the matter fairly it would have reached the same conclusion for these reasons.

Both the Supplier’s terms and the PTRs require the supplier to contact impacted passengers in a durable medium when such a significant change is made to the package. The supplier has not been able to provide a copy of the email it says it sent to all its impacted customers or to Mr O specifically. It has not said when it sent it, what its contents were or provided any internal computer system information showing it being sent. In essence it has no evidence to support its position which is odd considering the number of people on the cruise (albeit some booked through other parties clearly). Mr O says he received nothing from the supplier. On balance I’m satisfied the supplier didn’t send Mr O this email because had it done so it would have some form of record of doing so considering the importance of such messaging.

Tesco has provided a copy of an email that the cruise company (not the package supplier) says it sent all those due to be on the cruise. Similarly there is no supporting evidence showing it was sent to Mr O or delivered to Mr O. I also note that having considered the wording of this email that was purported to have been sent to Mr O that it doesn’t conform to the PTRs, specifically regulation 11.4.c as it doesn’t explain the “*consequences of the traveller’s failure to respond within the period referred to in sub-paragraph (b)*”.

So in any event notwithstanding my finding that the supplier didn’t conform to the PTR by properly informing Mr O of this significant change, it cannot attempt to rely on the cruise company’s email that it says was sent to all passengers as there is no evidence submitted in this case showing this email was sent to Mr O, and in any event it didn’t conform to the relevant PTR anyway. So I’m satisfied there has been a breach of contract here for the above reasons as the PTR’s are implied to such contracts as that which Mr O agreed with the supplier.

I appreciate Mr O’s strong feelings on the matter, nevertheless he did use the entire cruise and thus did receive the benefit of the cruise for the three days in dispute in terms of lodging, food and the other amenities available to him on the cruise. So it would be unfair on Tesco for it to wholly cover the cost of those days and Mr O to have received those benefits as well as that would equate to Mr O benefiting from what would be in essence double recovery.

The remedies available under the Consumer Rights Act 2015 for breach of contract are in essence performance of the contract through repair, replace or price reduction. Bearing in mind what happened here some form of price reduction is the most appropriate to my mind as it enables a fair and reasonable outcome to what happened here.

The Investigator in this case in arriving at a remedy noted the ship was due to be in port for three days and without a breakdown of the costs of the package suggested that Tesco

should pay three sixteenths of the total cost. Tesco contested this methodology as did Mr O to a lesser degree but obviously for different reasons namely that flight days are not normally considered.

The distance from the previous port to Qatar is roughly 480 nautical miles. The distance from Qatar to the next port it was due to go to is 206 nautical miles. Considering the cruising speed of the ship concerned in normal conditions these journeys would have taken approximately one day and three hours and eleven hours respectively. Tesco has said most holiday itineraries are measured in nights rather than days, which is a reasonable argument to my mind, as is Mr O's comments about flight days not being included.

Having considered the significant distances to be travelled into and from Qatar, the itinerary showing being present in Qatar during these three days but only two nights and the vagaries of weather conditions which could have been decidedly favourable or decidedly unfavourable for sailing speed, I think a fair solution would be to ascribe Mr O's time he would have been in Qatar to be equivalent to 2.5 days of the 16 days.

I also have to consider the significant benefit (albeit unwanted) that Mr O had during the three days when he was meant to be in Qatar but was actually in a different port and a different country but receiving the benefits of meals, lodging and the other amenities available to him through the terms of the package he agreed with the supplier. I appreciate that Mr O was very disappointed to miss out on Qatar, but I cannot ignore this significant benefit as to do so would be unfair on Tesco. I think it fair to ascribe a price reduction of half price to consider the disappointment of missing out on Qatar but also reflecting the benefits received during those three days.

Mr O has referred to out of pocket expenses in the region of £1000. If these are consequential of the breach then Tesco would be liable for them under the 'like claim' of a s75 claim. However he's not described or evidenced these losses or demonstrated how they flow solely from the breach of contract established here. If Mr O wishes to evidence these in response to this provisional decision I shall consider them.

Tesco has said in its response that it doesn't agree that what happened here was a significant change and that it is not for this service to consider what a significant change is when its not defined in the PTR's and is different to what the supplier says it is. I wholeheartedly disagree.

Tesco is required to consider s75 claims to it as a 'like claim' to that which Mr O can make against the supplier in court. A court would clearly have to consider in such a case what significant change would be in it establishing the facts. The fact that the supplier has given examples of what it thinks is a significant change would be a consideration for the court but clearly it wouldn't be binding on the court as they were examples and not an exhaustive list. And in any event it would be clearly unfair for the supplier to be responsible for defining what significant changes are without limit as otherwise firms would set out their contracts so that no such thing as a significant change would happen or exist. So clearly a court would decide in such a claim what a significant change would be in the circumstances of the claim. And accordingly Tesco should have considered this matter in a like manner and in a fair manner. So Tesco's argument here falls significantly short of being persuasive to my mind. And I'm currently satisfied on balance a breach has been made out and that Tesco should remedy the matter as I've described.

Further comments

Mr O has made a number of arguments and I thank him for these observations. Some of these agree with my positions and some disagree with reasons. I see little to be gained by

commenting on 'common ground' or comments about other travellers and their treatment, and the cruise provider as Tesco wasn't responsible for those. There are also comments about what happened and Mr O's thinking at the time. So I'll only address those key points contrary to my positions.

Mr O says he didn't have any realistic option but to use the package which was provided. This maybe the case but this was still a significant benefit to him and must be considered.

Mr O says Tesco treated him unfairly and it was hard work dealing with it. I agree it treated him unfairly and hence my decision to uphold his complaint.

Mr O disagrees with my redress. He points out he was due to be off ship for three days in Qatar and was due to be off ship for similar time in Dubai. If I follow his logic and there is no benefit to be ascribed to the period 'off ship' in either port then he gets no price reduction (refund). It is difficult to ascribe a price reduction between what should have happened and what did happen fairly to both sides bearing in mind I'm allocating a notional price difference between a hypothetical happening and what did happen. This is far from an exact science. And I have to show the differences between what did happen and what should have happened to come to a fair conclusion, hence my relevant comments about sailing times etc. I also have to weigh up the benefit provided versus what should have happened.

Mr O also says *"Your compensation figure is very disappointing and doesn't give any weight that the holiday was sold purely on "the World Cup" element which was the hook that sold it."* The award I'm making is price reduction not compensation. This service doesn't make punitive awards but rather fairly tries to ascribe a fair remedy considering what should have been provided and what was provided. Ultimately Mr O has made very clear his disappointment at what happened. But the key cause of this was the government changing the rules and thus the majority of his disappointment needs to be weighted to that issue. Clearly there were failings that Tesco is responsible for that follow on from that event. I've explained why I think the award I've made is fair and why the benefit of what he did receive during the relevant days (albeit he didn't want) must be included in any remedy.

For these reasons I uphold this complaint. I appreciate Mr O feels he should receive more but I'm also glad to hear that after such a long dispute he feels heard (albeit longer than he would have hoped).

Putting things right

Accordingly I direct Tesco to redress this matter by paying Mr O £484 plus 8% simple from when it rejected his section 75 claim until when it settles the matter.

My final decision

For the reasons set out above, I uphold the complaint against Tesco Personal Finance PLC and it must remedy the matter as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 27 September 2024.

Rod Glyn-Thomas
Ombudsman