

The complaint

Mr S complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to him the money that he paid to a travel company.

What happened

Mr S used his Tesco Bank credit card to make two payments to a travel company. He paid it £7,524.49 in July 2018 and £7,284.08 in August 2018. He says that he was contacted about reclaiming money that he'd paid for a timeshare and was offered free overseas accommodation for him and his wife but he would have to pay for the flights. He bought flights and attended a meeting when overseas about his claim. He says that the first payment was made to register his claim and that he was required to make the second payment after he'd returned home for his claim to be progressed.

He didn't receive any of the money that he'd paid for the timeshare and says that he then saw a television programme about a scam being operated by the travel company and its related claims company so he claimed a refund of the payments that he'd made to the travel company from Tesco Bank under section 75 of the Consumer Credit Act 1974.

Tesco Bank said that Mr S hadn't proved that the merchant verbally communicated the claim information to him so it didn't consider that there had been a misrepresentation and couldn't say that there had been any breach of contract. Mr S wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. He was satisfied that the main reason that Mr S made the purchase from the travel company was that it would be getting him compensation for a previous timeshare within 60 days and he thought that the travel company had misrepresented its ability to obtain compensation for him. He recommended that Tesco Bank should rework Mr S's credit card account as if the payments hadn't been made.

Tesco Bank has asked for this complaint to be considered by an ombudsman. It says that the actual contracts have clear breakdowns and none of them give any detail about a compensation claim being an additional paid service that formed a part of the contracts. It also says that the claim company said that no payment was necessary for the claim service due to it being "no win - no fee".

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 done so, I agree with the outcome recommended by our investigator for these reasons:

- in certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;

- to be able to uphold Mr S's complaint about Tesco Bank, I must be satisfied that there's been a breach of contract or misrepresentation by the travel company and that Tesco Bank's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mrs S's claim under section 75 as only a court would be able to do that;
- Mr S says that he was contacted about reclaiming money that he'd paid for a timeshare and was offered free overseas accommodation for him and his wife but he would have to pay for the flights;
- he says that he was assured that he would definitely get back the money that he'd paid for the timeshare and I consider it to be more likely than not based on the evidence that he's provided that he travelled overseas because he'd been told that he needed to do so to progress his claim;
- when he was overseas in July 2018 he says that he was told that he'd have to pay £7,524.49 to register his claim and he and his wife signed an accommodation contract with the travel company which described the accommodation that was included in his subscription – there was no reference in that contract to his timeshare claim but I consider it to be more likely than not that he made that payment to the travel company and signed the accommodation contract because he was told that he needed to do so for his claim to be registered;
- Mr S made another payment in August 2018 after he'd returned home for £7,284.08 and one of the documents that was provided to him in connection with his payments listed the services that were to be provided to him as: *"Compensation (third party), Enjoy travel services, Free holiday gifts, 3 weeks accommodation, Sovereigns"*;
- I'm not persuaded that it's likely that Mr S would have made the payment in August 2018 for accommodation as he'd already made the payment to the travel company in July 2018 – and I consider it to be more likely than not that he made the payment because he'd been told that he had to do so for his compensation claim to be progressed;
- I've seen no evidence to show that Mr S received compensation under his timeshare claim or that he received services that justified the payments that he'd made;
- the travel company has stopped trading and I've seen no evidence to show that Mr S has used any of the accommodation to which he should have been entitled (other than the accommodation that he used in July 2018);
- Mr S has also provided information about compensation claims from the travel company and its related claims company and e-mail exchanges about a compensation claim; and
- I consider it to be more likely than not that Mr S was induced into making the payments by misrepresentations that were made about his compensation claim and that he wouldn't have made the payments if those misrepresentations hadn't been made to him so I find that his complaint should be upheld.

Putting things right

I find that it would be fair and reasonable in these circumstances for Tesco Bank to rework Mr S's credit card account on the basis described below.

My final decision

My decision is that I uphold Mr S's complaint and order Tesco Personal Finance plc, trading as Tesco Bank, to:

1. Rework Mr S's credit card account as if the payment of £7,524.49 hadn't been made in July 2018 and the payment of £7,284.08 hadn't been made in August 2018 (including crediting to the account the foreign exchange fees that were charged) and, if that puts the account into credit, to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit - it should also refund the credit balance to Mr S.
2. If Mr S has repaid the payments of £7,524.49 and £7,284.08 (or any part of them) to Tesco Bank but doesn't have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 October 2022.

Jarrold Hastings
Ombudsman