

## **The complaint**

Mr C has complained that Tesco Personal Finance PLC, trading as Tesco Bank (“Tesco”), hasn’t done enough to recover money he paid using his Tesco credit card.

Although many of the products and services dealt with in this decision were in the name of Mr C and his wife, as the credit card used was Mr C’s alone, only he is able to bring this complaint. So I will refer to him throughout.

## **What happened**

In February 2019, Mr C says that he received a call from a timeshare reclaim company (“Business R”) that said it would be able to make a successful claim on his behalf for money he lost by being a member of a failed holiday club. He said he was told he needed to fly to Tenerife to speak about his claim, but the company would provide four nights of accommodation if he paid for the flights. This would be paid for by taking 20% of the compensation received.

Following that call, Mr C flew to Tenerife to make his claim. He stayed in the accommodation provided and, when there, was provided a letter dated 29 March 2019 which said a meeting was arranged for 1 April to discuss the claim.

Mr C says that the meeting was in two parts. The first part was held in a café where the claim was discussed. In the afternoon, Mr C went to the offices of a different business (“the Supplier”) to sign the paperwork, where the meeting changed into a ‘selling process’. Mr C described this meeting as very pressured and after several hours he was persuaded to buy a package of things at a cost of €5,800.74. This included a charge for the accommodation he used at €1,693.60 – the agreement said this accommodation was between 28 March and 4 April 2019, i.e. seven nights.

The following month, Mr C approached Tesco about the purchase, to see if he could get his money back. Tesco processed a ‘chargeback’, which was a way of recovering money through the credit card scheme when someone doesn’t get what they should after making a purchase. But Tesco didn’t claim back the full £5,140.16 paid, rather it only claimed for the ‘unused’ part of the agreement, i.e. £3,679.85. It said to Mr C that it couldn’t claim back everything as he’d signed something to say he’d ‘used’ accommodation between 28 March and 4 April 2019 at a cost of £1,460.31.

Mr C complained to Tesco about what it had done, saying it should have claimed back the full purchase price. It responded in June 2019 to say it thought it was likely the Supplier would contest any chargeback, saying that it had provided some services under the contract. If that happened, it would have to then repay some of the money back to the Supplier. Unhappy with the response, Mr C brought a complaint to our service.

One of our investigators considered the complaint, but didn’t think Tesco had done anything wrong. But then a different investigator considered things again and came to a different view. He thought Tesco should have considered a claim under s.75 of the Consumer Credit Act 1974 (“CCA”), as that covered what Mr C was concerned about. He thought Mr C was on a

free trip and not going with any expectation of being sold anything. But when there, a sales process took place that ended up with Mr C buying services from the Supplier. Our investigator said it wasn't clear precisely what Mr C was signing up for, but he thought there were representations that the Supplier would get substantial compensation for the old holiday club membership. He thought this was central to Mr C's decision to buy anything from the Supplier. But Mr C contacted Tesco shortly after the trip to dispute the payments and our investigator didn't think Mr C had any interest in buying a further holiday product. Our investigator concluded that there had been a misrepresentation that the accommodation was being supplied free of charge and that he'd get substantial compensation from a claim. But for these misrepresentations, he didn't think Mr C would have travelled to Tenerife or paid anything to the Supplier.

Tesco responded to say it didn't think there were the right sort of arrangements in place for Mr C to make a s.75 CCA claim. That's because Mr C paid the Supplier, but the initial contact came from Business R, which was a different entity. So representations made before Mr C went to Tenerife weren't made by the Supplier.

As Tesco didn't agree with our investigator's view, the complaint was passed to me for a decision.

Having considered everything, I thought Tesco didn't need to do anything further to settle this complaint. So I issued a provisional decision, setting out why I came to the conclusion I did and invited both parties to comment on what I'd said.

I explained that when evidence is incomplete, inconclusive, incongruent or contradictory, I made my decision on the balance of probabilities – which, in other words, meant I based it on what I thought was most likely to have happened given the available evidence and the wider circumstances.

There was no evidence from the Supplier or Business R, and the only evidence there was from the time of sale was from Mr C. He provided all of the documentation from the time of sale, along with his memories. So when considering this claim, that was the only evidence available. I was mindful that his memories may not be an accurate representation of the precise sales process as memories are imperfect. So I had to weigh all of that up when deciding what I thought most likely happened. I did not think it was unfair to Tesco for me to do this – ultimately I must decide the complaint in front of me based on the evidence available.

Having considered everything, I didn't think Tesco needed to do anything further to settle Mr C's complaint. I said this had been a difficult complaint to deal with, something reflected in the fact that two of our investigators came to different conclusions. And I thought it was important to set out my role wasn't to decide whether something went wrong in the arrangements between Mr C, Business R and the Supplier, rather it was to determine whether Tesco needed to pay anything to Mr C arising out of those arrangements.

When considering this complaint, I thought it was important to set out what evidence I had and then to say what I found Mr C agreed to and with which business. I then considered any legal claims that Tesco needed to consider, given the legal relationships between the parties.

### The evidence

Mr C provided an email he received on 4 February 2019 from Business R, setting out details of what was agreed in the call he had with the timeshare reclaim company. It said that the claim would be made on a 'NO WIN NO FEE' basis, with up to seven nights of free

accommodation being given in Tenerife – the email went on to say “*NO timeshare accommodation options used, so you will not be pestered whilst you are here.*” The email said “*All refunds will be settled in full into a bank account of your choice, within a maximum of 60 days (Through our third-party associates).*” It was implied in the email that there were tax implications of doing the deal in Tenerife, so it worked out better value for Mr C to go there than arrange the claim at home and that it had a 100% success rate.

I also saw a number of documents from the time of sale. These all had the Supplier’s name on them, which was a different business to Business R. There was an ‘accommodation contract’ that set out what Mr C bought. It was for three weeks of accommodation (seven nights per week), in the Canary Islands. The total cost was €5,800.74 (or £5,000). The agreement said these weeks were ‘pre-paid’, meaning the contract wasn’t refundable.

The three weeks of accommodation were each given a price, being £1,460 for the first, £1,650 for the second and £1,890 for the third, totalling £5,000. Mr C booked the second week of holiday for October 2019 and the third in January 2020.

As well as the price of accommodation, as set out above, Mr C was provided with a number of other things from the Supplier. He was told he was entitled to five ‘worldwide holidays’ of seven nights free accommodation, plus return flights up to £250. But before he could use these, he had to use a week of accommodation in the Canary Islands. And Mr C was given a certificate saying he was to be given 1,000 “*Sovereigns*”, although it wasn’t clear to me what these were.

I saw a document signed on 19 February 2019, that said the reservation for Tenerife was made on that date. I wasn’t convinced about the validity of this document, as Mr C said he only spoke with someone on the phone and didn’t sign anything before he got to Tenerife. Further, the document was on the Supplier’s headed paper, but I couldn’t see that Mr C had any contact with the Supplier before 1 April 2019. So I thought this was likely signed at the time of sale despite the date on the document.

Mr C and his wife also provided their memories of the sale. Mr and Mrs C explained that Mrs C spoke on the phone with Business R and she was told they would be put up in an apartment for free in Tenerife, but they would have to pay for their flights. They were offered a week-long holiday, but they could only go for four days. Mrs C was told the cost of travel from the airport to the apartment would be refunded, but that didn’t happen in practice.

Mr and Mrs C couldn’t remember what Business R said about who they would meet when they were in Tenerife or whether they would have to meet with another business. They said Business R told them that they wouldn’t to sell them anything. Mrs C said she asked whether they could sign up to the claim over the phone, but they were told they had to attend personally in Tenerife.

When they arrived in Tenerife, they went to the apartment and found it was run down and of poor quality. They also found out they could have booked it themselves for around £200.

Mr and Mrs C described the meetings they had on 1 April 2019. They said the conversation started about getting their money back, but the meeting lasted all day and they were pushed into taking out a holiday product. Mr and Mrs C described a strange setup and it was unclear who was offering what to them. Mr C described a pressured selling environment where he didn’t feel they had a real choice in paying for the accommodation.

Mrs C said that, with hindsight, she realised the people were from different companies. Finally, Mr C said he tried to cancel it straight away when they were still over in Tenerife, but they couldn’t do it.

### What Tesco did

Tesco made a chargeback claim as detailed above, recovering £3,679.85 of what was paid. Having considered everything, I thought it acted fairly in doing that and I didn't think it should have claimed the full amount under the chargeback scheme.

Under a chargeback, the lending bank (here Tesco) can make a claim to get funds back through the credit card scheme. But if the receiving bank (here the Supplier's bank) disputes it, the matter can then be looked at by the credit card scheme under its own rules.

Here Tesco thought that, as Mr and Mrs C had signed to say they'd used the first week of accommodation paid for, any request to get that back would fail. Having considered everything, I agreed that was a reasonable position for Tesco to take. I understood why Mr C disagreed with that, but I thought Tesco acted properly to put forward the most likely reasons for a chargeback to succeed.

But Tesco didn't consider a claim under s.75 CCA and I agreed with our investigator that it should have done so. But, for reasons I explained, I didn't think it was unfair for Tesco to decline the claim.

### The claim under s.75 CCA

Under s.75 CCA, a lender (here Tesco) can be jointly responsible to a borrower (here Mr C) for a supplier's misrepresentations or breaches of contract if the supplier was paid using credit. So here, Tesco needed to consider whether it was jointly liable for the things done by either Business R or the Supplier.

Only the Supplier was paid by Mr C using his credit card – nothing was paid to Business R. So it was only a breach of the contracts between Mr C and the Supplier that could be looked at or misrepresentations by the Supplier (or on its behalf) that caused him a loss.

Mr C hadn't set out any representations made by the Supplier that turned out to be untrue. And the things said by Business R were said on the phone to Mrs C and I couldn't see they caused Mr C to enter into an agreement with the Supplier several weeks later. So I didn't think there was an actionable misrepresentation that Tesco could be jointly liable to answer.

I also looked at the agreement between Mr C and the Supplier. Again, I couldn't see that Mr C didn't get anything he was entitled to under the agreement, here specifically the accommodation in Tenerife between 28 March and 4 April 2019. I understood that Mr C was led to believe by Business R that he'd get the accommodation for free and that he was only able to use four days of the accommodation, but that didn't mean the Supplier breached its agreement with Mr C. So I didn't think there was a breach of contract for which Tesco could be jointly liable.

In conclusion, although I understood why Mr C felt strongly something had gone wrong here, due to the way the credit card was used, I didn't think Tesco needed to do anything further.

Tesco responded to say it had nothing further to add. Mr C didn't respond to my provisional decision.

### **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.

As I've not been provided with anything further, I see no reason to depart from my provisional findings.

### **My final decision**

For the reasons set out above, I don't uphold Mr C's complaint against Tesco Personal Finance PLC, trading as Tesco Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 October 2023.

Mark Hutchings  
**Ombudsman**