

## **The complaint**

Mrs W complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to her the money that she paid for help with relinquishing a timeshare agreement. She's being represented in her complaint by a claims management company.

## **What happened**

Mrs W and her husband had a timeshare agreement which they wanted to relinquish. They entered into an contract with a supplier which was a company that specialised in timeshare relinquishment in January 2017. Mrs W used her Tesco Bank credit card later than month to pay a consultation fee of £1,000 under that contract and then to make a further payment under that contract of £6,914 in February 2017. The payments were made to two different companies, neither of which was the supplier.

Mrs W's representative claimed a refund of those payments from Tesco Bank under section 75 of the Consumer Credit Act 1974. It said that the contract was with the supplier but the two payments were made to accountants who took payments and transferred the funds to the supplier. It said that that broke the required debtor-creditor-supplier link so it was unable to consider the claim under section 75. Mrs W wasn't satisfied with its response so complained to this service.

Our investigator initially agreed with Tesco Bank that there was no relevant debtor-creditor-supplier relationship in these arrangements but he was then provided with information to show that the supplier and the company to which the consultation fee was paid were "associates". He thought that there was a debtor-creditor-supplier chain and, as the supplier stopped trading in May 2018, it wouldn't have been in a position to relinquish Mrs W from the timeshare agreement. He thought that that was a breach of contract and that a fair resolution would be for Mrs W to receive a full refund as no services appeared to have been provided.

Tesco Bank has asked for this complaint to be considered by an ombudsman. It says that at the time that the contract was entered into, there was no association between the accountants and the supplier as there were no common directors or shareholders.

## **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:

- Mrs W made the payments using credit provided by Tesco Bank and, 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;
- one of those circumstances is that there must be a relevant relationship between the debtor, the creditor and the supplier;

- to be able to uphold Mrs W's complaint about Tesco Bank, I must be satisfied that there was such a relationship, that there's been a breach of contract or misrepresentation by the supplier, and that Tesco Bank's response to her claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of that claim under section 75 as only a court would be able to do that;
- section 184(3) of the Consumer Credit Act says:

*“A body corporate is an associate of another body corporate:*

- (a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other; or*
- (b) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate”;*

- at the time that Mrs W entered into the contract with the supplier and at the time that she made the payment, I consider that Companies House records show that the supplier and the company to which she paid the £1,000 consultation fee were associates under that definition as both of them were controlled by persons who were associates as a result of their joint shareholding of another company;
- because of that, I consider that there was a relevant relationship between the debtor, the creditor and the supplier in these circumstances so I consider that Mrs W is able to make a claim under section 75 for a refund of the money that she paid to both companies;
- the supplier went into liquidation in May 2018 and it's clear that Mrs W and her husband's timeshare hadn't been relinquished then because they received a notice for outstanding fees under their timeshare agreement in June 2018;
- I've not seen any evidence to show that the supplier had provided any services to Mrs W and her husband under the contract and I consider it to be more likely than not that there's been a breach of contract by the supplier; and
- I find that it would be fair and reasonable in these circumstances for Tesco Bank to take the actions described below.

### **Putting things right**

I find that Tesco Bank should refund rework Mrs W's credit card account as if the payments of £1,000 and £6,914 had been refunded to the account in March 2019 (which is when I consider that it should have upheld her section 75 claim and refunded the payments), that it should pay interest as set out below and that it should then refund any credit balance to Mrs W.

If Tesco Bank has recorded any adverse information on Mrs W's credit file as a result of those payments being applied to her account, I find that it would be fair and reasonable for it to remove that information.

### **My final decision**

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

1. Rework Mrs W's credit card account as if the payments of £1,000 and £6,914 had been refunded to the account in March 2019, 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 Mrs W.
2. If Mrs W has repaid those amounts (or any part of them) to Tesco Bank but doesn't have a credit balance, to pay interest on the amount that she has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.
3. Remove any adverse information that it's recorded on Mrs W's credit file since March 2019 as a result of those payments being applied to her account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 16 March 2022.

Jarrold Hastings

**Ombudsman**