

The complaint

Mrs S complains that Tesco Personal Finance PLC hasn't fairly dealt with a claim she brought against it under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

Mrs S had a dispute with A arising from a contract she entered into that was funded with her Tesco credit card. The contract in question provided for A to apply charges in relation to the release of a motorhome that was the subject of a chattel mortgage under an agreement between Mrs S and another company ("B"). A had acquired B's rights and interest under that agreement following B's entry into administration.

Mrs S says she paid the charges imposed by A as she needed the motorhome to be released. But she didn't agree with them and subsequently contacted Tesco to seek recovery of the money she'd paid – some £3,260. In doing so, she referenced that her agreement with B didn't permit charges to be made in association with releasing the motorhome into her possession.

Tesco declined to reimburse Mrs S. It initially said it wasn't liable to her, on the basis that the way the transaction with A was constructed fell outside the requirements for a claim under section 75 of the Consumer Credit Act 1974 ("CCA"). The payment hadn't been made directly to A – instead, it had gone via a different company ("C"). Tesco subsequently revised that position, but still didn't accept Mrs S's claim. The bank said there was no breach of contract in relation to the fees Mrs S paid for release of the motorhome, as A had provided the service funded by her payment.

Tesco also said it couldn't consider the arrangements Mrs S had made with B, as it hadn't been involved in funding that agreement. Rather, the bank said it focused solely on the contract entered when making a purchase using its card. Mrs S remained unhappy with Tesco's response and brought her complaint to us.

Our investigator found there was an association between A and C that amounted to the debtor-creditor-supplier relationship necessary to proceed with a section 75 claim. He didn't think the available evidence indicated a breach of contract by A. But noting evidence from the insolvency practitioner that dealt with B's administration and the transfer of business to A, he was persuaded that A had misrepresented its position to Mrs S such that she was induced to make payment to it such that her claim might be successful.

The investigator proposed that Tesco reimburse Mrs S for the fees she'd paid, together with interest. He also considered it appropriate that Tesco pay Mrs S £150 compensation to reflect the distress and inconvenience she experienced in her efforts to resolve matters.

Tesco responded to say it disagrees that A misrepresented the contract. It said for that to be the case, A would have had to state that there were no additional costs, and that this wasn't what had happened. It asked for this review.

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.

Tesco has acknowledged that it was wrong to tell Mrs S at the outset that she couldn't bring a claim under section 75. The bank did revise that position fairly promptly, but for the sake of completeness I've set out the relevant considerations here.

The Consumer Credit Act 1974 makes provision for connected lender liability in specific circumstances, set out in section 75. There are several criteria that must be met for a successful claim against the creditor (or lender), which include that:

- the agreement with the lender is a debtor-creditor-supplier agreement falling within section 12(b) or (c) of the CCA
- the agreement with the lender is not a non-commercial agreement
- the debtor has, in relation to a transaction financed by the agreement, a claim against the supplier in respect of a misrepresentation or breach of contract
- that claim relates to any single item to which the supplier has attached a cash price of more than £100 but not more than £30,000

Here, there's no question that the financial limits apply to the transaction. Mrs S paid a total of £3,260, but no individual item within that total was £100 or less. And Mrs S's credit agreement with Tesco is not a non-commercial agreement; that is, it's not a consumer credit agreement not made by Tesco in the course of its business.

Section 12(b) of the CCA says that a debtor-creditor-supplier agreement is a regulated consumer credit agreement being *"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier"*. And section 11(1)(b) says that *"a restricted-use credit agreement is a regulated consumer credit agreement to finance a transaction between the debtor and a person (the "supplier") other than the creditor"*.

Mrs S's agreement with Tesco is a regulated consumer credit agreement. It was used to finance the transaction she was undertaking with A. But the payment was made to C. Tesco has said that Mrs S made her payment not knowing this. In any event, Mrs S was able to establish a link between A and C via Companies House records. A and C ultimately had controlling directors that appears to meet the definition of *"associates"* as defined in section 184 of the CCA, which also created an association between the corporate bodies A and C.

Section 187 of the CCA covers arrangements between creditor and supplier. It says:

"A consumer credit agreement shall be treated as entered into under pre-existing arrangements between a creditor and a supplier if it is entered into in accordance with, or in furtherance of, arrangements previously made between persons mentioned in subsection (4)(a), (b) or (c)."

Subsection (4) says the persons referred to in subsection (1) are:

- "(a) the creditor and the supplier;*
- (b) one of them and an associate of the other's;*
- (c) an associate of one and an associate of the other's."*

Given the associate connection established between A and C via the Companies House information, I'm satisfied that the way section 187 operates preserves the pre-existing arrangements link between Mrs S, Tesco and A, notwithstanding the involvement of C as the person to whom payment was made. As such, I find that this aspect of the section 75 requirement is met.

does Mrs S have, in relation to the transaction financed by the agreement, a claim against A in respect of a misrepresentation or breach of contract?

Mrs S has sought to make a claim of misrepresentation. She argues that the rights acquired by A when it purchased them from B were no greater than the rights B itself held. She says A sought to impose a further condition on the release of the motorhome that was not afforded it by the original agreement, but that A held itself out as having the right to do so. That, claims Mrs S, amounts to a misrepresentation by A that induced her to enter into the agreement with A and make the payment that she did.

Tesco's position appears to be that the only claim Mrs S could ever have in misrepresentation would be if A told her it wouldn't charge the stated fees and then proceeded to do so. It has offered no reasonable explanation for why it takes this view, or why it considers the claim Mrs S has made could not amount to misrepresentation. On the face of it, I see no reason why it could not.

With this in mind, I have to conclude that Tesco did not act fairly towards Mrs S in respect of the reasons it has given for declining her claim. All the necessary aspects for a claim have been met. So I've gone on to consider how Tesco's response affected Mrs S's position.

what was the impact of Tesco's actions on Mrs S?

It's clear that Mrs S has been inconvenienced by the way Tesco has dealt with her underlying claim. The bank isn't obliged to accept a claim simply because one is brought. But where it seeks to defend a claim, it seems to me only fair that it does so in a way that demonstrates it has properly contemplated the arguments made. Based on what I've seen from Tesco in this case, I'm not persuaded that it has done so, despite the extended period it has had to review its position.

In light of the trouble Mrs S has been put to in this respect, I share the investigator's view that Tesco should pay her compensation, which I assess at £150. I'm further inclined to say that Mrs S has presented what appears to be a compelling claim in terms of misrepresentation by A. Her submissions include a letter from B's administrators, which contains the following:

"Under the terms of the sale agreement

- the purchaser is obliged to seek the consent of the CM ("chattel mortgage") Holders to keep CM Vehicles in their possession*
- If the CM Holder does not wish to sell the CM Vehicle or otherwise make it available to the purchaser, then the purchaser is obliged to forthwith deliver the CM Vehicle up to them for no charge, save in circumstances where it does not have control of the CM motorhome"*

The administrators' letter is strong and persuasive evidence that the agreements A purchased from B provided that the mortgaged property (as I understand it, the motorhome and among other things, any fixed additions or accessories) should be delivered up to Mrs S without at least some of the charges A held out as having the right to collect. I can see that

A's assertion that having acquired B's rights from the original agreement it was able to make such charges could well amount to misrepresentation by A that led Mrs S to make payment.

For the avoidance of any doubt, I don't accept Tesco's argument that it can't consider the arrangements between Mrs S and B in relation to the claim in misrepresentation. There is nothing that prevents the bank from taking this arrangement into account. If anything, it was probably remiss of the bank to fail to do so, as it is the basis of the claim.

In light of this, I find that Tesco did not properly receive and consider Mrs S's claim in misrepresentation. Had it done so, I see no valid reason why it would not have met that claim. To address this, I consider it appropriate to require Tesco to reimburse the money Mrs S paid A, with suitable interest to reflect the time she's not had the use of her funds.

My final decision

My final decision is that I uphold Mrs S's complaint. To resolve it I require Tesco Personal Finance PLC to take the following steps within 28 days of Mrs S's acceptance:

1. Refund the amount Mrs S paid A, together with annual interest at 8% simple from the date Mrs S repaid the credit card transaction on her account to the date Tesco settles the claim.

If Tesco deducts tax from the interest element of my award, it should confirm to Mrs S that it has done so and provide her with the relevant tax deduction certificate

2. Pay Mrs S £150 for her distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 11 November 2022.

Niall Taylor
Ombudsman