

The complaint

Mr A complains Tesco Personal Finance PLC ("Tesco Bank") has declined a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA"). Mr A is represented by a claims management company (CMC).

Background

I issued a provisional decision on Mr A's complaint on 23 February 2022 in which I explained I was minded to uphold it. I think the provisional decision is worth reproducing in full, so I have done so below:

"I won't go into great detail about the background to this matter as the facts are well known to the parties involved, but to summarise:

- *Mr A had a timeshare-like product with a company I'll call "C". He was contacted by another company, "TRAG", who invited him to a meeting to discuss a potential no-win, no-fee legal compensation claim against C.*
- *Mr A attended the meeting on 25 March 2017. It was with a company I'll call "RAC", who were apparently based in Dubai. At the meeting Mr A says he was told he would be included in a class action lawsuit against C and he would receive significant compensation. He also says he was told he would be released from the timeshare and would no longer have to pay for a loan he had used to fund it. Mr A signed a contract with RAC, in which RAC agreed it would arrange to release him from his timeshare and "give assistance and guidance" in other legal disputes with C. On that day Mr A made a payment on his Tesco Bank credit card of £950. The payment appeared on his statement as having been made to "RAMCOM" in Spain. A few days later Mr A made another payment by bank transfer to a bank account in Dubai in RAC's name. Including the fees for sending the money, this came to £5,614.50.*
- *Some time later, Mr A says he discovered when researching online, that RAC was perpetrating a scam. He says he contacted C himself and arranged for the surrender of his timeshare at no cost, on 17 June 2017. No compensation claim or class action lawsuit materialised. RAC gave Mr A some advice about his timeshare loan, but this did not result in him being released from it.*
- *In 2019 Mr A engaged his CMC and they made a claim under section 75 of the CCA on his behalf with Tesco Bank. The bank declined the claim, stating that the necessary criteria to make a valid section 75 claim were not in place. Mr A complained about this decision, and the bank rejected his complaint, which he then brought to this service.*
- *One of our investigators recently looked into the complaint. He didn't think the bank had treated Mr A unfairly by declining his claim. He agreed the necessary criteria to make a successful section 75 claim were not in place. He also thought about whether the bank should have considered attempting a chargeback of the card transaction to RAMCOM, but concluded it had been too late for them to do so by the time they had become aware of Mr A's situation.*

Mr A asked for his complaint to be reviewed by an ombudsman, so the case has been passed to me to decide.

What I've provisionally 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.

Should Tesco Bank have attempted a chargeback?

I think our investigator reached the right conclusions regarding the matter of a chargeback. A chargeback is a means of disputing a card payment. The process is subject to rules made by the card schemes (Mastercard in Mr A's case). The rules say that there is a limited window of time in which to make a chargeback. Generally this is 120 days from the date of the transaction or, if a service was meant to be provided by a specific date in the future, 120 days from that date.

There don't appear to have been specific timescales mentioned in Mr A's contract with RAC, so it appears there would have been 120 days to dispute his card transaction, from the date he made the payment. By the time Tesco Bank were made aware of the problem, that date had long since passed. The bank would therefore not have been able to make a successful chargeback and I therefore don't find it surprising, or unfair, that they didn't consider one.

Mr A's section 75 claim – the DCS agreement

Section 75 of the CCA allows consumers a degree of protection when they purchase goods or services on a credit card, so long as certain technical conditions are met. If these technical conditions are met then they can make a claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of the goods or services. In this case Tesco Bank has said one of the technical conditions, the need for there to be a valid DCS agreement, has not been met.

What having a valid DCS agreement in place generally means is that the person making a claim needs to have used their credit card to pay the same company they say has breached its contract with them, or misrepresented something to them.

If the payment has been made to a third party then this will often cause the chain of connections to be broken, and for there to be no valid claim against the credit card provider.

In this case, Mr A signed a contract with RAC and it is RAC he says has either breached its contract with him, or misrepresented something to him. In order to make his card payment on the day, it appears he filled out a form on RAC's letterheaded paper. He provided personal details and the details of his Tesco Bank credit card. He signed underneath the following statement:

"I authorise RAC to debit one payment of £950.00 from this card as deposit of the balance under agreement number..."

So it seems Mr A had agreed to pay RAC using his credit card. His credit card statement didn't say "RAC" however, it said "RAMCOM" followed by the letters "ESP" (presumably meaning Spain) and a Spanish telephone number. In many cases the appearance of a different name on a credit card statement means the payment has been taken by a different company. But that isn't always the case. Sometimes a company will use different trading names for example, but each trading name relates to the same legal entity. I think something like that has happened here, for reasons I'll explain.

RAC was, according to the contract Mr A signed, a limited company based in Dubai. I've checked the company registers of the UAE (of which Dubai is a part) and RAC does not appear on them. A company by this name does exist in the UK but it appears to be involved in a different sector. Another company with the same name exists in Hong Kong, but is also involved in an unrelated sector. A company with a similar name is registered in Spain, and is linked to an individual I will come on to later, but it did not exist until some time after Mr A entered the contract. It seems unlikely to me that the RAC Mr A dealt with was any of the companies I've been able to locate, so it seems a distinct possibility that it was a trading name rather than a separate entity. There are further pieces of evidence which point in this direction, which I will come on to now.

Mr A received a receipt by email after he had given his card details. This receipt came from an email registered at the domain name of a well-known payment facilitator which I'll call "S". Businesses can set themselves up as merchants able to take payments by card, by signing up with S. In common with other similar facilitators, S allows businesses to choose the description which appears on customer bank or credit card statements, when they pay the business by card via S.

The email from S had the subject "Your RAC receipt". The sender appeared on Mr A's email account as "RAC". The body of the email was, as the title indicated, a receipt. It stated Mr A had paid £950 for "legal services". At the bottom of the email was the following sentence: "You are receiving this email because you made a purchase at RAC". A contact number was provided, which was the same number which appeared on Mr A's credit card statement.

I arranged for enquiries to be made with S about Mr A's payment. S explained that the company to which Mr A had made his payment was in fact another business I will call "FSL". S went on to explain that FSL had chosen for itself a trading name of "RAMCOM" and that it had also chosen the name "RAC" to appear on its receipts.

FSL was registered in Spain. Its sole director, from 2012 until 2019 when it was dissolved, was a "Ms F". When the company with a similar name to RAC, which I've mentioned above, was formed in 2018, Ms F was the owner and director. Ms F also appears in the evidence submitted in Mr A's case. When Mr A made the balance payment to RAC's bank account in Dubai, he replied to the receipt email to confirm he had done this. He received an email back from Ms F thanking him for the payment. Ms F's email address appeared as being from "RAM" and was registered at RAM.com. A few days later Mr A received another email from

Ms F. This time the email appeared to be from "RAC", registered at RAC.org. Numerous later emails Mr A sent to RAC were also responded to by Ms F.

It seems to me that, in the context of Mr A's purchase, RAC and RAM/RAMCOM were effectively interchangeable. Ms F represented both names in correspondence with Mr A, and the credit card payment was taken by FSL, of which Ms F was the sole director. According to S, FSL chose the names RAC and RAMCOM to appear on the payment receipt and credit card statement respectively.

I appreciate that there is a complex web of companies and trading styles involved in this case and the information available is possibly still incomplete. Nevertheless, I am minded to make a finding, on the balance of probabilities, that RAC was simply a trading name used by FSL. This means FSL would be the supplier for the purposes of the DCS agreement. As the credit card payment was made to FSL, there was a valid DCS agreement in place.

I will note here that I am aware of other cases where "RAM" has entered contracts with consumers which are very similar to the one Mr A signed with RAC. I've also seen other cases where RAC has entered contracts with consumers and different names have appeared on credit card statements. This decision does not set a precedent for those

cases, which need to be decided on their individual merits.

Finally, I will also note that although I think RAC was just a trading name of FSL, I will continue to refer to "RAC" for the remainder of this decision.

Mr A's section 75 claim – breach of contract or misrepresentation - evidence

Our investigator recently spoke to Mr A to obtain his account of events first-hand, rather than through his CMC. Mr A also sent us a large amount of email correspondence he'd had with RAC after entering the contract.

Mr A said that he'd been worried about the annual fees on his timeshare with C and had recently lost his job. He was, for reasons unknown to him, receiving phone calls from various companies offering to release him from the timeshare and include him in a compensation claim. One of these companies was RAC, who he agreed to meet. Mr A said RAC's representative told him he would get the money back he'd been paying to C for annual fees, the initial payments he'd made for the timeshare, and he would be released from the timeshare. Mr A says RAC told him if he didn't relinquish the timeshare, he would be charged forever by C, but relinquishing would cost £6,500, which he was happy to pay considering the large amount of compensation he could potentially claim. Mr A says he was also told he would not have to keep paying for a loan which had been arranged to pay for the timeshare, which gave him some added confidence in going ahead despite the price.

After paying RAC, Mr A says he didn't hear from them for a while. When he made enquiries about progress, he says he was told he would be released from his timeshare "in due course" and that the compensation claim would take time because it was a group action. Mr A says he continued to receive calls from other companies, one of which asked him if he'd checked if RAC were a legitimate firm. He says he then carried out research into RAC, which led him to believe they were not to be trusted, and also discovered he could simply send a letter to C to relinquish his timeshare, which he did as his annual fees were due soon. C confirmed that his timeshare was suspended but could be activated again.

Mr A said he believed RAC might still pursue the compensation claim so he chased them in early 2018, but did not receive any meaningful updates.

It's apparent from Mr A's correspondence with RAC, that he believed he was purchasing

more than just a timeshare disposal service. He was also under the impression that RAC were pursuing a compensation claim for him, and that they would be getting him out of a loan he had used to purchase his timeshare and which he was still repaying. There are a number of emails between him and Ms F on these subjects.

In June 2017, for example, Mr A wrote the following to Ms F:

"At our meeting with the advisor, we were advised that as we still had an outstanding loan / finance for the payment of our [C] membership; once we cancelled our membership we should no longer have to continue to pay the loan. I hope this is correct. How do we go about doing this? Please would you give instructions on how to approach the finance company."

Mr A also asked for an update on the compensation claim. When Ms F replied, she did not deny that Mr A had been advised that he would no longer have to pay for his loan, or that there was a compensation claim being taken forward. She advised there were "no updates at the moment" about the claim, and said Mr A needed to send a letter to his loan company which said the following:

"Under EU Law 4/2012 which supersedes Directive 2008/122 of the European Union where if a timeshare contract is cancelled and there is a pending finance, the finance contract becomes null and void. Please note I will cease payments on the above agreement with effect from this date."

Mr A's lender didn't agree that this was a legitimate reason for Mr A to stop making his loan repayments and began contacting him about arrears. Mr A went back to Ms F for advice; she replied that the loan was illegal and that Mr A should send the same wording as she'd advised before, and ask the lender to explain why they disagreed. It appears Mr A's lender explained to him that the law he'd quoted acted as a kind of "cooling off" period and it didn't apply at the time he had sought to invoke it. The lender continued to pursue Mr A for repayments, and in the end I understand Mr A decided to borrow money from family to pay the loan off and prevent further action being taken against him.

I have seen further emails in which Mr A quizzed Ms F for updates on the compensation claim. In October 2017 he was advised that "we have had no updates for a while" and "mass claims are slow and arduous processes", and in February 2018 Mr F advised that it had "...taken years to sign up members and months and months of preparation per person, you will receive updates as and when we have some but there are not many..."

Finally, I have seen emails between Mr A and a Ms T from RAC, in which Ms T provided advice to Mr A on how to exit his timeshare with C. This involved him writing a letter and returning his timeshare certificates.

Mr A's section 75 claim - conclusions

Based on the evidence I've outlined above, I'm satisfied RAC told Mr A that it could, and would, arrange for him to be released from his timeshare and his timeshare loan, and be added to a compensation claim. I think he was most likely told that cancellation of the timeshare would mean he would no longer have to pay for the loan. And I think he was told these things before he agreed to pay RAC for their services, and that they each played an important part in him agreeing to go ahead. Mr A signed a contract which did not refer to RAC doing all of these things (or referred to them only vaguely), but I am satisfied he was told verbally that this is what RAC would do for him.

I cannot see any reasonable basis for RAC to have told Mr A that on cancellation of his timeshare through them, he would no longer need to keep paying for his loan. It's apparent

from Ms F's later instructions to Mr A that RAC may have believed that the EU Directives referred to meant Mr A's loan would be cancelled if he cancelled his timeshare.

The Directives do not have that effect unless a contract to acquire a timeshare or similar product is withdrawn from within a short period of time after purchase. So if this was RAC's belief, I think it was mistaken. The alternative is that RAC was aware that what it was telling Mr A was incorrect. For the purposes of Mr A's section 75 claim against Tesco Bank it doesn't matter which it was. I think RAC made a false statement of fact or law when it told him that cancelling his timeshare through them would mean he would no longer need to keep paying for his loan. I think Mr A relied on this false statement when he agreed to go ahead and enter the contract with RAC, and that he therefore entered into the contract as a result of a misrepresentation by RAC.

I think it's possible RAC's statement that it was going to pursue some form of compensation claim for Mr A was also false. I think it may be that RAC had no intention of doing such a thing. But further research would be required in order to come to a firm conclusion on this, and I don't need to make a finding on this question as I have already found RAC made the misrepresentation I referred to in the preceding paragraph.

The effect of section 75 of the CCA is that Mr A has a like claim against Tesco Bank in

respect of RAC's misrepresentation. I don't think it's likely Mr A would have agreed to go ahead with the contract but for this misrepresentation. So the fairest remedy in the circumstances would be for Tesco Bank to take the actions necessary for Mr A to be put, as far as is practicable, into the position he'd have been in, had he not entered the contract with RAC.

My provisional decision

For the reasons explained above, I intend to uphold Mr A's complaint and direct Tesco Personal Finance PLC to take the following actions:

- 1) Refund the amount of £950 paid on the Tesco Bank credit card. This should include any interest, fees or charges which have been incurred as a result of the amount having been charged to the credit card.*
- 2) Reimburse the amount of £5,614.50, adding 8% simple interest per year* calculated from the date Mr A made the payment, to the date he receives a refund.*

I've thought about whether any deduction should be made from this redress to recognise the fact that RAC did provide some advice on how Mr A could exit his timeshare. I don't think this would be appropriate as it would be difficult to ascertain the value of the service, which would in any event have been minimal.

**If Tesco Personal Finance PLC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

I now invite all parties to the complaint to give me any new comments, evidence or arguments they would like me to consider, by 9 March 2022. I will then consider the matter again before making a final decision."

Mr A responded to my provisional decision to say he accepted it. Tesco Bank said it had nothing further to add. The case has now been returned to me to decide.

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.

Neither party to the complaint has put forward any new arguments or evidence they would like me to consider. Having reviewed the case again, I see no reason to depart from the findings set out in my provisional decision quoted above. It follows that I consider Tesco Bank acted unfairly in declining Mr A's section 75 claim, and that it should take the actions I outlined in my provisional decision which I will say again for the sake of completeness below.

My final decision

For the reasons explained above, I uphold Mr A's complaint and direct Tesco Personal Finance PLC to take the following actions:

- 1) Refund the amount of £950 paid on the Tesco Bank credit card. This should include any interest, fees or charges which have been incurred as a result of the amount having been charged to the credit card.
- 2) Reimburse the amount of £5,614.50, adding 8% simple interest per year*

calculated from the date Mr A made the payment, to the date he receives a refund.

I've thought about whether any deduction should be made from this redress to recognise the fact that RAC did provide some advice on how Mr A could exit his timeshare. I don't think this would be appropriate as it would be difficult to ascertain the value of the service, which would in any event have been minimal.

*If Tesco Personal Finance PLC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 April 2022.

Will Culley
Ombudsman