

The complaint

Mr B complains Tesco Personal Finance PLC trading as Tesco Bank failed to honour a claim he made under section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

The background to this complaint, and my provisional findings on it, were set out in a provisional decision I sent to both parties on 11 March 2022. I have set out the relevant content of that provisional decision below:

"Mr B had a timeshare-like product with a company I'll call "C". In March 2016 he was contacted by another company, "RAM", who he says agreed to release him from his timeshare and claim substantial compensation of over £20,000 for him for the mis-sale of the timeshare, in return for a fee.

There was a dispute between Mr B and RAM. In essence, it's alleged that RAM failed to meet its contractual obligations to Mr B, and that it misrepresented the work involved in effecting the release from his timeshare, causing him to pay a substantial amount of money for RAM's services (£6,570.92) which he wouldn't have otherwise.

Because Mr B had part-paid for RAM's services using his Tesco Bank credit card, he later brought a claim to the bank under section 75 of the CCA, asking for reimbursement. The bank rejected his claim, which resulted in a complaint from Mr B about this decision, which was also rejected. He referred his complaint to this service, where the most recent assessment by one of our investigators said that it should be upheld. Our investigator had initially not been convinced that RAM had breached its contract with Mr B, or misrepresented anything to him. But after hearing further representations from Mr B's representatives, and speaking to Mr B directly to obtain his first-hand testimony, she was persuaded that RAM had misrepresented two matters to Mr B:

- That it intended to pursue a compensation claim. On balance, our investigator considered RAM had no such intention. She noted C had informed this service that it had never heard from RAM.*
- The costs involved in the service it was contracting with Mr B for. Specifically, it had quoted costs for things such as notaries, lawyers and "resort fees", which were not required in order to effect Mr B's release from the timeshare.*

Our investigator concluded Tesco Bank, due to its joint liability under section 75 of the CCA, should refund the payments Mr B had made towards the contract with RAM, along with compensatory interest. Mr B accepted the investigator's recommendations but Tesco Bank did not. In essence, the bank was dubious about the accuracy of Mr B's recollections from six years ago, and felt there was a lack of evidence of RAM having done something wrong.

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.

Section 75 of the CCA allows consumers a degree of protection when they pay for goods or services using a credit card, so long as certain technical criteria are met. If these criteria are met then the consumer can claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of the goods or services.

Broadly speaking, the technical criteria concern the cash price of the goods or services, and whether the recipient of the credit card payment was the same entity as the supplier. It's not been disputed in this case whether the criteria have been met, so I will say only that, having considered the evidence, my view is that they have been.

The point in dispute in this case is whether or not RAM breached its contract with Mr B, or misrepresented something to him. I agree with our investigator that RAM probably made misrepresentations to Mr B, and I'll explain why.

RAM made false statements about the level of work required and what Mr B's payments were for

A key piece of evidence in this case has been a breakdown of costs RAM provided to Mr B as part of its sales process. This purported to show how the price Mr B was expected to pay would be divided up among various things which were necessary to effect his release from the timeshare. Specifically, £2,500 was said to be for fees for lawyers and notaries; £1,700 was said to be for "resort/trustee fees", and £1,218 for "administration costs". The rest of RAM's fee was made up of tax.

My starting position is that RAM was a company holding itself out to be an expert in the field of securing people's release from their timeshares, and that it would therefore be reasonable to assume that it was knowledgeable about what was required in order for a consumer to be released from their timeshare. If it was aware that certain services or payments would not be required, but represented that they were, then this would be a false statement of fact.

Ultimately, RAM's efforts to release Mr B from his timeshare appear to have consisted of advising him to fill out a form asking to be released from the timeshare, which he needed to send to C himself. C has informed this service that it has never heard from RAM, or a related company, in relation to Mr B. It has also said that it offers a free of charge way for its timeshare customers to exit their timeshares and that it has a policy of not dealing with third parties such as RAM. These are things which I'd expect RAM to have known given its apparent position as a timeshare-release specialist.

In light of this, it is difficult to understand how "resort/trustee" fees formed a part of the price. C was the resort, and it didn't require any fees to be paid to it in order for Mr B to be

released from his timeshare. I've not seen evidence that any trustees needed to be paid, which seems unlikely given C's exit programme was said to be free of charge. I think RAM would have been aware of this. It would have known that all Mr B had to do was send in a form to C. By telling him that a significant proportion of the payment he was expected to make went towards these fees, I think RAM falsely represented to him that such fees were required.

I think it is also unclear how fees for a notary or a lawyer were required given the free

nature of C's exit programme. For similar reasons to those I gave with regard to the resort/trustee fees, I think RAM falsely represented that money was required for the services of a notary or lawyer to effect Mr B's release from his timeshare. I have seen a partial copy of what appears to be a Spanish power of attorney with Mr B's name on it, bearing a notary's stamp. But even if a notary's services were in fact employed, I still don't think they were required to release Mr B from the timeshare. I think it is possible the power of attorney related to the compensation claim Mr B says RAM told him it would pursue for him, which I will now turn to.

RAM represented it would pursue a compensation claim when it likely had no intention of doing so

I've seen Mr B's contract with RAM and this makes no mention of a compensation claim being pursued for him. Tesco Bank has highlighted this also, and has noted that it's not possible to determine as a result the precise details of any agreement to carry out such a claim. The bank has also noted that while C may have told this service that it had never heard from RAM, work could have been going on in the background, so a lack of evidence of any action by RAM doesn't necessarily mean it had no intention of carrying out a claim.

This is not the first time I have seen a complaint involving RAM, in which the company is alleged to have told consumers it would pursue compensation claims for mis-sold timeshares. I have seen evidence that RAM did tell other consumers that this is what it would be doing for them. I have not seen evidence that it ever did pursue compensation claims and C has confirmed that it did not hear from RAM in relation to Mr B.

More broadly, Mr B's agreement with RAM bears many of the hallmarks of a well-known scam which targets timeshare owners and holiday club members. This type of activity has gone on in some form or another for many years and it has been the subject of warnings from ActionFraud¹ and analysis by the House of Commons Library, Trading Standards, and what was then the Department of Business, Innovation and Skills. It has also received substantial press coverage.

None of this means necessarily that RAM told Mr B that it would pursue a compensation claim against C and recover many thousands of pounds for him. But it is important background information and it has informed my judgement when deciding whether I accept Mr B's testimony that he was told a compensation claim would be pursued, and whether I think it is likely RAM intended to provide such a service.

My conclusion on this point is that I think it is likely RAM told Mr B it would pursue a compensation claim for him against C and that this would recover for him a great deal of money. I don't think RAM intended to pursue such a claim and, by telling Mr B that it would, it falsely represented its intentions to him. Had Mr B known that RAM did not intend to pursue a compensation claim, I do not think he would have agreed to enter the contract with them and part with the large sum of money that he did.

Ultimately, I think Mr B entered the contract with RAM as a result of RAM's misrepresentations. Due to the effect of section 75 of the CCA, he can hold Tesco Bank liable for these misrepresentations and I therefore think the bank did not act fairly in declining his claim.

Putting things right

¹ <https://www.actionfraud.police.uk/a-z-of-fraud/timeshare-fraud>

To put matters right, I think the fairest thing of the bank to do would be to put Mr B, as far as is practicable, into the position he'd have been in, had he not entered the contract with RAM.

This means it should reimburse all payments he made towards the contract, plus any fees or charges he incurred as a result of not having had refunds when he should have, along with compensatory interest. It should also remove any adverse credit file reporting which might have been caused by the payment he made on his Tesco Bank credit card.

I've considered whether a deduction should be made from any refunds to account for the fact RAM did provide a service to Mr B (advising him to send a form to C). I think it would be difficult to assign a value to this service and so I don't think it would be appropriate for any deduction to be made."

I said I was minded to make the following directions to Tesco Bank:

- *"Rework Mr B's credit card account as though the payment of £244.78 made on 28 March 2016, had been refunded on the date the section 75 claim was originally declined. This means any interest, fees or charges relating to the payment from that date should be refunded, and any negative credit file reporting which may have been caused by it, removed. If a credit balance would have arisen on the account at any point, 8% simple interest per year* should be added to the refund, calculated from the date the credit balance would have arisen, to the date it would have ceased to exist.*
- *Reimburse Mr B the amounts he paid by bank transfer to RAM, namely:*
 - o *£591.14, paid on 28 March 2016.*
 - o *£1,600, paid on 7 April 2016.*
 - o *£4,135, paid on 12 April 2016.*
- *Pay Mr B 8% simple interest per year* on the three reimbursed amounts above, calculated from the date the section 75 claim was originally declined, to the date Mr B receives the reimbursement.*

**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 B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."*

The responses to my provisional decision

I set a deadline of 25 March 2022 for both parties to respond to my provisional decision. Mr B said he accepted the decision. Tesco Bank did not reply.

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.

Because neither party to this complaint has put forward any new evidence or arguments for me to consider, I see no reason to depart from the conclusions I reached in my provisional

decision. It follows that I adopt the quoted findings from my provisional decision as part of my final decision, and conclude Tesco Bank treated Mr B unfairly in declining his section 75 claim. The bank should now take action to put things right as outlined in my provisional decision.

My final decision

For the reasons explained above, and in the quoted extracts from my provisional decision, I uphold Mr B's complaint and direct Tesco Personal Finance PLC to take the following actions:

- Rework Mr B's credit card account as though the payment of £244.78 made on 28 March 2016, had been refunded on the date the section 75 claim was originally declined. This means any interest, fees or charges relating to the payment from that date should be refunded, and any negative credit file reporting which may have been caused by it, removed. If a credit balance would have arisen on the account at any point, 8% simple interest per year* should be added to the refund, calculated from the date the credit balance would have arisen, to the date it would have ceased to exist.
- Reimburse the Mr B the amounts he paid by bank transfer to RAM, namely:
 - o £591.14, paid on 28 March 2016.
 - o £1,600, paid on 7 April 2016.
 - o £4,135, paid on 12 April 2016.
- Pay Mr B 8% simple interest per year* on the three reimbursed amounts above, calculated from the date the section 75 claim was originally declined, to the date Mr B receives the reimbursement.

*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 B how much it's taken off. It should also give Mr B 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 B to accept or reject my decision before 25 April 2022.

Will Culley
Ombudsman