

The complaint

Mr U says Tesco Personal Finance PLC – trading as Tesco Bank ('Tesco') – has unfairly declined her claim under section 75 of the Consumer Credit Act 1974 ('CCA').

What happened

- In December 2019, Mr U paid a holiday park operator I'll call 'P' an annual 'pitch fee' of £5,054 for 2020, using his Tesco credit card account. At the time, Mr U had a holiday home on one of P's sites.
- The site was closed for about 16 weeks between March 2020 and July 2020 because of the Covid-19 pandemic.
- Mr U asked P for a pro-rata refund in cash: $16/52 \times £5,054 = £1,555.08$.
- P refused, but it offered to reduce his 2021 pitch fee by a sum equal to 50% of the pro-rata refund.
- Mr U did not accept the offer and contacted Tesco to try to recover some money. He also sold his holiday home.
- Tesco says it chose not to raise a 'chargeback' and it declined a claim under section 75 of the CCA because it didn't think there had been a breach of contract by P. But it paid Mr U £25 because he had to chase it for a letter and it didn't explain its decision.
- Unhappy with Tesco's response, Mr U referred his complaint to our service. In addition to the pro-rata refund of £1,555.08 for the 16 weeks the site was closed, Mr U wanted Tesco to pay him £1,943.85 because he sold his holiday home on 16 August 2020, and under the Pitch Licence Agreement, wasn't entitled to any refund. He wanted a pro-rata refund to cover the period from 16 August 2020 to year end.
- One of our investigators recommended Tesco refund £777.54, which is 50% of the pro-rata refund for the 16 weeks the site was closed. But our investigator said Mr U chose to sell his holiday home when he did, and the paperwork made it clear that he wouldn't get a refund in those circumstances. So our investigator didn't think Tesco needed to pay Mr U any compensation for the period from 16 August 2020 to year end.
- Mr U accepted our investigator's recommendation – 'in the spirit of compromise'.
- In reply to our investigator, Tesco said: '...we now think [Mr U] should be reimbursed a percentage of the pitch fee costs for the 16 weeks the park was closed [and agree] that the cost of the 16 weeks equates to £1,555.08'. But it offered to pay Mr U 20% of this sum for the reasons I explain below. And, in recognition that it 'got it wrong in the first instance', offered an additional £50.
- Mr U didn't accept Tesco's offer, and Tesco refused to revise its offer and asked that an ombudsman make a final 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.

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

Initially, Mr U wanted Tesco to pay him compensation to cover the period from 16 August 2020 to 31 December 2020. I've inferred from his response to our investigator that he no longer seeks this. But for completeness, I'd like to confirm that I agree with our investigator. Mr U chose to sell his home when he did and the paperwork I've seen makes it clear that he isn't entitled to a refund. So, on this point, I don't think there was a breach of contract for which Tesco is liable.

Regarding the closure of the site for 16 weeks, the parties now agree that there was a breach of contract for which Tesco is legally answerable and only disagree on the appropriate remedy, which is all I need to decide here.

Tesco says paying Mr U 20% of the pro-rata refund for the 16 weeks the site was closed is fair because:

- It thinks it's reasonable to assume that the pitch itself, park maintenance and 24-hour security make up the 'vast majority' of the overall costs.
- If the site had been open, Mr U would have only lost out on the other facilities for the time he was there – and it 'highly doubts' that he would have been 'constantly' using the facilities so his loss in 'real terms' was 'very small'.
- If the site had been open, it's unlikely he would have been able to visit in any event because of travel restrictions imposed by the Government.
- Although P offered to reduce his 2021 pitch fee by a sum equal to 50% of the pro-rata refund, it doesn't think this is indicative of the cost of the facilities Mr U couldn't use as a proportion of the pitch fee – it says it is 'well known' that credit towards future purchases are often higher than cash refunds because suppliers benefit from – and therefore incentivise – repeat business.

I'll summarise Mr U's response to these points in the same order.

- Mr U says Tesco's assumption that the pitch itself, maintenance and security made up the 'vast majority' of the overall costs is wrong. He says homeowners who remained on site when it was closed told him and others that there were only two staff on site, and there was no maintenance or security. What's more, Mr U says there is usually only 2 security staff during the day and one at night – which is just 10% of normal staff numbers.
- As he's retired, Mr U says he spent most of spring, summer and autumn on site. In any event, he says it isn't a pay-as-you-use facility but one where you pay and use whenever you wish.
- Mr U doesn't think Tesco's comment about the effect of Government-imposed travel restrictions warrants a response and says P's offer should have been closer to a 90-95% refund.

Working out fair compensation in a case like this isn't straightforward and I must, necessarily, paint with a broad brush.

The value of a holiday home is surely derived from the ability of the owner to use it. I don't think it's necessary or appropriate to carry out a speculative, open-ended enquiry into the costs of what P provided when the site was closed or what they are as a percentage of the pitch fee when the site is open. I accept Mr U's testimony that he usually spent most of spring and summer on site, and he was unable to use his holiday home for 16 weeks. With

this in mind, and while I accept that P continued to provide some services, I think Tesco should pay Mr U 50% of a pro-rata refund for the 16 weeks the site was closed, which is £777.54. And I think it should pay him the £50 it offered in recognition that it 'got it wrong in the first instance', which I think is fair in the circumstances.

My final decision

For the reasons I've given, I uphold this complaint and direct Tesco Personal Finance PLC – trading as Tesco Bank – to pay Mr U:

- £777.54 with simple interest at a rate of 8% per year from 27 May 2020 (which is when it declined his claim) to the date he receives the money; and,
- £50 to compensate Mr U because Tesco initially declined his claim.

If Tesco thinks it is necessary to deduct tax from the interest element of this award, it should provide Mr U with a certificate of tax deduction if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 27 October 2022.

Christopher Reeves
Ombudsman