

## **The complaint**

Mrs T says that Tesco Personal Finance PLC, trading as Tesco Bank (who I'll refer to as "Tesco") unfairly declined her claims under the Consumer Credit Act 1974 (the 'CCA') in relation to a timeshare product she was sold.

Mrs T has made a claim on behalf of herself and her husband, but because the credit was in Mrs T's sole name, I'll refer only to her in this decision. I mean no disrespect to her husband when doing so.

## **What happened**

In February 2015 (the Time of Sale) Mrs T entered into a timeshare agreement with a company I'll call "E". The agreement gave her rights to accommodation at a hotel in Malta and also provided access to an international exchange scheme that I'll call "D". Mrs T paid a £1,000 deposit using her credit card.

In October 2019 her representatives made a claim to Tesco on her behalf. They said that Tesco were jointly liable for any claim Mrs T may have against the supplier and that the supplier had misrepresented the agreement. In particular they explained that:

- The timeshare was sold as an investment but wasn't one.
- Mrs T was promised she could sell the timeshare back.
- Mrs T was told there'd be plenty of availability, but she'd been unable to make any bookings.
- The timeshare would increase in value.
- That Mrs T hadn't been able to access the international exchange with D.
- That she wasn't given key information required by the Timeshare Holiday Products, Resale and Exchange Contracts Regulations 2010.

Mrs T's representatives also said Mrs T had a valid claim under s140A of the CCA.

Tesco didn't uphold Mrs T's claim. They didn't think she had been able to provide evidence of misrepresentation.

So, Mrs T referred her complaint to this service and our adjudicator provided his opinion. He couldn't find evidence in the paperwork that E had promised to be able to resell the timeshare themselves, or that holidays could be booked at any time or were being sold as an investment. He didn't think there was evidence the agreement had been misrepresented to Mrs T and he couldn't find any evidence there had been an unfair relationship. So, he didn't think it was fair to ask Tesco to take any action.

Mrs T and her representatives disagreed. They reiterated some of the misrepresentations they said had been made and said that we *could* consider the timeshare agreement as it was a linked agreement. They explained that the Timeshare Holiday Products, Resale and Exchange Contracts Regulations 2010 dictated that certain key information needed to be supplied to the consumer for the duration of the sales presentation, but that it wasn't. They said that no benefits were conferred on Mrs T as a result of her signing up for the timeshare as the same holidays could be booked by anyone through a regular travel agent. They also expanded on why they thought there was an unfair relationship and explained that a £200 discount was only available if a deposit was taken at the presentation. They said that was a clear breach of a provision of the Timeshare Holiday Products, Resale and Exchange Contracts Regulations 2010.

Mrs T therefore asked for her complaint to be referred to an ombudsman.

### **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.

I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my final decision.

### ***The Consumer Credit Act 1974 ("CCA")***

When something goes wrong and the payment was made in full or in part, with a credit card, as was the case here, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

It's not for me to decide the outcome of a claim Mrs T may have under sections 75 or 140A but I'm required to take them into account when deciding whether Tesco have been reasonable rejecting her claims.

### ***The claim under section 75 of the CCA***

If Mrs T was given a false statement of fact or law, and if that false statement was a significant reason why she entered into the agreement I may think the agreement had been misrepresented to her. In those circumstances I may think Tesco were unreasonable not to uphold a claim under section 75.

I understand that many of the misrepresentations Mrs T says were made, are claimed to have been provided in the timeshare presentation she attended. There's little, if any, direct testimony surrounding the allegations in question – like when the representations were made, by who and in what context. And, as misrepresentations are false statements of fact or law, without that important colour and context it's difficult to determine whether, what was allegedly said could have been an actual misrepresentation. It's understandable that it's not been possible to provide a copy of that presentation. But when considering if those misrepresentations are likely to have been made, I have been able to review copies of the documentation that was provided and the purchase agreement.

I've not found evidence in that documentation or in Mrs T's testimony, that the timeshare was sold as an investment or that any promise was made that it would increase in value. There's also no mention of E agreeing to resell the timeshare if required. Indeed the *"Summary Schedule and Customer Compliance"* form only says:

*"1. We understand that our agreement...permits us to sell through a third party..."*

There's no mention of being able to sell through E and I note that the supplier referred Mrs T to a number of third-party sales platforms when she enquired about selling the timeshare. That was in accordance with the point of sale paperwork.

I can understand that a consumer would expect to be able to book accommodation under the agreement. There's no guarantee of availability in the documentation and whilst Mrs T says she was unable to use her weeks because of availability issues, I note in her email to the supplier in August 2017 she said:

*"You may or may not be aware we have never taken up our free weeks for the past two years mainly due to personal circumstances. As these circumstances are unlikely to change we wish to sell our investment back..."*

I think that's at odds with the suggestion Mrs T had found limited availability. It seems, on that basis, that the reason she wasn't able to book accommodation was more likely to be because of her personal circumstances.

If Mrs T had been unable to book accommodation I would expect to have seen considerably more communication with the supplier about that issue. So, I'm not persuaded the agreement was misrepresented to her on that basis.

There's no dispute that the agreement included access to an international exchange (D). Mrs T emailed the supplier in August 2015 and said:

*"we were told at the presentation that you would help us in booking a holiday. We have had no dealings yet with DAE (D here – my edit). Could someone please contact us regarding the procedure we need to follow in a booking a holiday."*

Mrs T says she didn't hear back from the supplier, but I don't think that demonstrates that there'd been a misrepresentation. The email was sent to an address that hasn't been included in other examples of correspondence, so it's unclear whether it was received by the supplier and that could explain the lack of response. And even if the supplier did receive the email and didn't respond, I don't think that suggests Mrs T couldn't access D, as the agreement had promised. Mrs T had merely explained she needed help with the procedure; she didn't say she couldn't make a booking or that bookings weren't available when she had been promised otherwise at the time of sale. And, as I've not been provided with any further communication on that issue, I think it's fair to assume Mrs T was subsequently able to

access bookings or that she chose not to. I've searched for D on the internet and can see that although it's now changed names, it appears accessible.

Mrs T's representatives have suggested that the agreement offered no benefit as the same holidays could be booked by anyone through a regular travel agent. I've not been provided with any evidence that was the case and I can't see that the agreement or literature makes that claim.

Mrs T's representatives have also suggested the supplier breached the implied terms of the contract with Mrs T because they didn't carry out their responsibilities with reasonable care and skill. Section 13 of the Supply of Goods and Services Act 1982 says that:

*"...there is an implied term that the supplier will carry out the service with reasonable care and skill".*

It's Mrs T's representative's suggestion that as they say Mrs T was incorrectly advised on the resale of her agreement, and on the timeshare being an investment, this demonstrates that the supplier hadn't acted with reasonable care and skill. But, as I've not found sufficient evidence the supplier misrepresented the re-sale options or that they had sold the timeshare as an investment, I don't agree there is sufficient evidence the supplier hadn't used reasonable care or skill.

So, I'm not persuaded that there was a misrepresentation or a breach of contract here and I don't therefore think Tesco have been unreasonable to reject Mrs T's claim under section 75.

### ***The claim under section 140A of the CCA***

Section 56 of the CCA is relevant. In broad terms this means that any negotiations between Mrs T and E or the credit broker are deemed to have been conducted by E or the credit broker as an agent of Tesco. This includes any representations made by E or the credit broker and any other dealings between them. So, the pre-contractual acts or omissions of E or the credit broker will be deemed to be the responsibility of Tesco, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mrs T and Tesco.

If Mrs T wasn't provided with all the information she needed to make an informed decision that would have been capable of creating an imbalance in knowledge, such that there was an unfair debtor-creditor relationship.

Mrs T's representatives have explained that relevant legislation (under The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010) required E to give Mrs T key information in good time before she entered into the purchase agreement. They've explained that key information was provided too late and that created an unfair relationship. It's their suggestion that the information was provided but only at the end of the sales presentation.

As I've not been provided with a copy of the presentation Mrs T attended it's not possible for me to be sure when the key information was provided, and I'm therefore not persuaded there has been a breach of Regulation 12 of The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010. But even if there was a breach the fact that the purchase agreement may have been/may be unenforceable under Regulation 15 is unlikely to render the debtor-creditor relationship unfair because I can't see why the unenforceability of the purchase agreement against Mrs T would be to her *disadvantage*.

Mrs T's representatives also say that a £200 discount was only available if a deposit was taken at the presentation. They said that was a clear breach of a provision of the Timeshare Holiday Products, Resale and Exchange Contracts Regulations 2010. I don't agree that there is evidence that was the case. I say that because I've seen a copy of a letter sent on 23 February 2015 from E to Mr and Mrs T. That letter says:

*"If the balance...is received by no later than 2015-03-22 the amount payable will be GBP6,700 and not GBP6,900..."*

So, it seems Mrs T was given a month in which to make payment and benefit from the £200 discount, and I don't think there is evidence she was unduly pressured to take up that offer in such a way as to create an unfair relationship.

Mrs T's representative has also explained that Mrs T was 73 when the agreement was made and would therefore have been 89 when the agreement ended. They've not explained why this would create an unfair relationship, a breach of contract or a misrepresentation and I'm not persuaded it does.

Ultimately I haven't seen anything to suggest Tesco have been unreasonable when rejecting Mrs T's claims.

### **My final decision**

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 1 May 2023.

Phillip McMahon  
**Ombudsman**