

## The complaint

Mr R complains about the way Tesco Personal Finance PLC handled his request for money back in respect of an annual golf membership he paid for using his Tesco credit card.

## What happened

In July 2021 Mr R renewed an annual membership at a golf club I'll call C. He paid £430.50 using his Tesco credit card. The full cost of the membership was around £600, and also included some additional affiliation costs of around £30. Mr R used £172.50 of credit with C towards the cost which he'd accumulated as a result of the course being closed the previous year due to the Covid-19 pandemic.

Mr R has said there were a number of things that were unsatisfactory during his membership including:

- The course was poorly maintained throughout the year despite written promises before he renewed his membership that improvements would be made to it. In particular the greens, approaches and tee areas were either in poor condition or replaced with temporary greens – which were not proper putting surfaces.
- C went out of business in March 2022 and some of the benefits included with his membership were not honoured by the new company that took over – such as a 10% discount at the clubhouse.
- One of the smaller courses on the complex was reduced from 18 to 9 holes and was also of a poor standard.

Mr R asked Tesco to help him get a refund of the membership fee, (less the affiliation costs of around £30) in June 2022.

Tesco considered its liability to Mr R under Section 75 Consumer Credit Act 1974. It offered to pay Mr R £116.61 to account for what it thought was the period between C going out of business and the end of his membership. But it didn't think it was liable to Mr R for the whole cost of the membership. It said that although improvements to the course might have been promised, they were not contractually guaranteed and the course was available to Mr R to use. So, it didn't think there had been a breach of contract by C, save for the period it thought his membership hadn't been available for him to use.

I issued a provisional decision in June 2023 setting out the findings I planned to make. I said (in summary):

- I'd considered whether by way of its potential liability to Mr R under Section 75 Consumer Credit Act 1974 ("section 75") or via the chargeback process, Tesco should reasonably have met Mr R's request for money back.
- Tesco was only liable to Mr R under Section 75 if there had been a misrepresentation or breach of contract by C.
- I thought it was unlikely there had been a misrepresentation. I wasn't persuaded C had no intention of following through on the promises it made to Mr R before he renewed his membership in July 2021 that it would make improvements to the course

and surrounding grounds. So, I didn't think C had said something that was untrue at the time it was said.

- I found that Mr R's contract with C would have included terms implied by the Consumer Rights Act 2015 ("CRA") that any service provided would be done so with reasonable care and skill.
- It seemed likely to me that reasonable care and skill in this case would include maintaining the golf course to the standard that other competent providers of the same kind of service would have given at the kind of price Mr R paid for his membership.
- Research suggested that the average cost of annual golf club membership was £900 so I thought Mr R had paid around a third less than average. While I didn't think this meant he should have expected the course to be of a poor standard, it was still a relevant consideration in considering what the standard of other competent providers might have looked like.
- I thought Mr R had provided convincing evidence there had been problems with the greens, approaches and tee areas on the course in the year before he renewed his membership. But I didn't think he'd provided much in support of those problems persisting during the period of his membership from July 2021 to July 2022.
- Nevertheless, I'd seen communications from the new operators of the course in May 2022 appearing to acknowledge inconvenience to members as a result of the irrigation system not functioning properly.
- I found (on the balance of probabilities) that the problems Mr R had demonstrated were present in the previous year before he renewed his membership, were likely to have been the inconvenience referred to in C's communication. So, I thought they were likely present to some extent until at least May 2022.
- I thought this meant it was likely the service Mr R bought wasn't always provided with reasonable care and skill. The course had not been maintained to the standard one might reasonably have expected.
- I didn't think the withdrawal of the 10% discount at the clubhouse was a breach of contract as it didn't appear from the available evidence that Mr R was contractually guaranteed to receive it.
- I also didn't think the removal of 9 holes of the par 3 course was a breach of contract and I found it likely Mr R would have known about this before he decided to renew his membership.
- I thought that Mr R likely had the right to ask for a price reduction, as a result of C's lack of conformity to the contract (it not being possible in the circumstances to require repeat performance of the service).
- I noted that Mr R had continued to use the course for the period of his membership – albeit with impairment. I also thought that Mr R would likely have known from communications C had sent him shortly before he renewed his membership, that some of the problems with the course would not be resolved overnight and as such would persist for some of the period of his membership.
- I pointed out that although Tesco had offered to pay Mr R a sum of money to reflect the period it thought his membership was not available after C went into administration, the evidence I'd seen suggested the golf course did not shut and that Mr R's access to the course was not in fact interrupted.
- With everything considered I thought that £150 (which I said equated to around 25% of the cost of the membership) was likely an appropriate price reduction in the circumstances. I said I planned to ask Tesco to pay this sum to Mr R, less anything it already paid to him.
- I didn't think Mr R would have been able to secure more than this if Tesco had raised a chargeback. There were dispute conditions set out in the card scheme's rules for where services weren't as described or defective, but I didn't think the circumstances of Mr R's dispute fitted neatly enough into any of these.

Mr R did not agree with my provisional decision. He said, in summary:

- C did not make the improvements to the course that it promised on several occasions.
- C couldn't have had the intention to make these improvements as it went out of business during the membership so must not have had the money to make them.
- The average cost of golf memberships in his area was not £900 and was more like £750
- He used the par 3 course extensively and would often take friends who were beginners to use it. The best part of the course, with the best layout, was the part that was built upon. No notice was provided by C that this would happen. He also only found the information about this on social media when he was researching about his complaint and not before he renewed his membership in July 2021.
- The 10% discount at the clubhouse was a part of the contract and was listed on the membership form and club brochures as a part of membership.
- For the majority of the membership period the main greens were not available for use and poorly prepared areas of grass were used instead. He didn't submit any non-competition handicap cards because of this.
- He should be able to claim for considerably more than I'd planned to tell Tesco to pay him.

Tesco did not respond to my provisional decision within the time I asked it to.

The complaint was therefore returned to me for 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.

There doesn't appear to be any disagreement from either party (in part due to Tesco not responding to my provisional decision in time) that C failed to provide some of the membership benefits with reasonable care and skill – it having failed to maintain the golf course(s) to a reasonable standard during Mr R's period of membership. So, I see no reason to change my finding that C was likely in breach of contract in respect of the standard of the golf courses.

Where Mr R disagrees is whether there were other benefits of membership that he didn't receive which he should have, such as a 10% discount at the clubhouse and half of the par 3 course for some of the membership period. He also disagreed with what I said an appropriate price reduction might have been in the circumstances.

I've thought very carefully about everything Mr R has said about these things in his response to my provisional decision. I asked Mr R for some more information about when half of the par 3 course became unavailable. He said he thought that building work began during the period of his 21/22 membership but he's not entirely sure when that part of the course became unavailable. From what I've been provided, it's not clear enough to me that the full 18 holes of the par 3 course was a benefit that was available to Mr R when he renewed his membership in July 2021. So, I still don't find there to be persuasive evidence of a breach of contract in respect of this benefit.

The membership brochure Mr R has provided (which is for the 2020/21 season) said that a '*discount in club*' was a benefit of membership – although it didn't specify how much. So, I accept on reflection that Mr R was likely promised a discount of some kind in the clubhouse.

The terms and conditions of membership I have been provided with said that C was able to vary the terms of its contract – which might have been a defence to the removal of a benefit. It's very possible however that such a provision may have been considered unfair under the unfair contract terms provisions of the CRA as it provided for unilateral variation of the contract without agreement of both parties. And that would usually result in the term not being binding. It's possible therefore that the loss of this benefit was a breach of contract.

I asked Mr R about his average weekly spend in the clubhouse which he said was around £15-£20. The receipts he provided as part of his file of evidence suggest a spend on the lower end of that estimation. On that basis it appears Mr R lost out on around £24 from when the discount was no longer available until the end of his membership period (10% of £15 for around 16 weeks).

Thinking about all of this, along with what Mr R told us about his overall use of the membership since my provisional decision (around two rounds of golf per week), and the impairment to that use, I still think the sum I'm requiring Tesco to pay is fair compensation for what Mr R lost out on.

I appreciate Mr R has given a detailed account of what C said it was going to do to improve the courses before he agreed to renew his membership. I still don't think this was a misrepresentation as I still haven't seen enough to persuade me C had no intention of making the improvements. I take Mr R's point that C went out of business. But that didn't happen until around eight or nine months into the membership. So, I don't think this is indicative of it having no intention around the time Mr R renewed his membership.

It's possible, by way of section 50 of the CRA that the statements C made before Mr R renewed his membership became part of the contract. But even if that were the case, I still think it would be fair to assess the overall benefit Mr R received from the membership when deciding what an appropriate price reduction as a result of the failure to keep those promises might look like.

Mr R pointed out the average cost of golf club membership was lower in his area than the figure I quoted in my provisional decision of around £900. The figure I quoted came from England Golf from a study it carried out 2018. But even if that figure was slightly lower in Mr R's local area (Mr R said it was around £150 cheaper), I don't think it changes my findings as to what fair compensation looks like. I say this because the price was only one of a number of factors in determining what the standard of another competent provider might have looked like. And the difference between Mr R's figure and the one I quoted is not significant.

Overall therefore, I find it fair and reasonable that Tesco pay £150 to Mr R.

### **My final decision**

For the reasons I have explained above, my final decision is that I uphold Mr R's complaint in part. To put things right Tesco Personal Finance PLC must pay Mr R £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 August 2023.

Michael Ball  
**Ombudsman**