

## The complaint

Mrs A has complained that Tesco Personal Finance PLC, trading as Tesco Bank (“Tesco”), hasn’t paid out on a claim she says she had under the Consumer Credit Act 1974 (“CCA”).

## What happened

In June 2018, Mrs A bought some ‘points’ from a holiday club provider (“the Supplier”) that could be exchanged by members of its club for holidays. Mrs A was already a member of the Supplier’s club and already held 236,000 points, buying a further 44,000 in this transaction. Mrs A paid for this in part by using her Tesco credit card, with the remainder being paid using a credit card from a different provider.<sup>1</sup>

In October 2022, Mrs A, using the help of a professional representative (“PR”), wrote to Tesco to say it was jointly responsible to answer the Supplier’s misrepresentations from the time of sale under s.75 CCA. In particular, it was said:

- the fact that the membership of the holiday club was a long-term contract with unlimited liability for management fees was concealed at the point of purchase. There was no provision for Mrs A to withdraw from her membership.
- the membership was likely to have continued past the time Mrs A was realistically able to use any points.
- the terms surrounding maintenance fees were hidden in the paperwork, so it wasn’t clear to Mrs A what she was signing up to.

Tesco initially said that it needed some more information before it could deal with Mrs A’s claim. PR provided further information, but by March 2023, Tesco hadn’t answered the claim. So PR referred a complaint to our service that the claim hadn’t been dealt with fairly.

One of our investigators considered everything, but didn’t think Tesco needed to do anything further. He thought that Tesco could have answered the claim Mrs A had made earlier, so he couldn’t say Tesco had acted fairly. But there wasn’t enough evidence to say there was any misrepresentation made by the Supplier for which Tesco was jointly liable.

PR, on behalf of Mrs A, responded to say it disagreed with our investigator. It pointed to evidence to show that the Supplier had mis-sold timeshare products for a number of years prior to the sale in question, noting concerns made by some of its other clients.

PR gave more information about Mrs A’s purchase and said that it had been presented to her as an investment that could be resold at a profit. It also said that there was a representation made that the standard and quality of accommodation would also improve if she bought more points. Further, buying the extra points meant that the timeshare would not be ‘in perpetuity’, that she could exit it within a short period of time and that her maintenance fees would decrease. None of these representations were true.

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<sup>1</sup> Although the points were bought with another, as the credit card used was in Mrs A’s name, only she is able to make this complaint.

Our investigator replied that this information didn't change his mind as it was largely focused on the Supplier's sales in general and not specific to Mrs A's actual circumstances. As the parties didn't agree with what our investigator had said, the complaint was passed to an ombudsman for a 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.

When deciding complaints, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's ("FCA") Handbook to consider:

*"(1) relevant:*

- (a) law and regulations;*
- (b) regulators' rules, guidance and standards;*
- (c) codes of practice; and*

*(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."*

Where I need to make a finding of fact based on the evidence, I make my decision on the balance of probabilities. In other words, when I make a finding that something happened, that's because I think it's more likely than not that that thing did happen.

Here Mrs A said that Tesco ought to have paid her compensation as it was jointly liable for the Supplier's misrepresentations and breaches of contract under s.75 CCA. That provision covers situations where the supplier of goods and services was paid for those goods or services directly using a credit card.<sup>2</sup>

I agree with our investigator that Tesco was in a position to assess Mrs A's claim earlier and that it could have done so on the evidence it had. I also agree that, had it done so, it would have fairly concluded that it didn't need to do anything further.

In this complaint I have limited information about what happened at the point of sale. I have some of the documentation that set out what Mrs A bought and I have PR's letter of claim and submissions. PR has said that matters were misrepresented to Mrs A by the Supplier, so I have considered whether there is enough evidence to suggest such misrepresentations were made.

PR has pointed to a number of provisions it says were breached during the sale, including The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 and The Consumer Protection from Unfair Trading Regulations 2008. But I can't see that a breach of those regulations would amount to an actionable misrepresentation (or breach of contract), so I won't comment on them further.

Mrs A's original complaint was that the fact that the membership of the holiday club was a long-term contract with unlimited liability for management fees was concealed at the point of purchase. However, in responding to our investigator, PR said that she was told that buying the points meant she could exit her membership in a short period of time. I don't think these two statements are consistent, so it's not clear to me what Mrs A actually thought happened.

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<sup>2</sup> In this case, Mrs A's payment was taken by a differently named business to the Supplier, albeit one that falls within the same group of companies. I don't need to make a finding whether s.75 CCA applies to this transaction as, even if it did, I don't think Tesco needs to do anything further.

I can see that the five page purchase agreement states on the front page that it was to run until the end of 2059. So it appears that Mrs A would have understood that these points, and the club they were associated with, were due to run for some time and past the date she was likely to have been able to use them.

I've also thought about whether Mrs A could withdraw from her membership. Originally, PR alleged that there was no provision for Mrs A to withdraw from her membership. However in response to the view it said that if Mrs A didn't pay her maintenance fees, the Supplier would terminate her membership. So it appeared that PR accepted that Mrs A could withdraw from her membership if she chose to, albeit without receiving any rebate of what she had paid upfront for it. However, I've not seen any evidence or argument that Mrs A was led to believe she would get any such rebate.

It was said in the original complaint that the terms surrounding maintenance fees were hidden in the paperwork, so it wasn't clear to Mrs A what she was signing up to. In response to our investigator's view, PR said that Mrs A was told that maintenance fees would go down. I haven't seen any detail in the purchase agreement as to what the maintenance fees would be after the purchase. I note that Mrs A was already a long standing member of the Supplier's club, so I think she would have been aware she needed to pay maintenance fees. And I've not seen any evidence that the fees went up, down or stayed the same after the purchase. So I can't say there was any misrepresentation in relation to the management fees.

Finally, I haven't seen anything to show that Mrs A wasn't able to book the standard of accommodation that she expected, or that, had she been told these points could have been sold later for more than she paid for them, that she has tried to sell them and not been able to. So I don't have enough evidence to say Tesco needed to compensate Mrs A for any of the claims made.

### **My final decision**

I don't uphold Mrs A's complaint against Tesco Personal Finance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 29 February 2024.

Mark Hutchings  
**Ombudsman**