

## The complaint

Mr A complains that Tesco Personal Finance PLC (“Tesco”) didn’t fairly respond to his claim under Section 75 of the Consumer Credit Act 1974 (“the CCA”) relating to payments he made when purchasing a holiday club product.

## What happened

In November 2018, Mr A attended a meeting with a travel business, who I’ll refer to as “T”. During that meeting, Mr A agreed to purchase a holiday product for an agreed price of £2,200 (€2,508.75) which he paid for using a Tesco credit card in his sole name.

In August 2022, using a claims management company (“the CMC”), Mr A submitted a claim to Tesco under Section 75 of the CCA (“S75”). The CMC said that during the sales meeting in November 2018, T made a number of representations about the benefits of Mr A’s purchase which turned out not to be true. And it was these misrepresentations that had induced Mr A to enter into the purchase contract with T. They believe that under S75, Tesco are jointly liable for any misrepresentation. In particular, the CMC allege that T told Mr A:

- the product purchase was of some substance, but it became clear it was “*worthless and has no merit*” and Mr A was “*the victims of fraud*” (sic); and
- the purchase would be an investment which would increase in value and could be sold at a considerable profit.

Further, the CMC allege that T “*has ceased to trade*” and have “*committed a repudiatory breach of contract*” which, under S75, Tesco are also liable for.

Having not received a response to Mr A’s claim, the CMC referred matters to this service as a complaint. Having contacted Tesco, they told this service that neither a claim nor a complaint had been received by them from either Mr A or the CMC. They agreed to consider Mr A’s claim and complaint.

Tesco requested further information and evidence in order to progress Mr A’s claim. But that information wasn’t received. So, they closed his claim. Tesco confirmed to this service they would be able to reopen it and review it further in the event that the information requested was received.

Subsequently, information received by this service was passed to Tesco. Having considered this, Tesco couldn’t find any evidence to support the allegations within Mr A’s claim, so rejected it.

One of this service’s investigators considered all the information and evidence provided together with a witness statement prepared by Mr A. Having done so, our investigator also couldn’t find any evidence to support the alleged misrepresentations. Further, our investigator was unable to establish whether T (as the supplier) had ceased to trade or whether any of the contractual benefits were no longer available as a direct consequence.

Mr A didn’t agree with our investigator’s findings. So, as an informal resolution couldn’t be reached, Mr A’s complaint was passed to me to consider further.

## 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.

### Relevant Considerations

When considering what's fair and reasonable, DISP<sup>1</sup> 3.6.4R of the FCA<sup>2</sup> Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides consumers with protection for goods or services bought using credit. Mr A paid for the holiday product under a pre-existing credit card agreement with Tesco. So it isn't in dispute that S75 applies here. This means that Mr A is afforded the protection offered to borrowers like him under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.

It's important to distinguish between the complaint being considered here and the legal claim. The complaint this service is able to consider specifically relates to whether I believe Tesco's response to Mr A's claim was fair and reasonable given all the evidence and information available to me, rather than deciding the legal claim itself.

It's also relevant to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we don't provide a legal service. And as I've already said, this service isn't able to make legal findings – that is the role of the courts. Where a consumer doesn't accept the findings of an ombudsman, this doesn't prejudice their right to pursue their claim in other ways.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

### The claim for misrepresentation under S75

For me to conclude there was a misrepresentation by T in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that T made false statements of fact when selling the holiday product. In other words, that they told Mr A something that wasn't true in relation to one or more of the points raised. I would also need to be satisfied that the misrepresentations were material in inducing Mr A to enter the contract. This means I would need to be persuaded that Mr A reasonably relied on those false statements when deciding to buy the holiday product.

From the information available, I can't be certain about what Mr A was specifically told (or not told) about the benefits of the product he purchased here. It was, however, indicated that he was told these things. So, I've thought about that alongside the other evidence available.

The main document provided is entitled "*Accommodation Contract*". It shows that Mr A's "*subscription*" includes:

- "*1 week of accommodation [...] provided and used*";
- "*a second week reserved and paid for today*"; and
- "*a choice of 1 additional week of accommodation [...]*."

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<sup>1</sup> Dispute Resolution: The Complaints sourcebook (DISP)

<sup>2</sup> Financial Conduct Authority

The contract also confirms a payment of £2,200 (€2,508.75) had been received. This amount is confirmed on Mr A's Tesco credit card statement. So, simply put, it appears Mr A purchased three weeks accommodation at a choice of accommodation in a particular holiday destination area. And he paid for this using his Tesco credit card.

Mr A's witness statement alleges he was induced to travel to meet T, having been contacted by another company who had undertaken to cancel and obtain a refund in respect of a timeshare product Mr A purchased in 1997. It's also alleges that Mr A was asked to obtain a bank loan for £5,800 which T would then meet the repayments for.

Whilst I acknowledge what Mr A has said here, I haven't been provided with any evidence to support those recollections. There is a document entitled "*Subscription for the Exclusive Service*" which references a payment of £5,800 to be paid by Mr A by 13 December 2018. This document appears to have been signed by Mr A. But I understand payment wasn't completed. So, I don't think Tesco can be held liable under S75 for any aspect of what appears to be a distinct and separate purchase which wasn't, in fact, completed.

Furthermore, although not determinative of the matter, I haven't seen any documentation which supports the assertions in Mr A's claim, such as marketing material or documentation from the time of the sale that echoes what he says he was told. In particular that the product purchased was represented as a financial investment.

I don't think the contract can have been marketed and sold as an investment. And given the product purchased doesn't appear to fall under the provisions of the Timeshare, Holiday Products and Exchange Contracts Regulations 2010 ("the TRs"), I don't think those regulations apply here anyway. Mr A appears to have purchased three weeks holiday. And in any event, even if there might have been some inherent value to what Mr A's purchased, I've found nothing within the evidence provided to suggest T gave any assurances or guarantees about the its current or future value.

On balance, and in the absence of further supporting evidence from the time of the sale, I therefore can't reasonably say, with any certainty, that T did in fact make the alleged misrepresentations.

#### The breach of contract claim under S75

The claim suggests the seller (T) has ceased to trade resulting in a breach of contract. The CMC have provided copies of articles and online reports which suggest "*Rumours*" that various entities offices have been closed. Including those of T. However, I can't see that the evidence confirms whether T, or any associated booking company, have actually ceased trading.

More importantly, even if confirmed, I haven't seen any evidence that Mr A made any attempt (unsuccessful or otherwise) to secure bookings for the weeks he was contractually entitled to. So, in the absence of any specific explanation or evidence to support why Mr A believes there's been a breach of contract which resulted in a loss for him, I haven't seen anything that would lead me to conclude there was such a breach, such that Tesco would be liable for under S75.

#### Summary

Having carefully considered everything that's been said and provided, I haven't found anything to support the allegations included with Mr A's claim. This confirms Tesco's own findings albeit they have confirmed they'd be willing to consider re-opening Mr A's claim, should he be able to provide the necessary evidence. And I think this is a reasonable response.

I realise that Mr A will be very disappointed. But I can't say that Tesco's response to his claim was unfair or unreasonable give the circumstances and information available. Because of that, I won't be asking Tesco to do anything more here.

**My final decision**

For the reasons set out above, I don't uphold Mr A's complaint.

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

Dave Morgan  
**Ombudsman**