

The complaint

Mr H has complained that Tesco Personal Finance PLC ("Tesco") has unfairly turned down a claim he made under section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

In 2016, Mr H was called by someone who offered him a holiday to Tenerife. He was told that whilst overseas he would attend a meeting to discuss a potential claim that could be made in relation to two timeshare memberships he already held.

In June 2016, Mr H went to Tenerife and entered into a number of agreements with three different businesses, Luxury Leisure Group SL ("LLG"), Travel Home & Adventure SL ("THA") and Globe Trekking SL ("GT"). Mr H says this was for a number of things, including for LLG to make a claim on his behalf in relation to his timeshares and for it, and the other two businesses, to supply holiday and travel services. For these services, Mr H paid around £9,750, of which £1,242.78 was paid using his Tesco credit card to LLG and the remainder was paid by bank transfers to the three businesses.¹

In November 2020, Mr H, using the help of a professional representative ("PR"), made a claim to Tesco under s.75 CCA. PR said that the nature of the 2016 deal had been misrepresented to Mr H and, under s.75 CCA, Tesco were responsible to answer that claim. Further, as the three businesses involved in the 2016 deal were all 'linked' under s.189 CCA, Tesco were liable to refund everything paid, even though not all of the agreements had been paid for using a credit card.

Tesco responded to say it was only responsible for claims about one part of the 2016 deal, an 'accommodation contract' between Mr H and LLG that had actually been paid for using the credit card. It said there was no evidence this contract had been breached or that there had been a misrepresentation in relation to it. Tesco also said, as it hadn't funded the other parts of the deal, any claims in relation to those agreements weren't its responsibility.

PR responded to Tesco to argue that all of the agreements were linked, as were the three companies involved in them. PR argued that Tesco were legally responsible to answer claims about all of the agreements Mr H entered into, even if Tesco only provided the funds to one of them. Tesco treated this as a complaint about its original decision to turn down Mr H's claim. It reiterated that Mr H entered into four separate agreements with three separate companies, so it couldn't be liable for claims about the three agreements it didn't fund. Tesco also said that, if Mr H remained unhappy about its position, he could refer a complaint to our service, which he did.

One of our investigators considered the complaint and thought Tesco needed to do more to deal with Mr H's claim. He thought that Mr H's evidence was that everything had been sold to him as a package by LLG, acting as agent for THA and GT. He thought that the payment made on credit card was effectively a deposit paid toward a package of things offered by

¹ Mr H entered into these agreements alongside his wife, however as the credit card was in his name, only he is able to make the complaint he has about Tesco. So I will refer to only Mr H throughout.

LLG and the evidence suggested the businesses were sufficiently linked, meaning Tesco was responsible for claims about all of the agreements. Our investigator concluded that the nature of the timeshare claim had been misrepresented to Mr H and, had that not been done, he wouldn't have entered into any of the agreements he did. So he recommended that Tesco refund everything paid to LLG, plus interest.

Tesco disagreed, reiterating what it had said before. It argued that the agreements all formed separate contracts and our investigator was wrong to say it was responsible to answer claims about them all. So Tesco asked for the matter to be passed to an ombudsman for review.

I issued a provisional decision on Mr H's complaint. I explained that I thought the complaint should be upheld, but for different reasons to our investigator. So I issued a provisional decision setting out my thoughts and invited both parties to provide anything further they wished me to consider before I issued a final decision.

I explained that when evidence is incomplete, inconclusive, incongruent or contradictory, I made my decision on the balance of probabilities – which, in other words, means I based my findings on what I thought was most likely to have happened given the available evidence and the wider circumstances.

There was no evidence from LLG, THA or GT, and the only evidence there was from the time of sale is from Mr H. He provided all of the documentation he had, along with his memories. So when considering this claim, that is the only evidence there is available. I was mindful that his memories may not be an accurate representation of the precise sales process as memories are imperfect. So I had to weigh all of that up when deciding what I thought most likely happened. I didn't think it was unfair to Tesco for me to do this – ultimately I must decide the complaint in front of me based on the evidence available.

When considering this complaint, I thought it was important to set out what I found Mr H agreed to and with which business. I then considered any legal claims that Tesco needed to answer, given the legal relationships between the parties. Finally, I considered whether Tesco needed to do anything further to resolve this complaint.

Mr H's memories of the sale

Mr H explained that he attended a sales presentation in Tenerife where he was told that, if he took out the agreements he did, he'd get discounts on the market price of holidays. Further, he was told that LLG would get him out of his existing timeshare memberships and claim money back on his behalf. He was told the claim would be for £30,875 and he'd get this paid within 60 days, meaning the other things he bought were effectively free.

Mr H described the sales meeting as pressured and that he was told he had to sign up on the day. He said he was only prepared to pay a deposit there and then, so LLG drew up a payment plan to set out how he'd pay for everything. Mr H also said that, when he asked why there were different companies named that he'd have to pay, he was told by LLG that they were all the same company – he stated that all the contracts were provided at the same time by the same person, so he believed what he was told.

Mr H used his Tesco credit card to pay for some of the cost of the agreements, but when he returned home LLG helped him arrange a personal loan to pay for the rest of what he'd bought. So he transferred the balance of what was owed to LLG, THA and GT.

Mr H explained that he never received any money from a timeshare claim, nor was he able to use any of the other services he paid for.

The available documents

Much of the documentation came from the sale that took place on 7 June 2016 ("the Date of Sale"). I saw a number of different documents, each signed separately by Mr H. It was not entirely clear what they related to, so I set them out in some length before I could say what I thought happened.

There was a document on LLG headed paper called an 'Accommodation Contract'. An extract read:

"Included in the initial subscription fee is 1 week of accommodation in Tenerife, and the choice of 1 week of accommodation in any of the Canary Islands."

The reservation details show that the 'Tourist Agent' was LLG and the price and other offers were agreed by LLG. The total price as £2,500 (€3,187.50) and it said payment was received on the Date of Sale.

I saw another document on LLG headed paper titled "Subscription for the Exclusivity of [LLG]" that set out that Mr H was to pay £5,000 by bank transfer by 7 July 2016. No further information as to what this was for was given.

Mr H was also given two letters on LLG headed paper, both from the Date of Sale, to confirm that LLG would instigate claims on his behalf for a total of £30,875. Both of these letters stated that the claims would be settled in full and Mr H would be expected to pay back 20% of the claim. Both letters read:

"Please note, from registering the claim, to having the monies paid into our client account, will take a maximum of 60 days.

[LLG] is not a finance company, and is currently working with a third party firm of Solicitors, and various advisory companies, who specialise in reclaims, to enable us to offer our customers this intermediate service."

There was a document on THA headed paper called a "Subscription Application". It said:

"[THA], referred to as the Vendor, a registered Spanish Company and authorised to represent and market in Europe, ..., are established under Law to allow members to access and participate in [THA] Entertainment, Home and Leisure Reservation System based on the appropriate subscription.

The Applicant(s) hereby apply for the subscription of [THA] and agree to use the services provided applicable. The Applicant(s) hereby agree to pay the subscription fee specified and agree to be bound by the usage of [THA]. This agreement is subject to the Terms and Conditions on the second page and the Applicant(s) acknowledge they have read and understood in full."

It said that £1,250 was paid for this and was received on the Date of Sale. The subscription is described as a "One Time Only Subscription".

An identical letter on GT paper was also provided, save that references to THA were replaced with references to GT. Again it was recorded that a payment of £1,250 was made on the Date of Sale.

Finally, there was a document that set out a comparison in the difference between paying for everything upfront and using a loan instead. It showed that it was estimated the interest over

five years would be £1,500. This was based on a bank advance of £10,000.

What payments were made?

On 7 June 2016, Mr H paid LLG £1,242.78 (being €1,594.87), plus £34.17 foreign exchange fee, using his Tesco credit card.

On 8 June 2016, £1,254.90 was paid from Mr and Mrs H's joint bank account and was noted as a debit card transaction to LLG. And then £1,255.72 was paid to GT on 8 June 2016 and £1,256.55 to THA on 10 June 2016 in the same manner. On 28 June 2016, £4,730 was sent as a transfer from Mr and Mrs H's joint bank account to LLG.

What were the agreements?

I found that Mr H purchased accommodation from LLG, for one week in Tenerife and for one further week in accommodation on the Canary Islands. Although it was not obvious, I thought this was paid for by using the Tesco credit card and the debit card payment on 8 June 2016. The total paid was £2,497.68 against a contract price of £2,500.

Mr H also purchased something from LLG as detailed in the document titled "Subscription for the Exclusivity of [LLG]". It wasn't clear to me what this was for, Mr H said it was for travel and holiday services, which would fit with the other agreements he entered into on the Date of Sale. The contract price was £5,000 and I thought this was paid for with the bank transfer of £4,730 on 28 June 2016

I also thought LLG agreed to make a claim on Mr H's behalf in relation to existing timeshare memberships he held. It was not clear what that claim was actually for, but LLG said Mr H would get a pay out within 60 days of the Date of Sale, which would be just over £30,000 and enough to cover the cost of the things he agreed to buy. In exchange, Mr H agreed to pay 20% of what was recovered to LLG.

Mr H also purchased services of some kind from THA and GT. I found this was arranged by LLG, most likely acting as agents for THA and GT, as Mr H only recalls one meeting on the Date of Sale when he agreed to go ahead with the agreements. Again, although these agreements were both said to cost £1,250, I thought they were paid for by the debit card payments made to THA and GT of slightly more than that as set out above.

These agreements were entered into at the same time and at the same meeting, so to some extent I thought they were linked in that there was nothing to suggest Mr H was offered these parts of the deal individually. But I couldn't see that the three businesses were all part of the same company.

Was Tesco jointly responsible for any breach of contract or misrepresentation?

S.75 CCA states that in certain circumstances, when a debtor has a claim against a supplier in respect of a misrepresentation or breach of contract, they will have a like claim against the creditor. So here, Mr H (the debtor) was asking Tesco (the creditor) to answer his claims about what he said had gone wrong.

But I said this doesn't apply to every claim Mr H may have. Tesco is only responsible for claims when there is a debtor-creditor-supplier ("DCS") agreement in place. This is set out more fully in s.11(b) and s.12(b) CCA, but in short, there have to be arrangements in place so that the supplier of goods or services is paid using the credit card. In Mr H's case, he paid LLG directly with his credit card and it was not in dispute that Tesco could be held jointly responsible for any claim of a breach of the contract with LLG that arose from that

transaction (the accommodation contract) or of a misrepresentation that led Mr H into entering into that agreement with LLG.

However, I didn't think Tesco had to answer any claim for breach of contract by THA or GT, or for a breach of the LLG agreements that wasn't funded by the credit card transaction. That was because anything supplied by those businesses outside of the accommodation contract was outside of the arrangements between Mr H, LLG and Tesco. Under the CCA, it is possible Tesco would have to answer a claim if it could be shown LLG, THA and GT were 'associates' (s.184 and s.187 CCA). Having considered everything, I couldn't see they were. But, for the reasons I went on to explain, that didn't make a difference in this case.

Did Tesco properly consider the claims?

Tesco said there was no evidence that there was a misrepresentation made about the accommodation contract or a breach of that contract. Mr H said that he didn't get any of the accommodation he was entitled to under that agreement, but I couldn't say, based on the available evidence, that was down to LLG's actions. So I couldn't say there was a breach of that agreement that Tesco needed to answer under s.75 CCA.

However, I did think Tesco needed to properly assess any claim for misrepresentation, here that the misrepresentation was fraudulent or negligent. The normal way to remedy any such claim would be recission of the contract entered into and damages to put Mr H in the position he would have been in had the misrepresentation not been made. So I first needed to consider whether LLG, and thereafter Tesco, could be liable for a misrepresentation.

I considered what Mr H said about what he was told about the accommodation contract only – that it was part of the package of things he needed to buy to get out of his existing timeshares and make a claim. But I couldn't see that he made any allegation that LLG misrepresented the nature of the accommodation contract to him. However, I thought focusing solely on that was too narrow a way to look at the issue of misrepresentation. I noted that a misrepresentation about something outside of the contact can still be an actionable misrepresentation if it induced someone to enter into the agreement.

I thought LLG made a number of representations about how it could make a claim in respect of Mr H's timeshares. In particular it said a claim would be made and that it would be paid within 60 days.

For there to be a misrepresentation there needed to be an untrue statement of fact or law made by one party to another, which induces the party receiving the statement to enter a contract, thereby causing them loss. A statement of opinion can be a misrepresentation if the opinion amounts to a statement of fact and it can be proved that the person who made it did not hold that opinion or could not reasonably have held it.

Here Mr H set out a number of things that could amount to misrepresentations. The specific things LLG said would happen with any claim were clearly representations made to Mr H of things that it could cause to happen. But those were statements of fact that I didn't think were true. I thought LLG must have known it couldn't guarantee any payment of compensation, within a specific timeframe or at all, or that it had no reasonable grounds for believing it could do so. Any claim made to Mr H's timeshare provider was simply that, a claim, with no guarantee it would be paid or how much. Further, claims like that take time, so it was fanciful that anything would be paid within 60 days. I couldn't see how LLG had any reasonable grounds to believe it could procure the outcome it said it would. It followed, I thought that amounted to a misrepresentation.

If I thought about what would have happened had LLG not misrepresented that it could get

Mr H a sum of money within 60 days, I didn't think he would have entered an agreement with LLG to make a claim. But he also entered into other agreements with LLG, THA and GT. I thought the central reason he entered into any of those agreements was the guarantee of a large sum of money in the near future from a claim – he had been clear that he was interested in exiting his timeshares, so I couldn't see he had any interest in the other holiday products offered in their own right. And had he known the reality that there was no guarantee of a successful claim, I didn't think he would have entered into any of the agreements. It followed, I thought Tesco needed to pay the amount paid to all the three businesses as part of Mr H's s.75 CCA claim, to put him the position he'd be in had the misrepresentations not been made.

Mr H's representative responded but had nothing further to add.

Tesco responded to say it still disagreed that the complaint should be upheld for the same reasons given before. It provided no further evidence or arguments.

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.

As neither party has given me anything further to consider, I see no reason to depart from my provisional findings. So I direct Tesco to pay Mr H a sum equivalent to what he paid LLG, THA and GT.

Those are:

- £1,276.95 on his credit card on 7 June 2016.
- £2,510.62 from his joint bank account on 8 June 2016.
- £1,256.55 from his joint bank account on 10 June 2016
- £4,730 from his joint bank account on 28 June 2016.

plus 8% per annum simple interest from the date of payment to the date of settlement.

My final decision

I uphold Mr H's complaint against Tesco Personal Finance PLC and direct it to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 February 2024.

Mark Hutchings
Ombudsman