

The complaint

Ms P complains that Tesco Personal Finance Limited, trading as Tesco Bank, rejected her claim under section 75 of the Consumer Credit Act 1974 in relation to the alleged mis-sale of a fractional timeshare.

Background

On 18 November 2015 (“the time of sale”) Ms P and her husband purchased holiday club membership from a timeshare provider (“the supplier”), by way of upgrading their existing membership to a fractional timeshare. After trading in their existing timeshare points, the price came to £6,380, which Ms P paid using her Tesco Bank credit card in December. (Therefore Ms P is the only eligible complainant in this case.)

In October 2021, Ms P (represented by a claims management company (“the CMC”)) complained to Tesco Bank that the timeshare had been mis-sold. She described various shortcomings about how the supplier had sold the timeshare, and also about the product itself. She asked Tesco Bank to consider her complaint as a claim for compensation under section 75. When Tesco Bank did not respond in time, she brought this complaint to our service. Subsequently, the bank concluded that the section 75 claim had not been brought in time (*i.e.* within six years of her purchase, in the belief that she had not contacted it until 2022).

When one of our investigators considered this case, she concluded that section 75 did not apply to Ms P’s credit card purchase, for legal reasons. Consequently, she did not uphold this complaint. Ms P asked for an ombudsman to review her case, and so this case was eventually passed to me.

I would like to take this opportunity to apologise to both parties for how long it has taken for this case to be allocated 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.

Having done so, I do not uphold it. I will explain why.

I have assumed, in the absence of evidence to the contrary, that Ms P’s section 75 claim was submitted in October 2021 (the date on the claim letter) and was therefore brought in time.

Where goods or services are purchased on credit, section 75 can (in certain circumstances) make the provider of credit jointly and equally liable with the supplier of the goods or services for a misrepresentation by the supplier. But section 75 only applies where the credit is paid directly to the supplier, and under pre-existing arrangements between the supplier and the creditor (Tesco Bank).

When Ms P made her credit card payment, the payment was not made directly to the supplier, but to a third party, which I will refer to as “X”. X then passed the money on to the supplier, but this was not done under any arrangement between the supplier and Tesco Bank. Consequently, I do not think that section 75 applied to Ms P’s payment, and so I do not think it would be fair or reasonable to hold Tesco Bank liable for the actions of the supplier, in the absence of any law making it liable.

I am reinforced in that opinion by the judgement of the High Court in the case of *Steiner v. National Westminster Bank plc* [2022] EWHC 2519 (KB), which reached the same conclusion in another case about the purchase of a timeshare.¹ (That judgement was actually about section 56 of the Consumer Credit Act, not section 75, but the same restriction on the applicability of one section also applies to the other.)

I am therefore satisfied that Tesco Bank was not wrong to reject Ms P’s claim under section 75.

Before I conclude, I will address some arguments which were made on Ms P’s behalf by the CMC in response to the investigator’s decision.

The CMC reminded me that the Financial Ombudsman Service is not bound by the law, but has a duty to make decisions which are, in the opinion of the deciding ombudsman, fair and reasonable – while having regard to what the law says, and giving reasons for departing from the law if that is what he decides to do. And the CMC pointed out that the Service deals with complaints, not with legal causes of action. In other words, I am not obliged to reach the same conclusion as a court would.

All of that is entirely correct, but I do not think that it would be fair and reasonable of me to hold Tesco Bank liable for the actions of a third party in circumstances where the law does not make it liable. Nor do I think it would be fair of me to uphold a complaint about the bank’s decision to deny a claim under section 75 where the bank was entitled to reach that decision.

So while I am not bound by the terms of section 75 or by the judgement of the High Court in the *Steiner* case, I do not propose to depart from where the law leads me in this complaint.

The CMC has pointed out that there was no indication to Ms P at the time of sale that her credit card payment would not attract the protection normally afforded under section 75. But that is not unusual, and it does not affect my view of how I should approach a complaint about a denied section 75 claim.

The CMC also argued that the funds paid would presumably all have been transferred to the supplier by X, and so X was effectively acting as a payment facilitator for the supplier (using a payment facilitator does not prevent section 75 from applying to a transaction, which was not the scenario considered in *Steiner*). However, X was not a payment facilitator, but the trustee of a trust under which the supplier was the beneficiary, and I do not think that can be regarded as essentially the same thing. So I remain of the view that section 75 does not apply to Ms P’s purchase.

My final decision

My decision is that I do not uphold this complaint.

¹ See in particular paragraphs 61 to 63 of the judgement, with which I agree.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 14 July 2025.

Richard Wood
Ombudsman