

## **The complaint**

Mr M complains about the sale of a timeshare he paid for using credit provided by Tesco Personal Finance PLC trading as Tesco Bank (who I'll call Tesco). Mr M has brought his complaint through a representative, so references to his submissions and arguments include those made on his behalf.

## **What happened**

I issued a provisional decision on this complaint in December 2022. An extract from that provisional decision is set out below.

*In March 2011 Mr M purchased a timeshare with a company I will call "D" from a supplier I'll call "Ab". The purchase entitled him to the use of a lodge for a named week at a named complex.*

*In April 2011 while discussing the purchase with D they offered him a further week at a different lodge on the same complex. Mr M agreed to purchase that further timeshare and paid the £2,514 with his Tesco credit card.*

*In September 2016 Mr M complained to Tesco. He said that section 75 of the Consumer Credit Act 1974 ("section 75") allowed him to make the same claim for breach of contract or misrepresentation against the provider of credit as he could against the supplier. He said the agreement had been misrepresented to him because he had been told it was an investment and could be resold in the future. Since he referred his complaint to this Service Mr M has explained that he agreed to the subsequent purchase because he was told the only way he could exchange the week named in his earlier agreement would be if he entered into a new timeshare arrangement with D directly. Mr M also alleged that there had been a breach of various regulations that meant the agreement should be voidable.*

*Tesco didn't uphold Mr M's claim and he therefore escalated it to this Service. Our investigator thought there was evidence the agreement had been misrepresented to Mr M. He accepted that it was likely Mr M had been falsely told he could exchange his weeks and he didn't think he would have entered into the contract had he known that wouldn't be possible.*

*Tesco didn't agree with the investigator's opinion, and they asked for a decision to be made by an ombudsman. The complaint has, therefore, been referred to me.*

## **What I've provisionally 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.*

*I don't currently agree with the investigator's view on this complaint and I'm not currently expecting to uphold it. I'll explain why.*

*I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take*

*into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.*

*The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.*

### **The claim under the Consumer Credit Act (CCA)**

*When something goes wrong and the payment was made with a fixed sum loan, as was the case here, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.*

*From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.*

*Certain elements of Mr M's complaint would be more fairly considered under s140A of the CCA. That looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement (taken together with any related agreement). Section 56 of the CCA is relevant in the context of section 140A of the CCA, as the pre-contractual acts or omissions of the credit broker or supplier will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mr M and the lender.*

*It's not for me to decide the outcome of any legal claim Mr M may have under sections 75 or 140A but I'm required to take the provisions into account when deciding whether the lender was reasonable to reject Mr M's claims.*

### **The claim under section 75**

*Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.*

*Mr M says he was told the purchase was an investment, but I've seen no reference to that in the contractual paperwork provided and I don't think Tesco were, therefore, unreasonable to reject that claim.*

*Mr M also says that he was told the week he purchased, and the week he had previously purchased from Ab, could be exchanged if, and only if, he entered into an agreement with D for the new purchase. I don't think a false statement was made about the presence of an exchange scheme. Clause 4.7 of the purchase agreement explains that such a scheme exists, it says:*

*"you shall be entitled to exchange Your Week Number ...in accordance with term 8".*

*I haven't been provided with a copy of the purchase agreement that contains term 8 so I don't know how the entitlement to exchange could have been affected by that subsequent*

clause.

*I've considered whether Mr M was provided with a false statement about the availability of other weeks that he wished to exchange to. He's explained that he wanted to move his week before Christmas and one in February, for weeks in May or late September, and he's explained that very shortly after he joined the scheme, he asked to exchange those weeks. If Mr M wanted a week in May or September I think it's likely that he would have purchased that in April 2011 when he entered into the agreement with D. As he didn't do so, it must have been clear to him then that those weeks weren't available. So, I'm not persuaded that it's likely D promised him the ability to exchange to any week. I think it's reasonable to suggest that would always be likely to be subject to availability as there are only so many lodges on the complex and so many weeks in the year. I don't think a court would be likely to uphold a claim for misrepresentation on those grounds.*

*Mr M also says the accommodation was misrepresented to him as it was "shoddy" and not "five star". I think that's a subjective view and I'm not persuaded Tesco were presented with sufficient information to suggest the accommodation was misrepresented to Mr M on those grounds.*

### **The claim under s140A**

*Mr M says he was induced into entering into the agreement by being offered a price reduction only available on the day and that undue urgency and pressure was applied. I've therefore, considered whether there is evidence that Mr M's ability to exercise choice was significantly impaired.*

*Regulation 7 of the Consumer Protection from Unfair Trading Regulations 2008 (CPUT Regulations) seems to expand on the everyday definition of pressure. At the time of sale, Regulation 7 stated that a commercial practice was aggressive if, in its factual context and taking account of all of its features and circumstances, it:*

- a. significantly impaired or was likely to significantly impair the average consumer's freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion, or undue influence; and*
- b. caused or was likely to cause the consumer to take a transactional decision they would not have taken otherwise as a result.*

*Regulation 7(2) went on to say that consideration must be given to the timing, location, nature and persistence of the practice. And when thinking about whether "undue influence" was applied, Regulation 7(3) said that thought must be given as to whether the Supplier exploited "a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly [limited] the consumer's ability to make an informed decision."*

*Mr M hasn't provided any further evidence to suggest the discount would only be applied if he signed up for the agreement on the day. I note that he was given a 14 day cooling off period within which he could have reflected and changed his mind.*

*Overall, I'm not persuaded that Mr M's ability to exercise choice was – or was likely to have been – significantly impaired contrary to Regulation 7 of the CPUT Regulations.*

*Mr M also says that the supplier was in breach of regulation 12 of The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 2010 Regulations) as he wasn't provided with key information specified in those regulations. However, section 12.1 of the purchase agreement that Mr M signed says "you have been provided with the Standard*

*Information Form, containing key information about the property and your rights of occupation...". I think it's likely that information was, therefore, provided.*

*Mr M also says that D were in contravention of Section 25 of the 2010 Regulations, when they took payment of a deposit within the 14 day "cooling off" period. The agreement was signed on 22 April 2011 and Mr M's credit card statement shows that payment wasn't taken until 12 May 2011 after the cooling off (withdrawal) period. I don't, therefore, think a court would uphold the claim and I don't think Tesco were unreasonable to reject it on that basis as I don't think a payment was accepted before the end of the withdrawal period.*

*Ultimately, I don't think Tesco have been unreasonable to reject Mr M's claim and I'm not expecting to uphold his complaint.*

### ***My provisional decision***

*For the reasons I've given above, I'm not expecting to uphold this complaint.*

### **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.

Neither party provided any additional information, so I have not been persuaded to change my provisional decision. My provisional decision, therefore, becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 February 2024.

Phillip McMahon  
**Ombudsman**