

## The complaint

Mrs T complains that Tesco Personal Finance PLC ("Tesco") didn't fairly respond to her claim under Section 75 of the Consumer Credit Act 1974 ("the CCA") relating to a payment she made when making a purchase using her credit card.

## What happened

In or around April 2016, while on holiday outside of the UK, Mrs T attended a meeting with a timeshare supplier who I'll refer to as "S". During that meeting, Mrs T agreed to purchase what she believed to be a 10% share in an apartment. The purchase price agreed was €20,735, equivalent to around £16,000. This was funded, in part, by using a credit card with Tesco in her sole name.

In or around September 2019, Mrs T submitted a claim to Tesco under Section 75 of the CCA ("S75"). She said she'd been approached by various parties advising her that S had ceased trading and gone into liquidation. Mrs T further said that S had made representations about the purchase and its benefits which turned out not to be true. And it was these misrepresentations that had induced her to enter into the purchase contract with S. Mrs T believes that under S75, Tesco are jointly liable for any misrepresentation. In particular, Mrs T alleged that S told her:

- she wasn't purchasing a timeshare but a share in an apartment;
- her share could be sold at any time; and
- S would manage and maintain the apartment retaining 50% of the income earned with the remainder divided amongst the shareholders and paid annually.

With all of this in mind, Mrs T thought she'd actually been sold a Fractional timeshare, which wasn't what S had told her.

Having considered Mrs T's claim, Tesco didn't uphold it. They said the documentation from the time of the sale showed she'd purchased a 10% share in a company with dividends distributed to its shareholders in proportion to their shareholding. Tesco didn't agree Mrs T had purchased a timeshare. Rather they thought the purchase was an investment and wasn't, therefore, covered under S75. Tesco weren't able to establish a breach of contract or any misrepresentation.

Mrs T didn't agree with Tesco's findings. So, using a professional representative ("the PR"), Mrs T referred her complaint to this service. Having contacted Tesco, they told this service that whilst they'd received and responded to the claim, they hadn't received a complaint about Mrs T's claim outcome. Having considered Mrs T's complaint, Tesco didn't think they'd done anything wrong in rejecting it.

One of this service's investigators considered all the evidence and information available. Having done so, they weren't able to find any evidence of misrepresentation or a breach of contract such that Tesco would be liable under S75. As a consequence, our investigator didn't think Tesco's response was unfair or unreasonable.

Mrs T didn't agree with our investigator's findings. So, the PR submitted various arguments to support why they believe Mrs T's complaint should be upheld.

As an informal resolution couldn't be achieved, Mrs T's complaint has been passed to me to consider further and reach a final 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.

#### 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. Mrs T paid for her purchase under a pre-existing credit card agreement with Tesco. So, it's possible that S75 applies here. This means that Mrs T may benefit from the protection offered to borrowers like her under those provisions – subject to any restrictions and imitations. 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 Mrs T'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 under S75

S75(1) says, *"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor"*.

For me to conclude there was misrepresentation by S in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that S made false statements of fact at the time of the sale. In other words, that they told Mrs T 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 Mrs T to enter the contract. This means I would need to be persuaded that Mrs T reasonably relied on those false statements when deciding to complete the purchase.

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

<sup>2</sup> Financial Conduct Authority

From the information available, I can't be certain about what Mrs T was specifically told (or not told) about the benefits of what she purchased here. She has, however, indicated that she was told these things. So, I've thought about that alongside the other evidence available.

Having considered the documentation from the time of the sale, it appears Mrs T purchased a 10% shareholding in a company registered outside of the UK. Or, as the contract phrases it, "*a participation*". The documentation makes no reference to the purchase of a timeshare or any specified property.

A fractional timeshare, as referred to by Mrs T, is one that essentially provides an equity share in specific property or properties. The available documentation makes no reference to the purchase being that of a fractional timeshare. And although not determinative of the matter, I haven't seen any other documentation which supports the assertions in Mr T's claim, such as marketing material or documentation from the time of the sale that echoes what she says she was told.

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 S did in fact make the alleged misrepresentations.

I also haven't seen anything to persuade me that a breach of contract occurred. I accept that Mrs T expected to receive annual dividends as a result of her purchase (which I understand she did for two years). So, I've considered the Articles of Association relating to the company in which she bought a share cover. Article 32 covers the distribution of dividends to shareholders. It says that dividends are paid from the "*...profit or freely disposable reserves...*". However, if the company entered into a liquidation process, it's reasonable to conclude that dividends may no longer be available or payable. And I wouldn't necessarily consider this to be a breach of contract such that Tesco should be held liable for it under S75. Dividends were, as I understand it, related to the profitability of the company Mrs T held a share in.

#### The PR's response to our investigator's view

The PR has gone to some length to explain why, in their view, Mrs T's complaint should be upheld. Many of their arguments raise new claims and allegations of regulatory breaches. I don't believe those new claims would fall under S75 as either evidentially supported misrepresentations or a breach of contract. And I can't see that those allegations were included in Mrs T's claim submitted to Tesco, giving them opportunity to consider and respond. In the circumstances, I don't think it would be fair or reasonable of me to consider those further as part of Mrs T's complaint about the outcome of the claim she actually submitted.

#### Summary

I would like to reassure Mrs T that I've very carefully considered everything she's said and provided. In doing so, I've been unable to find any evidence of the alleged misrepresentations or a breach of contract. And because of that, I can't say that Tesco's response to her claim was unfair or unreasonable. While I appreciate she will be disappointed, I won't be asking Tesco to do anything more here.

#### **My final decision**

For the reasons set out above, I don't uphold Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 2 April 2024.

Dave Morgan  
**Ombudsman**