

The complaint

Mr L complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to him the money that he paid under an accommodation contract. He's being represented in his complaint by a claims management company.

What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follows:

"Mr L says that he and his wife had bought holiday products in May 2011 and January 2012 and that they were offered termination of those products and a holiday scheme by another holiday company in February 2014 so they entered into a contract with that holiday company. He says that their holiday products weren't terminated and they were contacted by another company (which I'm calling "Company A") that told them that it would be able to terminate their contracts and it also offered discounted holidays.

Mr L and his wife entered into an accommodation contract with Company A in April 2019 and agreed to pay a price of €6,900.53. Mr L paid that amount using his Tesco Bank credit card and £5,970.17 and a foreign exchange fee of £164.17 were charged to his credit card account. Mr L says that he also paid £6,000 to a related company (which I'm calling "Company B") at that time but the only evidence of that payment that he's provided is a document showing that a payment of £6,000 was made by bank transfer and Company B's terms and conditions relate to a reservation service.

Mr L's representative made a claim to Tesco Bank in February 2022 under section 75 of the Consumer Credit Act 1974. The representative's letter to Tesco Bank said that: the timeshare relinquishment product was mis-sold to Mr L and his wife and, but for the misrepresentations made to them, they wouldn't have purchased it; it was represented to them that Company A would be able to terminate their timeshare and that that could be done if they purchased a discounted holiday product; they were pressured into entering into the agreement to purchase the timeshare relinquishment product; and Company A used aggressive commercial practices against them and breached the Timeshare Regulations.

Tesco Bank responded to that claim by e-mail to Mr L and said that there had been no evidence provided to support Mr L's claim that part of the contract included the merchant relinquishing his and his wife's current timeshare and the contract doesn't show that a relinquishment service would be provided so it was unable to progress his claim under section 75. Mr L says that he didn't receive that e-mail so he complained to this service. Tesco Bank then said that it couldn't identify any Tesco Bank errors so wasn't upholding the complaint.

Our investigator recommended that Mr L's complaint should be upheld. She said that, even though the accommodation contract doesn't list relinquishment services, she was persuaded that the relinquishment of Mr L's previous timeshare was the

main reason he agreed to meet with Company A and she thought that relinquishment of it was central to the conversations that took place. She recommended that Tesco Bank should refund Mr L the full amount that he paid to Company A so it should rework his account as if the transaction for £5,970.17 plus £164.17 never happened (and should that adjustment result in a credit balance at any point, Tesco Bank should refund the credit and pay 8% simple interest on that amount).

Mr L agreed with our investigator's recommendation but Tesco Bank has asked for the complaint to be forwarded to an ombudsman for a decision. It says that just because other customers have had a certain experience with this merchant, doesn't mean that Mr L had the same experience, it reviews disputes on their own individual merits and each customer needs to provide enough proof to show that the merchant misrepresented the contract. It says that it hadn't seen anything to suggest that the services on the contract weren't made available to Mr L and his wife and there is no evidence here that supports Mr L's dispute".

I said in my provisional decision: "I consider that Mr L's complaint shouldn't be upheld for these reasons:

- *Mr L's claim was made under section 75 which gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);*
- *Mr L's claim under section 75 is that a timeshare relinquishment product was misrepresented to him and his wife by Company A and that they wouldn't have bought it if it hadn't been misrepresented to them;*
- *I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not Tesco Bank's response to Mr L's claim was fair and reasonable in the circumstances;*
- *Mr L and his wife signed the accommodation contract and the accommodation conditions and Company B's terms and conditions in April 2019 – I've not been provided with a copy of a separate contract between Mr L and his wife and Company B;*
- *Mr L paid €6,900.53 to Company A using his Tesco Bank credit card and £5,970.17 and a foreign exchange fee of £164.17 were charged to his credit card account - Mr L says that he also paid £6,000 to Company B at that time but the only evidence of that payment that he's provided is a document showing that a payment of £6,000 was made by bank transfer;*
- *as there's no evidence to show that Mr L made a payment to Company B using his Tesco Bank credit card, I'm unable to consider any claims that he may have about Company B in this decision;*
- *Mr L's representative's letter to Tesco Bank says that it was represented to Mr L and his wife that Company A would be able to terminate their timeshare and that that could be done if they purchased a discounted holiday product;*
- *the accommodation contract included four weeks of accommodation but there's no reference in the accommodation contract or the accommodation conditions (or in Company B's terms and conditions) to Mr L and his wife's existing holiday products or to any relinquishment services that were to be provided;*
- *Mr L and his wife have provided a statement in which they describe what they say happened but I don't consider that there's enough evidence to show that Company A had agreed to provide any relinquishment services to Mr L and his*

wife and I'm not persuaded that there's enough evidence to show that the accommodation contract was misrepresented to them;

- the statement says that Mr L and his wife have never been able to use the scheme for holidays, unless they were meeting the representatives of Company A, and they've since seen the offices which are either empty or are now occupied with companies that carry out a different trade – but neither Mr L's representative's letter to Tesco Bank nor Mr L's complaint form contain any detailed information about any alleged breaches of contract by Company A and I don't consider that Mr L and his representative have provided enough evidence to show that there's been a breach of contract by Company A for which Tesco Bank would be liable under section 75 in these circumstances;*
- Mr L has also provided evidence showing that he made a payment of €5,000 to a mediation company in January 2020 using his Tesco Bank credit card and that £4,224.21 and a foreign exchange fee of £116.16 were charged to his credit card account and that his wife made a payment of £2,815.75 to a litigation company in January 2020 from her bank account – but I've seen no evidence to show that those payments relate to the complaint that he's made about Tesco Bank's response to the claims that were made to it in Mr L's representative's February 2022 letter;*
- that letter says that Mr L and his wife were pressured into entering into the agreement to purchase the timeshare relinquishment product, Company A used aggressive commercial practices against them and breached the Timeshare Regulations – but under section 75 Tesco Bank would only have liability if there had been a breach of contract or misrepresentation by Company A and I don't consider that those alleged issues would constitute a breach of contract or misrepresentation by Company A;*
- I sympathise with Mr L and his wife for the issues that they've had with their holiday products and with their efforts to relinquish them, but I consider that Tesco Bank's responses to the claims that were made to it were fair and reasonable in the circumstances; and*
- I find that it wouldn't be fair or reasonable for me to require Tesco Bank to refund to Mr L any of the money that he paid to Company A, to pay him any compensation or to take any other action in response to his complaint”.*

Subject to any further comments or evidence that I received from any of Mr L, his representative and Tesco Bank, my provisional decision was that I didn't intend to uphold this complaint but none of them has responded to it.

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 none of Mr L, his representative and Tesco Bank has responded to my provisional decision, I see no reason to change the findings that I set out in my provisional decision.

My final decision

For the reasons that I gave in my provisional decision (which are set out above), my decision is that I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 May 2024.

Jarrold Hastings
Ombudsman