

## **The complaint**

Mr K complains that Tesco Personal Finance PLC, trading as Tesco Bank, treated him unfairly regarding a dispute about a transaction to get him out of a timeshare.

## **What happened**

In April 2020 Mr K entered a contract where he had to pay £12,435 for Timeshare Relinquishment and other services to a Timeshare Relinquishment company ('the TR company'). He used his Tesco Credit Card to part fund this contract paying £3108.88 on 08 April 2020. Mr K says he was misrepresented into this agreement by the TR company and that that it was fraudulent as it never provided him with any of the agreed service. So when he didn't get anywhere with the TR company, he took his dispute to Tesco in 2022.

Tesco considered the matter and didn't think there was enough evidence to show it should refund Mr K. So it felt it hadn't done anything wrong when Mr K complained. So, unhappy with this, Mr K brought his complaint to this service.

Our Investigator looked into the matter and concluded that Mr K had been misrepresented into entering the contract and that the contract had been breached. So they concluded that Tesco should refund Mr K the £12,435 along with 8% interest simple from when it declined Mr K's claim to it. Mr K accepted that assessment.

Tesco disagreed saying that there wasn't enough to support our Investigator's position. So this complaint came to me to decide. I issued a provisional decision with further reasons for why the complaint should be upheld in addition to those given by the Investigator. Mr K accepted my provisional decision. Tesco has not responded and the deadline has passed.

## **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.

### **authorisation**

Mr K accepts he made the transaction for TR and related services from the TR company. He doesn't dispute the amount charged on his statement or the date it was charged. And it hasn't been argued that it was double charged or applied to the wrong account. Considering what has happened here and what the parties have said, I'm satisfied on balance that Mr K did properly authorise the transaction at the time. And accordingly it was correctly allocated to his account by Tesco.

### **could Tesco challenge the transaction through a chargeback?**

In certain circumstances, when a cardholder has a dispute about a transaction, as Mr K does here, Tesco (as the card issuer) can attempt to go through a chargeback process. I don't think Tesco could've challenged the payment on the basis Mr K didn't properly authorise the transaction, given the conclusions on this issue that I've already set out.

Tesco has not described its position regarding chargeback on Mr K's case. The chargeback scheme as certain time limits set by the card network (not Tesco) for card holders to raise the dispute with card issuers. I've looked into what happened here and considered the network rules around chargeback and I can see it was out of time. Accordingly I don't think Mr K has lost out here by Tesco not raising a chargeback.

## **Section 75**

For Tesco to be held liable under Section 75 there are some pre-requisites to be considered before assessing whether there is a breach of contract or misrepresentation by the TR company. These pre-requisites include a financial limits requirement and an appropriate contractual relationship between the Debtor, Creditor and Supplier-often referred to as the 'DCS arrangement'.

The CCA requires the single item price to be over a hundred pounds and under thirty thousand pounds. I'm satisfied this contract for TR services meets this requirement in the CCA.

I note here that the payment went through a Payment Processor before getting to the TR Company. I also note that Tesco hasn't raised this as an issue as to why it couldn't be liable under Section 75. This service (and indeed I) have issued a number of decisions regarding payment processors and why their presence in transactions does not break the DCS arrangement. These decisions consider both the relevant case law including the Court of Appeal case of the Office of Fair Trading v Lloyds TSB & others [2006] ("the OFT case") and the High Court case of Steiner v National Westminster Bank (2022) EWHC 2519 ('the Steiner case'). As Tesco hasn't raised such arguments here I see nothing to be gained by repeating this service's approach to Payment Processors regarding DCS arrangements in this decision other than to say in this case I'm not persuaded that this Payment Processor breaks the DCS arrangement here. If Tesco does wish to challenge this finding in this case it would be useful to consider our recent published decisions on this point before doing so. That way it can see the minutiae of the reasoning for our position and respond accordingly if it chooses to do so having considered those arguments.

So I'm satisfied that the requirements of the CCA are met in this case and accordingly I can go on to consider whether the TR Company did misrepresent or breach the contract with Mr K, and if so what would be an appropriate remedy.

## **Liability**

For Tesco to be liable under S75 a breach of contract or a material misrepresentation needs to be made out. Mr K has made clear that the TR company didn't provide him any services under the contract, and he says the business is no longer functioning.

I've considered the contract Mr K entered into with the TR company. I should start by noting that despite his paying it more than twelve thousand pounds there is little persuasive evidence of the TR company providing any tangible service to Mr K other than a few emails at the beginning of the matter. So Mr K's argument that he's been misrepresented into this agreement and that it was a fraudulent enterprise isn't without some foundation.

I've considered the contract Mr K had with the TR company. I can see he's completed a claim form detailing the Timeshare arrangement he had which he wished to exit. In that form he's been asked to detail how he was pressured into entering the Timeshare and believe they (he and Mrs K) were "misled". The contract he had with the TR company included explaining that '*claims*' mean the claimant's claim "*against the company relating to the mis-*

*selling of a Timeshare*” it also referred to “*Panel Law Firms*” which it could select to proceed with a claim and “*success fee*” which would be charged to claimants such as Mr K in the event of a successful claim (as a percentage of the total gross sum recovered through making a claim).

I also note that the TR Company commits to a number of elements of service it would provide within the contract. I can see it commits to using ‘reasonable endeavours’ to obtain the maximum compensation for the claims pursued (term 4.2) and promptly notifying the claimant if a claim was not to be pursued (4.3), it or the Panel Law Firm selected would correspond and negotiate with the lender responsible (2.3) evaluate and consider offers made by lenders (2.5). The contract also stipulates that the governing law for the contract is that of England and Wales and that such claims are normally concluded within 18 months (although might take up to 36 months or longer). I also note that although the contract points to engaging such panel law firms it is made clear that the TR Company is participating in the progress of the claim from beginning through to either the claim being ended (at its discretion) or the claim being successful and compensation and fees being paid to the relevant parties including Mr K.

I can also see emails between the TR company and Mr K arranging a meeting and also a significant amount of paperwork which is professional in tone and requiring a significant amount of input from Mr K in terms of providing information regarding his timeshare and why he felt he was mis-sold it. So I can understand why Mr K thought he was entering into a legitimate agreement with a professional firm. And I can see the firm was registered in this country and its details are logged at Companies House. So there are a number of reasons for Mr K to feel he was entering a legitimate contract for important services.

A breach of contract occurs when one party breaks the express terms of contract, or breaks terms treated as included in the contract by the operation of law. Mr K’s contract with the TR Company was a contract for services and would be covered by the relevant parts of the Consumer Rights Act 2015 (“CRA”). One of the effects of the CRA is to cause terms to be treated as included in a contract for services that:

- a) The services will be carried out with reasonable care and skill
- b) Where a timescale or deadline for the service is not fixed, the service will be carried out within a reasonable time.

What constitutes reasonable care and skill is not defined in the CRA, but it has generally been held to mean the standard of care and skill which would be expected of a competent practitioner of the service in question. What constitutes a reasonable time is a question of fact.

When our investigator issued his findings recommending that Mr K’s case was upheld, their perspective was that there was no persuasive evidence that TR had really done anything substantial after receiving Mr K’s payment. They noted that one Panel Law Firm had been engaged and hadn’t been paid. Tesco in response pointed to emails showing that the TR Company had engaged the referred to panel law firm and then engaged another to replace it. It is however evident that it has now been more than four years since Mr K paid for these ‘services’ and apart from some largely fruitless emails at the beginning of that period there is no persuasive evidence of anything of substance having been done by the TR company in relation to his claim. Specifically I note it hasn’t informed him that it wouldn’t continue with his claim under term 4.3 as its obliged to, nor inform him of any offer or indeed any significant advancement of his claim with the Timeshare provider as it is also obliged to. So I can see how the Investigator concluded that under the CRA the contract hadn’t been pursued within a reasonable time. Particularly bearing in mind that deciding on what would be a reasonable time here can be considered based on the guidance given in the contract on this point.

Bearing in mind the nature of the Timeshare Mr K held I think it would be reasonable expect the TR company have to either have informed him of progress in his claim or, potentially more likely, that it wasn't going to continue his claim and inform him of that under term 4.3. I should also note that I've considered Companies House and the documentation Mr K supplied shows the TR company he entered into a contract with was a limited company in England and giving its company number. There is an entry on Companies house for this firm and it is listed in liquidation. It is noted that it last supplied its accounts to Companies House in 2021. It also notes a Compulsory Liquidation order being registered against this company in February 2024. So it is likely that this firm will not be providing any of the services agreed with Mr K now.

Tesco has pointed to little evidence of the TR Company performing the contract to which it can be held to a like claim. Rather it has said there is insufficient evidence of their being a breach of contract put before it to make it uphold Mr K's S75 claim. I think there is significant evidence that the TR company breached the contract. Firstly there is no persuasive evidence of the TR company either progressing Mr K's claim or explaining to him that his claim wasn't to be pursued as it was obliged to do. There is no persuasive evidence of it completing the contract within a reasonable time bearing in mind it pointing to claims "generally" being completed within "18 months". Furthermore considering the Companies House information it is likely that the TR company cannot provide any service under this contract now. And considering the last time it provided accounts as it is legally required to do was in 2021 it seems likely that it hasn't been trading and providing the contracted services described for some years now. Tesco should also remember that this is a civil matter where the test is balance of probabilities, not the criminal test of beyond reasonable doubt. I think Tesco was provided with sufficient evidence to conclude on balance of probabilities that there was a breach of contract here and significantly so. And I think Mr K's comments about misrepresentation aren't lacking either.

Accordingly I'm satisfied the TR company has breached the contract and that Tesco can be held liable for a 'like claim'. And as neither party has made any persuasive arguments to depart from the thinking in my provisional decision then it is my decision that Tesco must redress this matter as below.

### **Putting things right**

Under the CRA Mr K would be entitled to a price reduction of an "appropriate amount" as a result of the TR Company's breach. Further guidance on what this means is given by explanatory notes which accompany the CRA:

*"A "reduction in price of an appropriate amount" will normally mean that the price is reduced by the difference in value between the service the consumer paid for and the value of the service as provided. In practice, this will mean that the reduction in price from the full amount takes into account the benefit which the consumer has derived from the service. Depending on the circumstances, the reduction in price could mean a full refund. This could be, for example, where the consumer has derived no benefit from the service and the consumer would have to employ another trader to repeat the service "from scratch" to complete the work."*

I can see very little benefit of the service provided here to Mr K, bearing in mind there appears to have been no worthwhile progress of his claim here at all. Accordingly I think a price reduction of 100% of the price paid is appropriate here. I should add that Mr K paid the full amount of £12,435 to the TR Company and thus Tesco should pay this amount despite only £3108 being paid on his Tesco credit card. This is because as a 'like claim' Tesco is responsible under the Consumer Credit Act for the whole contract (and any consequential

losses) and not just the amount of credit it provided to Mr K to fund the transaction here. Tesco should also pay 8% interest on this amount from when it rejected Mr K's claim to it until it settles this matter.

### **My final decision**

It is my decision that this complaint should be successful for the reasons I've described above and Tesco must redress the matter as I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 July 2024.

Rod Glyn-Thomas  
**Ombudsman**