

The complaint

Mr D complains about a credit card agreement he has with Tesco Personal Finance Limited trading as Tesco Bank. More specifically, the way that Tesco Bank dealt with a claim he submitted under section 75 (s.75) of the Consumer Credit Act (CCA). Tesco Bank did not uphold his claim.

What happened

Mr D entered into a scheme whereby he agreed to pay £945 per month for three years for a property and the property would then be let out, providing him with an income and ideally a return on his investment. Mr D's agreement was with a company I shall refer to here as A and Mr D used his Tesco Bank Credit card to make a total payment of £5,029 to A.

Mr D is disappointed with the returns on the scheme and believes it is a fraudulent scheme that misled him into entering into the agreement. After submitting a claim to Tesco Bank, where the claim was denied, Mr D complained and his complaint was referred to our service.

The complaint was considered by one of our investigators, who explained the limits of s.75 and that it does not cover goods or services where the contract price exceeds £30,000. But s.56 CCA did refer to antecedent negotiations and Tesco Bank could therefore be held liable if Mr D was misled into entering into the agreement. The investigator did not consider Mr D was ultimately misled into entering into the agreement, or that Tesco Bank unreasonably dealt with Mr D's claim.

Mr D did not accept the investigator's conclusions and the complaint has been referred to me as the last stage in our process.

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.

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Where there is a dispute about what happened, or where evidence is unclear or incomplete I make my findings on the balance of probabilities – which is to say, what I consider is most likely to have happened based on the evidence available and the wider surrounding circumstances.

What I need to consider in this complaint is whether Tesco Bank – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr D's request for getting money back. But it's important to note Tesco Bank isn't A. I can't hold it responsible for everything that Mr D is unhappy about with A.

S.75 is a statutory protection that in certain circumstances enables Mr D to make a 'like claim' against Tesco Bank for breach of contract or misrepresentation by a supplier paid using certain types of credit. As the investigator has set out in some detail there are certain conditions that need to be met for s.75 to apply. One of which relates to the cash price of the goods or services and in brief, means that where the price exceeds £30,000, s.75 does not apply.

Mr D paid £5,029 on his Tesco Bank credit card to A as initial payments but the agreement he had with A was to pay £945 per month over a three year period. This was the contract period and the result of this is that contract price exceeded the upper limit of £30,000 for s.75 to apply. This therefore means that Tesco Bank has no liability under s.75 for any claim Mr D makes about breach of contract or misrepresentation by A.

However, s.56 CCA does not have the same monetary limits as s.75 and while it does not offer the same protections as s.75, it does refer to antecedent negotiations and can make Tesco Bank liable for what A set out to Mr D before entering into the contract.

Mr D has referred to the documentation he was given and discussions he had with A and which ultimately resulted in him entering into the agreement. Mr D refers to various things, including not being made fully aware of the risks or that his capital is at risk. But A is not a regulated business and is therefore not bound by the same requirements as a regulated investments provider, which would be required to set out prescribed wording, and ultimately warnings, about the risks associated with the scheme.

I fully appreciate the marketing documentation is very positive but I have not seen anything here in the documentation that would have been referred to by A in the discussions that is actually false or misleading. There are no actual guarantees as to the amount Mr D was to receive from the property being let out and the fact the property had not previously been let out is not in my view misleading about the potential returns. These were I understand based on similar properties in the area, which is again not an unreasonable estimation of potential, not guaranteed, returns.

The investigator has clarified how the cleaning costs are applied and accounted for and although I can understand why Mr D thought he needed to pay these, the actual costs were paid for by the people who rent the property. Mr D specifically refers to the fact that A has not explicitly denied his allegations but that does not appear to be the case from the supporting evidence of messages between Mr D and A.

Mr D has referred to the scheme being fraudulently misrepresented but any allegations of fraud or criminality will need to be referred to the police. As the investigator has already referred to, the online websites that have been highlighted do not conclude the scheme run by A is fraudulent, but simply highlight the risks of A not being authorised or regulated.

While I can fully understand that Mr A will be unhappy with what he has received back from this scheme, having considered all that has been said and presented in this case within the limited parameters of s.56 CCA, I am not sufficiently persuaded there are grounds to direct Tesco Bank to do anything different to what it has already done. Tesco Bank has considered Mr D's claim and it has in my view not done this unreasonably.

My final decision

I accept Mr D will remain unhappy with the outcome I have reached here but my final decision is that I do not uphold this complaint against Tesco Personal Finance Limited trading as Tesco Bank. Should Mr D wish to continue his complaint against Tesco Bank or A, he will need to do so through alternative means, such as court.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 April 2025.

Mark Hollands
Ombudsman