

The complaint

Mrs C complains that Tesco Personal Finance Limited trading as Tesco Bank ('Tesco')_ rejected her claim under Section 75 of the Consumer Credit Act 1974 ('CCA'). Mrs C made the purchase along with her husband. But as the payment was made using her credit card, she is the only eligible complainant here.

What happened

In September 2019 (the 'Time of Sale'), Mrs C entered into a contract with a business who I'll refer to as 'GGH' which was headed 'Contract for purchase of rights of properties by period for tourism purposes'. There was also a separate Management Mandate Agreement ('MMA') with another business, who I'll refer to as 'GEC'. Mrs C says she paid €3,995 to GEC under the contract using her Tesco credit card.

Mrs C has not provided any information about any payments made to GHG under that specific contract, but that contract is not the subject of this complaint.

On or around 10 March 2024, Mrs C submitted a claim to Tesco under Section 75 of the CCA ('S75') highlighting the findings of an Online Investigation Business (the 'OIB'). Mrs C said that GEC had breached the contract she'd entered into. In particular because the findings of the OIB showed that the contract entered into with GGH was not as described, had been misrepresented and was unlawful under the regulations that applied. And as a consequence, she hadn't received what she believed she'd been sold.

Mrs C alleges that GEC purported to offer a legitimate administrative service to ensure that the GGH contract was legally compliant and also act to protect her interests. However, the findings of the OIB suggest GEC didn't do that and, as a consequence, the GEC contract had been misrepresented to her and ultimately breached.

Having considered Mrs C's claim, Tesco rejected it explaining that they had been unable to identify a breach of contract or misrepresentation. Unhappy with Tesco's response, Mrs C submitted a complaint about the outcome of her claim. Tesco wrote to Mrs C on 25 April 2024 with its final response. Having looked again into the circumstances of Mrs C's claim, Tesco didn't agree it had done anything wrong and rejected her complaint. So, Mrs C referred her complaint to the Financial Ombudsman Service.

Having considered all the evidence and information provided, one of this service's investigators didn't think Mrs C's complaint should be upheld. In particular because:

- it hadn't been demonstrated that GEC made untrue factual statements to entice her into the contract; and
- there was insufficient evidence to demonstrate that GEC had failed to fulfil its contractual obligations.

Mrs C didn't agree with our investigator's findings. In doing so, she forwarded information and guidance provided by the OIB which she thought demonstrated that the contract had been misrepresented and breached by GEC. The information also suggests that it had previously been used to support other such claims and complaints, placing the onus upon Tesco and this service to investigate matters further.

Mrs C wanted her complaint to be considered further by an ombudsman, which is why it was passed to me.

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.

Having done that, whilst I understand and have every sympathy with Mrs C's experience, I do not think this complaint should be upheld. But before I explain why, I want to make it clear that my role as an ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable to all parties in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

When deciding complaints, I am required by DISP¹ 3.6.4 R of the FCA² Handbook to take into account:

“(1) relevant:

(a) Law and regulations;

(b) Regulators' rule, guidance and standards;

(c) Codes of practice; and

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.”

The claim under S75

Liability under S75 isn't based on anything the lender does wrong, but on any proven misrepresentation and / or breach of contract by the supplier. S75 imposes on the lender a “like claim” to that which the borrower enjoys against the supplier. If the lender is notified of a valid S75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful S75 claim, the act or omission that engages this service's jurisdiction is the creditor's (here that's Tesco's) refusal to accept and pay the debtor's (Mr C's) claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier's alleged misrepresentation(s) or breach(es) of contract.

In Mrs C's case, as Tesco refused to accept and pay her claim in March 2024, it is Tesco's handling of that claim that this service is investigating – not the alleged actions or failings of the supplier or its associates. So, in considering Mrs C's complaint, it is my role to decide whether Tesco acted fairly and reasonably when considering and responding to Mrs C's claim. And my decision is based upon the actual claim Mrs C submitted and the associated evidence and information she has provided.

Amongst the information and evidence Mrs C has provided is documentation associated with the contract she entered into with GGH. Whilst I've read and considered that information, it doesn't form part of the specific claim Mrs C submitted to Tesco. I say that because I can't see that GEC was a party to that contract or had any contractual obligations under it. And I also can't see that Mrs C made any payment to GGH under that contract using her Tesco

¹ Dispute Resolution: Complaints Sourcebook

² Financial Conduct Authority

credit card. The complaint I'm considering here relates to Tesco's response to Mrs C's claim about the contract she entered into with GEC.

The specific allegations are that GEC misrepresented the MMA Mrs C entered into. And further that it also breached the terms of that contract. So, it is these specific allegations I will now consider.

The MMA

The MMA appears to be a document between Mr and Mrs C and GEC which sets out across seven clauses the parties' contractual obligations under it. The document appear to have been signed by the parties to it and lists a number of services GEC will provide in very general terms. These include:

- the co-ordination and intermediation of the internal and external procedures;
- settlement of administration and registration costs;
- to ensure correct identification of the customer; and
- that the products allocated to the customer are available for registration.

In reference to the findings and advice provided by the OIB, Mrs C suggests that the GGH contract was unlawful. In particular, as the purchase agreement with GGH breaches the various regulations and legislation that apply. Therefore, the suggestion is that GEC did not fulfil its obligations under the MMA. So, I've thought about whether it would have been reasonable for Tesco to have upheld Mrs C's claim for misrepresentation and / or breach of contract based upon the documentary evidence I've seen.

For me to conclude there was a misrepresentation by GEC in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that GEC made false statements of fact when selling the MMA to Mrs C. In other words, that they told Mrs C something that wasn't true in relation to one or more of the points raised. I would also need to be satisfied that any misrepresentations were material in inducing Mrs C to enter the MMA. This means I would need to be persuaded that she reasonably relied on those alleged false statements when deciding to buy the Timeshare.

From the information available, I can't be certain about what Mrs C was specifically told (or not told) about the benefits of the MMA she entered into. And I can't see that Mrs C has explained, in any detail, what it is that GEC allegedly told her that led her to believe it would ensure that the GGH contract was legally compliant and also act to protect her interests.

Having considered the MMA in detail, I'm also not persuaded that Mrs C has demonstrated that GEC failed to deliver under it in such a way as to amount to a breach of contract. The services to be provided by GEC are vaguely worded, and it would be extremely difficult to establish that the contract had been breached. Nor does any of the documentation indicate that GEC was acting as an agent for GGH. It was providing services to Mrs C and not to GGH.

To take one example; of all the services GEC agreed to supply, I think the one which offers the greatest support to Mrs C's claim is:

"Check with the development company that the products allocated to the customer are available for acquisition under the legislation in force".

This wording is typical of the document generally in that it is imprecise. It does not specify which company is the development company, but it is reasonable to presume that could be GGH. While I can see that Mrs C may have taken that to read that GEC should check that the product is legally available for her, it does not say that. It simply says it will check with the development company. So, in order to satisfy any obligation under that clause, it simply had to ask the development company whether the products were legally available. I can't see that it offered to do any more than that. And it certainly didn't offer to ensure any answer

from GGH was accurate. I also can't see that it offered to ensure that the GGH contract was legally compliant, or to act to protect Mrs C's interests.

I appreciate Mrs C takes it as implicit in the MMA that GEC would ensure everything was in order with the GGH contract. Whilst I can understand why she may think that I can't reasonably conclude that it offered such a service. So, even if the purchase contract with GGH was found to be illegal and / or fraudulent – and I make no such finding – I can't reasonably say that there's any evidence that GEC failed to deliver what was promised under the MMA.

Mrs C may well be able to pursue his claim through other avenues however, I can't say that Tesco ultimately acted unfairly or unreasonably in rejecting her claim as it did.

Other matters

As part of her submissions to this service, Mrs C has offered to supply contact details for the OIB so that I may discuss her case further. The rules that apply dictate that a Claims Management Company ('CMC') representing a consumer in bringing their complaint to this service must be regulated by the Financial Conduct Authority ('FCA'). Unfortunately, I can't see that the OIB Mrs C refers to is regulated by the FCA. And because of that, it is not able to represent her in bringing her complaint.

My final decision

For the reasons set out above, I don't uphold Mr C's complaint about Tesco Personal Finance Limited trading as Tesco Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 30 April 2025.

Dave Morgan
Ombudsman