

## **The complaint**

Mrs T complains that Tesco Personal Finance Limited (which I'll call "Tesco Bank") has not paid her claim under section 75 of the Consumer Credit Act 1974 ("section 75").

## **What happened**

In or around August 2019 Mrs T and her husband booked a diving holiday with a company which I'll call "B". The total cost was £7,506, later reduced to £7,500, and payments were to be made in instalments. Mrs T made two payments of £1,000 each, one in September and one in December 2019, using her Tesco Bank credit card. The balance of £5,500 was paid by three bank transfers between March and September 2020. Those payments were made, as requested by B, through a different company, which I'll call "O".

Mr and Mrs T were due to take the holiday in December 2020. Unfortunately, travel restrictions imposed because of the Covid-19 pandemic meant that the holiday had to be postponed until November 2022.

B ceased trading in November 2021. Mr and Mrs T could not therefore take their holiday. They sought refunds through the Association of British Travel Agents (ABTA) and under ATOL (Air Travel Organisers' Licensing) protection. That was unsuccessful, however, as it seems that B had not paid the airline for their flights.

Mr and Mrs T therefore turned to Tesco Bank, seeking a refund under section 75, as they had paid for part of their holiday using Mrs T's credit card.

Tesco Bank refunded the £2,000 which had been paid with the card in April 2022. It did not, however, accept the section 75 claim. It said, in summary, that the involvement of O (to which payments totalling £5,500 had been made) meant that there was no "debtor-creditor-supplier agreement", a necessary condition of section 75.

Mr and Mrs T referred the matter to this service. Our investigator considered what had happened and issued a preliminary assessment in which he did not recommend that the complaint be upheld. He concluded that section 75 could only apply if all the payments under the contract had been made directly by Mr and Mrs T to B. In this case, however, some of the payments had been made through O.

Mr and Mrs T did not accept the investigator's assessment and asked that an ombudsman review the case.

I did that and issued a provisional decision. I concluded that section 75 did apply and that Mrs T should have received a full refund for the holiday. It did not matter that she had only paid part of the purchase price using her credit card. Tesco Bank should therefore refund the balance of £5,500, with interest.

Mrs T accepted my provisional decision, but Tesco Bank did not. It referred to information on the website of the Financial Conduct Authority (FCA), which it said "... *confirms that the*

*introduction of a 3rd party into the payment chain means that Section 75 protection may not apply.”*

The bank continued:

*“Our decision to decline the claim for the payments made to [O] was not in relation to the value not paid using her Tesco Credit Card, but the ability to link these two entities to be able to accept the funds were in fact paid directly to the supplier. This means that the payments being made to [O] before being passed on to [B], mean they are a third party, which again means the DCS link has been broken.”*

### **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 legislation**

So far as is relevant to credit card payments, section 75 says:

#### **75 Liability of creditor for breaches by supplier.**

*(1) 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.*

...

*(3) Subsection (1) does not apply to a claim —*

*(a) under a non-commercial agreement,*

*(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...*

Section 12(b) of the Consumer Credit Act (referenced in section 75) says:

#### **12 Debtor-creditor supplier agreements.**

*A debtor-creditor-supplier agreement is a regulated consumer credit agreement being —*

...

*(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or ...*

And section 11(1)(b) says:

#### **11 Restricted-use credit and unrestricted-use credit.**

*(1) A restricted-use credit agreement is a regulated consumer credit agreement —*

...

*(b) to finance a transaction between the debtor and a person (the “supplier”) other than the creditor, ...*

*and “restricted-use credit” shall be construed accordingly.*

Section 189 is the definitions section and includes:

*“finance” means to finance wholly or partly, and “financed ” and “refinanced ” shall be construed accordingly”*

### ***The application of section 75 in this case***

I do not understand there to be any dispute that a credit card agreement with an individual is a restricted-use credit agreement, because the card can only be used to pay suppliers who have been accepted by the card schemes to take credit card payments. B was one such supplier.

Tesco Bank says however that there was no debtor-creditor-supplier agreement in this case, because some of the payments for the holiday were made to O. Clearly, however, there were pre-existing arrangements between Tesco Bank and B, made through Mastercard. Those arrangements enabled Mrs T to use her Tesco Bank credit card to make two payments to B. There was, therefore, a debtor-creditor-supplier agreement.

But was there a transaction financed by that debtor-creditor-supplier agreement? Again, I believe there was. The relevant transaction here was the contract between Mr and Mrs T on the one hand and B on the other. Under that contract, B agreed to provide Mr and Mrs T with a holiday and Mr and Mrs T agreed to pay for it.

Mr and Mrs T did pay for the holiday, in part using Mrs T's credit card. That was sufficient for the transaction to be *“financed”* under the debtor-creditor-supplier agreement, since (by section 189) that term covers a transaction which is partly financed with the credit card. Indeed, it has long been established that, as long as part of the price for goods or services (or both) is paid with a credit card to the supplier, section 75 can apply.

So, for example, a person who splits a payment over two or more credit cards can have a section 75 claim against both providers for the full amount of any claim against the supplier. Similarly, a person who pays a deposit of £1 by credit card for an item costing £25,000 can bring a claim for the full amount against the card provider.

Tesco Bank has not said whether it accepts that, but it does say that all payments must be made to the contracting party. If they are not, it says there is no debtor-creditor-supplier agreement. There is however no such requirement or exception in section 75. Section 75 applies if the supplier takes the credit card payment and other conditions are met. The supplier here was B, and it took the card payments. The position might be different if O, rather than B, had taken the card payments, but that is not what happened.

For the avoidance of any doubt, I believe that the information on the FCA website and to which Tesco Bank referred sets out the correct position. But I don't agree with Tesco Bank's interpretation of it.

I have considered too whether the payments to O might have been in respect of a different transaction which was not financed by the credit card payments. There is nothing to suggest they were. They were part of the payment for the holiday which B was to provide, and were made in line with B's instructions. Mr and Mrs T were not buying anything from O.

The final issue I need to consider is whether there was a breach of contract on the part of B. It seems to me unarguable that there was. It didn't supply the holiday it had agreed to provide and which Mr and Mrs T had paid for.

### ***What is the appropriate remedy?***

Section 75 provides that a cardholder who has a claim against a supplier has a “like claim” against the creditor. I have therefore considered what claim Mrs T might have had against B.

The usual remedy for breach of contract is to put the parties in the position they would have been in if the contract had been performed. In this case, that would mean that Mr and Mrs T would have the holiday they booked (or an equivalent one) for £7,500. If they could only replace the holiday by paying more, they might be able to recover the difference in price, in addition to the payments they have already made.

It seems to me, however, that trying to work out the cost of an equivalent replacement holiday is unnecessarily complex and unlikely to be practical. Rather, a fair resolution would be to require Tesco Bank to pay Mrs T the balance of the price which has not been refunded – that is, £5,500 – together with interest. Had Mrs T been able to bring a claim against B while it was still in business, it’s likely that is what she would have claimed.

In my view, Tesco Bank ought to have identified – if not immediately, then very soon after the claim was made – that section 75 did apply and that Mrs T had a very strong claim for breach of contract. Because it didn’t, she (and Mr T) have been deprived of funds for nearly three years and have been put to the inconvenience of having to pursue a complaint. So, as well as interest, I propose to include some compensation for the distress which Mrs T has suffered and the inconvenience to which she has been put.

### **My final decision**

For these reasons, my final decision is that, to resolve Mrs T’s complaint in full, Tesco Personal Finance Limited should pay Mrs T:

- £5,500;
- interest on £5,500 at 8% a year simple from 2 April 2022 until payment; and
- £350 in recognition of the distress which she has suffered and the inconvenience to which she has been put.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs T to accept or reject my decision before 18 March 2025.

Mike Ingram  
**Ombudsman**