

The complaint

Mrs A's complaint is that Tesco Personal Finance Limited ('Tesco') acted unfairly and unreasonably by deciding against paying claims under Section 75 of the Consumer Credit Act 1974 (the 'CCA').

Although the purchase in question here was made by both Mr and Mrs A, it was paid for with a credit card which was in Mrs A's name only. As such she is the only eligible complainant here. I will, however, refer to both of them where appropriate.

What happened

On 20 April 2015, Mr and Mrs A paid around £6,000 to a company (the 'Supplier') that said it would help them get out of an existing timeshare membership that they held. Part of the payment (£1,501.89) for this service was made using Mrs A's Tesco credit card.

Within a few months, Mr and Mrs A say they realised the service was not being provided and thought it was a scam, so on 4 July 2015 they wrote to the timeshare provider and cancelled their membership themselves.

On 29 June 2019, using the assistance of a professional representative (the 'PR1'), Mrs A made a claim to Tesco under Section 75 of the CCA. She said that they had been subject to deliberate and gross misrepresentations by the Supplier which induced them into proceeding with payment for the service. And Tesco was jointly and severally liable to her for the Supplier's misrepresentation.

There was some ongoing communication between the PR1 and Tesco, where Tesco asked for evidence that Mrs A had tried to contact the Supplier, but due to the passage of time the emails and telephone records no longer existed. On 26 August 2020 Tesco turned down the Section 75 claim, stating that as Mr and Mrs A had chosen to cancel the timeshare membership themselves within about two months of paying the Supplier to do that for them, the evidence did not support a claim that the Supplier was in breach of the contract.

On 25 November 2020 PR1 referred a complaint to this Service that Tesco had unfairly turned down Mrs A's Section 75 claim. When Tesco was contacted by this Service it said it had only considered and turned down the claim, and a complaint about its handling of the claim had not been made to it. So it said it would investigate the matter as a complaint and issue its final response in due course.

It did so, and on 15 January 2021 it sent its final response to Mrs A's complaint, rejecting it on all grounds. It said it had acted fairly when reviewing her Section 75 claim.

In February 2023 PR1 wrote to this Service explaining that the complaint management was being transferred to be dealt with by new representatives (the 'PR2').

In March 2023 Tesco argued that this Service did not have jurisdiction to consider the complaint as it had been referred here too late. The jurisdiction issue was considered by an Ombudsman who decided that it had not been made too late, and that this Service was able

to consider the merits of Mrs A's complaint against Tesco.

The complaint was considered by an Investigator at this Service who thought it ought to be upheld. He thought it likely that the Supplier had misrepresented that Mr and Mrs A would fully recover the sums paid towards their timeshare, and he didn't think they would have entered into the contract had they known this would not happen. So he thought that Tesco, as the lender, should refund to Mrs A all of the monies paid to the Supplier with interest.

Tesco did not agree. It said that it considered all Section 75 claims on their individual merits using evidence provided by the customer. In this case, no evidence had been provided which suggested any wrongdoing by the Supplier and there was no evidence to suggest the agreement was to assist with the recovery of the money paid by Mr and Mrs A for their timeshare.

No informal agreement on the outcome to this complaint could be reached, so the matter has come to me for a decision.

Having considered everything that had been submitted, I didn't think this complaint ought to be upheld. As this was a different outcome to that reached by the Investigator, I set out my initial thoughts in a provisional decision (the 'PD'), and invited all parties to submit any new evidence and arguments that they wished me to consider before I made my final decision.

In my PD I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, I don't currently think this complaint ought to be upheld. I do not think Tesco was unreasonable or unfair in rejecting Mrs A's claim under Section 75 of the CCA.

But before I explain why, I want to make it clear that my role as an Ombudsman is to determine whether Tesco acted fairly, and whether it reasonably declined Mrs A's Section 75 claim based on the information which was before it at the time.

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.

Could Tesco challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute about a transaction, as Mrs A does here, Tesco can attempt to go through the chargeback process. Chargeback isn't a right, but this Service does consider it good practise to raise a chargeback if within the time limits and there's a reasonable prospect of success.

There are rules as to how and when chargebacks can be raised to challenge disputed transactions. And Tesco only has to raise a chargeback dispute when it thinks such a chargeback has a reasonable prospect of success. I've considered the sequence of events here and I can see that Mrs A didn't approach Tesco until June 2019. Consequently, considering the relevant dates of events here, I think Mrs A was out of time, and any such attempted chargeback, on balance, would have likely been unsuccessful. So I don't think Tesco has treated Mrs A unfairly in regards to chargeback.

The Consumer Credit Act 1974

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against Tesco under Section 75 essentially mirrors the claim Mrs A could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Tesco does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr and Mrs A at the Time of Sale, or to have breached any terms of the contract, Tesco is also liable.

It has been alleged that the Supplier misrepresented what it would do for Mr and Mrs A. But other than the contract that they signed, which I will come on to below, there is no actual evidence of what the Supplier said it would do for Mr and Mrs A. There is nothing to indicate what was actually said, by whom, and in what context to support the allegation that the Supplier misrepresented what it would do or the service it was offering.

In its later correspondence with Tesco, the PR1 said it was also misrepresented to Mr and Mrs A that the Supplier would seek compensation on their behalf for the mis-sale of the timeshare in question. However, there is no evidence which leads me to think that the Supplier told Mr and Mrs A that it would, or even could, recover any of the money they paid for the timeshare. Mr and Mrs A, in the initial Section 75 claim, did not say anything about what the Supplier told them in this regard. And as this compensation would likely have been a considerable sum, very likely in excess of what Mr and Mrs A paid to the Supplier, this would, I suggest, have likely been a very important part of the Service being offered, so I find it hard to understand why this wasn't said to Tesco at the outset of the claim - it was only said after the claim was originally rejected. And having considered the contract that Mr and Mrs A entered into with the Supplier, there is no mention of the recovery of any money or any payment of compensation. So, also bearing in mind that Mr and Mrs A signed the contract with the Supplier so were likely to have been aware of its contents, it seems unlikely that the Supplier would have made any commitment to Mr and Mrs A which was outside the terms of the agreed contract.

So, given her evolving recollection of events, and that this part of the service does not form part of the contract, I think it unlikely that the Supplier would have told Mr and Mrs A that it could recover money on their behalf from the timeshare provider.

So given the lack of information in this case, and the lack of any evidence relating to the misrepresentations that the Supplier is alleged to have made, I do not think Tesco is liable to pay Mrs A any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think Tesco acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

I have also considered whether it is likely that there has been a breach of contract here, but I don't think there has been.

Having considered the contract that Mr and Mrs A signed on 20 April 2015 I can see that it said, amongst other things:

"The [Supplier] will arrange for the disposal of [Mr and Mrs A's] timeshare interest by whatever means necessary depending on the resort of ownership..."

This, it seems to me, is the crux of the matter and the reason Mr and Mrs A signed the contract and paid the money to the Supplier. And although Mrs A says that they were unable to get hold of the Supplier after they paid them the money, there is no evidence to support this. I understand that this all occurred some four years before the Section 75 claim was made, and I intend no criticism of Mr and Mrs A here for not keeping the records, but for me to say that Tesco was unfair and unreasonable in its rejection of the claim, I'd have to see that there is some evidence to support Mrs A's assertion. And there simply isn't any persuasive evidence in this regard.

And there also does not seem to have been any contracted timescale for the Supplier to complete the relinquishment service on Mr and Mrs A's behalf. In other similar contracts that I have seen, it seems fairly standard that there is an undertaking to complete the work within 12 months. But this doesn't seem to be the case here.

And the contract also says the following:

"[Mr and Mrs A] also accepts that this is a contract for services and any monies paid in accordance therewith are non-refundable unless the [Supplier] fails to fulfil his obligations."

And as I've said, Mr and Mrs A took the decision to contact the timeshare provider and cancel their membership themselves within less than three months of their agreement with the Supplier to do so, and apparently without affording the Supplier a reasonable opportunity to do so and fulfil its contractual obligations.

Overall, therefore, from the evidence I have seen, I do not think Tesco is liable to pay Mrs A any compensation for a breach of contract by the Supplier. And with that being the case, I do not think Tesco acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that Tesco acted unfairly or unreasonably when it dealt with Mrs A's Section 75 claims, and having taken everything into account, I see no other reason why it would be fair or reasonable to direct Tesco to compensate her."

Tesco responded to say that it agreed with the outcome and had nothing further to add. But neither Mrs A nor the PR on her behalf responded.

As the deadline for responses has now passed, the complaint has come back to me for further consideration.

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.

And having reconsidered everything afresh, and as no further evidence or arguments have been submitted, I see no reason to depart from the findings in my PD, as set out above.

My final decision

I do not uphold Mrs A's complaint against Tesco Personal Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 6 June 2025.

Chris Riggs
Ombudsman