

The complaint

Mr D complains that Barclays Bank UK PLC trading as Tesco Bank ('Tesco') has not honoured a liability he says arises out of his claim made under section 75 of the Consumer Credit Act 1974 (the 'CCA').

What happened

In or around 2018/19, Mr D received an unsolicited telephone call from a marketing business (the 'Marketing Business') that assured him it would be able to initiate a claim to recover money he had previously expended on the purchase of a timeshare product. In order to initiate that claim, Mr D was told he needed to travel to Tenerife to meet with a claim specialist. The Marketing Business told Mr D they would provide a week's free accommodation to assist with that trip.

On 21 June 2019 (the 'Time of Sale'), having travelled to Tenerife as requested and agreed, Mr D met with representatives of two businesses. The first of these I will refer to as 'TA' and the second as 'P' (referred to collectively as the 'Suppliers'). Mr D says he was told the Suppliers would initiate a claim on his behalf. However, before any claim could be initiated, he needed to enter into two contracts (the 'Purchase Agreements') and pay a deposit followed by a balance payment.

As a consequence, Mr D (jointly with his wife) entered into the Purchase Agreements at a total cost of €8,375.03. This amount was funded, in part, by making payments of €1,521.61 to TA and €2,986.67 to P using a credit card provided by Tesco in Mr D's sole name (the 'Credit Agreement'). The remaining balance of €3,335.03 was paid to TA by his wife using a credit card provided by another financial business in her sole name.

On 11 March 2024, Mr D wrote to Tesco to make a claim under section 75 of the CCA ('S75'). In his letter, he said:

"The purchase was for legal services/discount holiday scheme purportedly offered by [TA/P], both of which were revealed to be part of a fraudulent enterprise..."

"I have not received any of the services guaranteed. Moreover, the companies involved have ceased operations following widespread exposure of their fraudulent activities".

Mr D added:

"They falsely promised to pursue legal action against my timeshare company [...] However, subsequent research has revealed no claims against any timeshare company have ever been raised by the merchant..."

"The membership purported to offer discounted travel options worldwide, yet attempts to utilize these benefits proved futile."

"...5 free worldwide holidays were promised but remain unfulfilled due to the cessation of operations by the involved companies."

Various exchange between Mr D and Tesco followed seeking and providing more information, evidence and clarification to enable Tesco to consider Mr D's claim. During that time, Mr D confirmed that a similar claim had not been made to his wife's credit card provider. Having investigated Mr D's claim, Tesco rejected it on the basis there was

insufficient information/evidence to establish a breach of contract or misrepresentation by the Suppliers.

Unhappy with Tesco's response, Mr D wrote to Tesco to explain why he disagreed with its findings, but Tesco said it was unable to change its decision. So, Mr D wrote to Tesco again to express his dissatisfaction with that decision. Following further exchanges, Tesco raised a complaint on Mr D's behalf.

Tesco issued its final response in an email to Mr D on 12 August 2024. In doing so, Tesco didn't agree it had done anything wrong when dealing with Mr D's claim, so didn't uphold his complaint. Unhappy with Tesco's response, Mr D referred his complaint to the Financial Ombudsman Service.

One of this service's investigators considered all the evidence and information provided. Having done so, the investigator didn't think the outcome reached by Tesco was fair and reasonable. In particular, he was persuaded that there had been contractual breaches by the Suppliers, such that Mr D's claim under S75 should have been successful. And in order to put things right, the investigator thought Tesco should pay to Mr D £6,242.90 plus simple interest at 8%.

Tesco didn't agree with the investigator's findings arguing that Mr D's claim didn't support the contracts provided. Furthermore, it argued that Mr D has been unable to provide further information and evidence requested to support his claim. Rather, he relied upon publicly available reports and articles which are not directly related to the specifics of his own claim.

As an informal resolution couldn't be reached, Mr D's complaint was passed to me to consider.

Having considered all the evidence and information available, I was inclined to reach the same conclusion as our investigator although my proposal for putting things right varied slightly. So, I issued a provisional decision ('PD') on 19 June 2025 giving Mr D and Barclays Bank UK PLC trading as Tesco Bank the opportunity to respond to my findings below, before I reached a final decision.

In my PD, I said:

When considering what is fair and reasonable, DISP¹ 3.6.4R of the Financial Conduct Authority ("FCA") Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides protection for consumers for goods or services bought using credit. Mr D made payments to TA and P under a pre-existing credit card agreement with Tesco. So, it isn't in dispute that S75 applies in relation to any contract entered into specifically as a result of those payments – subject to any restrictions and limitations. So, where the requirements of the CCA are met, it means Mr D is afforded the protection offered to borrowers like him under those provisions. As a result, I've taken this section into account – together with any related provisions within the CCA – when deciding what is fair and reasonable in the circumstances of Mr D's complaint.

It is important to distinguish between the complaint be considered here and any legal claim. The complaint referred to this service relates to whether I believe the Lender's treatment of Mr D's claim was fair and reasonable given all the evidence and information available to me. This service isn't afforded powers to determine any legal claim itself. That is the role of the courts.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've

¹ Dispute Resolution: The Complaints Sourcebook (DISP)

based it on what I think is more likely to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address in my decision every single point that has been made. And for that reason, I will only refer to what I believe are the most salient points having considered everything that's been said and provided.

No evidence has been provided by the Suppliers referred to above. The only evidence relating to what was purchased, and the circumstances surrounding that, has been provided by Mr D along with his recollections. I'm mindful that recollections may not always be an accurate representation of the precise sales process as memories can be imperfect. So, I've had to weigh up all of that when deciding what I thought most likely happened. I don't think it was unfair on Tesco for me to do that – ultimately, I must decide the complaint based upon the evidence available from the time.

In considering Mr D's complaint, I think it's important to set out what I've found Mr D agreed to and with which business. I've then considered any legal claims that the Lender need to consider, given the relationship between the various parties. Finally, I've considered whether Tesco need to do anything more to resolve Mr D's complaint.

Mr M's memories of the sale(s)

Mr D explains what he recalls happened leading up to and including the Time of Sale. He says he was approached by a representative from a Marketing Company on behalf of the Suppliers offering to assist him by making a legal claim against a timeshare provider from whom he had previously purchased a timeshare. That approach resulted in Mr D travelling to Tenerife whereupon he met with a representative of the Suppliers.

Mr D confirms that he did receive email confirmation from the Marketing Company for the (free) accommodation booking associated with that call. However, due to that email account no longer being active, a copy is no longer available.

Mr D goes on to say that during the meeting with the Suppliers in Tenerife, he was promised they would initiate a claim on his behalf. However, he was told he had to sign two contracts and pay a deposit before a claim could be initiated. He then had to pay a balance payment before the claim could continue.

The available documents

Mr D has provided three separate documents from the Time of Sale, each one signed by Mr D and his wife and dated 21 June 2019. They include:

- A document on headed paper bearing the name of TA with the title 'Accommodation Contract'. It includes:
 - *"Type of Accommodation: Accommodation only, consisting of 6 days , 7 nights".*
 - *"Included in the initial subscription fee is 1 week accommodation in the Canary Islands, provided and used satisfactorily, a second and third week reserved and paid for today 21 Hune 2019 and the choice of 1 additional week of accommodation [...] reserved and paid for today..."*
 - *"Total Price (taxes included £4,497.21/ €5,036.10".*
 - *Payments Received" £4,497.21/ €5,036.10".*
- A document on headed paper bearing the name of P with the title 'Accommodation Contract'. It includes:

- *“Included in the initial subscription fee is 1 week of accommodation in the Canary Islands, provided and used satisfactorily, a second week reserved and paid for today, 21 June 2019, which can be modified if required but not cancelled”.*
- *“Type of Accommodation: Accommodation only, consisting of 6 days, 7 nights”.*
- *“Total Price (taxes included):.....£2,980.50 / €3,338.93”.*
- A letter on headed paper from TA confirming entitlement to *“5 WORLDWIDE HOLIDAYS. Each holiday includes 7 NIGHTS of free accommodation worldwide, plus two return flights, up to the total value of £250.”*

What payments were made?

I've seen credit card statements showing the following:

- A payment of £1,521.61 (€1,701.07) Mr D made to TA on 21 June 2019 using a credit card provided by Tesco in his sole name.
- A payment of £2,966.67 (€3,338.93) Mr D made to P on 21 June 2019 using a credit card provided by Tesco in his sole name.
- A payment of £2,983.18 (€3,335.03) made to TA on 24 June 2019 using a credit card provided by another financial business in Mr D's wife's name.

The total payments made to both TA and P (in Euros) correspond with those quoted within the Accommodation Contracts detailed above. So, I'm persuaded that the payments did relate to those contracts.

What were the agreements?

The first two documents appear to be simple - albeit crudely worded – accommodation contracts providing a total of six weeks accommodation (four from TA and two from P). So, in simple terms, Mr D made advance payments for accommodation in the Canary Islands.

Importantly, each contract confirms that one week of accommodation had already been utilised. I acknowledge that Mr D believes the week's accommodation he used in June 2019 was provided free of charge by the Marketing Company, but I've seen no evidence to support that. Rather it seems that week's accommodation formed part of the contract(s) Mr D entered into for which the associated payments were made.

Furthermore, in signing those contracts, Mr D confirms that he had utilised a week's accommodation from each contract (i.e. a total of two weeks). And in the absence of any documentary evidence from the time to the contrary, I can't reasonably conclude that he didn't.

Is the Lender jointly responsible for any breach of contract or misrepresentation?

S75 states that in certain circumstances, when a debtor has a claim against a supplier in respect of a misrepresentation or breach of contract, they will have a 'like' claim against the creditor. So here, Mr D (the debtor) was asking Tesco (the creditor) to answer claims about what he said had gone wrong.

The Lender is only responsible for claims when there is a debtor-creditor-supplier ("DCS") agreement in place. This is set out more fully in sections 11(b) and 12(b) of the CCA. In short, there must be arrangements in place so that the supplier of any goods or services is paid using the credit card provided by the lender.

In Mr D's case, the total amounts paid directly to TA (in Euros) directly correspond with the amount due under the Accommodation Contract Mr D entered into with TA.

And in relation to the Accommodation Contract entered into with P, again the amount paid by Mr D to P using his Tesco credit card directly corresponds with the amount due under that contract.

On this basis, I believe the evidence demonstrates that the necessary DCS agreement existed to enable a claim for breach of contract and/or misrepresentation to be considered under S75.

Mr D's claim for misrepresentation under S75

I've already summarised the basis of Mr D's claim earlier on in this decision. For me to conclude there was misrepresentation by the Suppliers in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that the Suppliers made false statements of fact when selling the Accommodation Contracts to Mr D. In other words, that the Suppliers told Mr D something that wasn't true in relation to the allegations raised. I would also need to be satisfied that any misrepresentation was material in inducing Mr D to enter into those Purchase Agreements. This means I would need to be persuaded that he reasonably relied upon false statements when deciding to enter into the Purchase Agreements.

Mr D says that the Marketing Company had approached him with an offer to pursue a claim to recover monies expended previously on the purchase of a timeshare. And his trip to Tenerife was made specifically for that purpose. It isn't possible for me to confidently establish what Mr D was or wasn't told by either the Marketing Company or the Suppliers prior to or at the Time of Sale. So, the extent to which I'm able to rely in Mr D's recollections relies upon the supporting evidence available.

Unfortunately, I've not been provided with any evidence from that time which supports Mr D's assertions. And whilst I don't doubt the integrity of his recollections, it would not be fair or reasonable for me to hold Tesco jointly liable for the alleged misrepresentations in the absence of corroborating evidence to support them. So, I can't reasonably conclude that the Suppliers did misrepresent the Purchase Agreements in the manner alleged.

Mr D's claim for breach of contract under S75

Mr D alleges he did not receive any benefit under the Purchase Agreements he entered into. To support that assertion, he has provided evidence in the form of publicly available reports and articles to demonstrate that TA and P appear to be no longer trading.

My own investigations lead me to reach a similar conclusion. Neither Supplier appears to have a continuing active presence or any current contact details available – and haven't for some considerable time. Furthermore, having considered the information held on Spain's equivalent of a Companies Register, it appears neither TA nor P have filed any company returns since late 2018 – some months before the Time of Sale.

So, whilst I can't be certain whether either Supplier remains active and able to deliver under the Purchase Agreements, on the balance of probability, I think it more likely than not, neither is able to. This then raises the question of whether Mr D received what he was contractually entitled to under those agreements before the Suppliers ceased actively trading.

Given the Time of Sale relative to when TA and P last appear to have submitted company returns, other symptomatic evidence publicly available and Mr D's testimony and recollections, I'm persuaded that he didn't receive all of those benefits. After all, it seems likely TA and P ceased their activities very shortly after the Time of Sale. And with that being the case, I think it unlikely Mr D would've been able to use

those benefits in such a short space of time. Because of that, I'm persuaded this constitutes a breach of the Purchase Agreements for which Mr D would be able to successfully pursue a like claim against Tesco under S75. For that reason, I think Tesco need to do more to put things right.

Mr D also alleges he was entitled to receive five free worldwide holidays, as evidenced by TA's letter referred to above. However, I haven't seen anything within the Purchase Agreements to suggest that TA was contractually obliged to provide that benefit. Or that it constituted anything other than a free gift. Because of that, I can't reasonably conclude that Tesco should be held responsible for those holidays not being provided.

Putting things right

Having found it more likely than not there has been a breach of the Purchase Agreements that Mr D entered into with TA and P, and further that the required DCS agreement existed to enable a successful claim to be made under S75, I've thought about what I believe Tesco needs to do to put things right.

In our investigator's view, he explained that under the two Purchase Agreements Mr D was entitled to receive a total of six weeks accommodation. However, the investigator also thought that the week's accommodation in June 2019 constituted one of those six weeks. So, he thought any reimbursement should be proportionately adjusted to reflect the week that had been successfully utilised.

However, upon my reading of the Purchase Agreements, in signing them Mr D confirmed that one week under each contract had been "*provided and used satisfactorily*". And in the absence of any contradictory documentary evidence, I think any reimbursement needs to reflect that.

The credit card statements I've seen show the £ sterling equivalent payments made were:

- 21 June 2019 to TA £1,521.61
- 21 June 2019 to P £2,986.67
- 24 June 2019 to TA £2,983.18

Total payments £7,491.46 - for a total of six weeks accommodation.

Proportionately, the cost of the two weeks Mr D signed to confirm were "*provided and used satisfactorily*" equates to £2,497.15², leaving unreceived benefits proportionately costing £4,994.31.

The investigator also thought Tesco should add simple interest of 8% to the amount paid from the point of breach to the point of reimbursement. He suggested that Tesco use 1 December 2019 as the point of breach on the basis this was around 12 months from when TA and P last submitted returns to the Spanish Companies Register. I think the investigator's rationale for this appears fair and reasonable, given the circumstances.

With all of that in mind, I intent to instruct Tesco to:

- Reimburse to Mr D £4,994.31
- Add simple interest to that figure from 1 December 2019 (the date of breach) to the date of settlement.
- Should Tesco require direct confirmation from Mr D's wife's credit card

² The total of £7,491.25 divided by 6 (weeks) then multiplied by 2 (for the weeks taken) equals £2,497.15.

provider that no claims have been raised (before completion of any reimbursement) Mr D should provide all necessary assistance to enable it to obtain that.

- In the event that Mr D requires a certificate to show the interest received for tax purposes, Tesco should provide that.

As the time for responses had passed, Mr D's complaint was passed back 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.

In response to my PD, Tesco confirmed it has nothing further to add. Mr D acknowledged receipt of my PD but offered no further comment or information for me to consider.

In the circumstances, I have no reason to vary from the findings in my PD, so my final decision remains unchanged.

My final decision

For the reasons set out above, I uphold Mr D's complaint and require Barclays Bank UK PLC trading as Tesco Bank to settle his complaint in the manner described above under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 August 2025.

Dave Morgan
Ombudsman