

## **complaint**

Ms P complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to her the money that she says she paid to a modelling agency. Her complaint is made against Tesco Bank under section 75 of the Consumer Credit Act 1974.

## **background**

Ms P used her Tesco Bank credit card in June 2017 to pay £4,000 to a photographic company for some modelling photos. She also paid a £55 deposit by other means. She says that she was charged for a model portfolio, including a website, which is against the law for a modelling agency to do – and that the photographic acted unlawfully an employment agency. She complained to Tesco Bank under section 75 but wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. He said that there was no direct relationship between Tesco Bank and the modelling agency which broke the necessary chain of businesses for a successful section 75 claim. And he said that any misrepresentation was made by the modelling agency but the services that Ms P received were from the photographic company. So he didn't feel that Tesco Bank acted unfairly in rejecting Ms P's section 75 claim.

Ms P has asked for her complaint to be considered by an ombudsman. She says, in summary, that:

- her first contact was with the modelling agency but it was the photographic company that took her payment and produced the materials, including a website under its sole control, which were to be used to find employment for her and that it's acting as an employment agency;
- the website is no longer available to her; and
- the photographic company and the modelling agency are joint tortfeasors and are jointly and severally responsible for the breach in the law.

## **my findings**

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

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier. And to be able to uphold Ms P's section 75 complaint about Tesco Bank, I must be satisfied that there's been a breach of contract or misrepresentation by the photographic company.

Ms P signed a purchase/copyright agreement with the photographic company in June 2017 – and she paid it a total of £4,055 for a disc with images, a binder and A3 prints, printed comp cards and an online modelling profile. The modelling photos were taken and she received the items that she'd paid for and a website was created for her (but she says that she's no longer able to access it). So she received the goods and services from the photographic company that she'd paid for. I'm not persuaded that the photographic company is a modelling agency or that it unlawfully offered modelling services or employment to Ms P.

Nor am I persuaded that there's enough evidence to show that there's been a breach of contract or misrepresentation by the photographic company.

Ms P says that other promises were made to her by the modelling agency. But her contract was with the photographic company and there's no direct relationship between Tesco Bank and the modelling agency – so the debtor-creditor-supplier relationship required for a successful claim under section 75 isn't present in relation to the modelling agency. And I'm not persuaded that there's enough evidence to show that the photographic company and the modelling agency are associates under the definition in the Consumer Credit Act.

So I find that it wouldn't be fair or reasonable in these circumstances for me to require Tesco Bank to refund to Ms P any of the money that she paid to the photographic company – or to take any other action in response to her complaint.

### **my final decision**

For these reasons, my decision is that I don't uphold Ms P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 6 March 2018.

Jarrold Hastings  
**ombudsman**