

complaint

Mr N complains that Tesco Personal Finance PLC declined his request for the refund of a credit card payment, under section 75 of the Consumer Credit Act 1974 ("section 75").

background

Mr N purchased a holiday club membership in 2004 for £5,100.96. He paid £2,200.96 on his Tesco credit card and the balance was paid using funds from a third party he said.

Mr N says he only purchased the membership because he was told he would get his money back via a third party cashback scheme.

Our adjudicator recommended that the complaint should be upheld. She concluded the supplier had misrepresented the contract to Mr N in relation to the cashback scheme and this had induced him to purchase the holiday club membership.

Tesco did not agree with that conclusion. It said:

- There is not enough evidence available in relation to if any misrepresentation was ever made about the cashback scheme and when.
- Mr N had not provided evidence of how the balance of the contract was paid – so he could potentially benefit from double recovery if it was paid with a loan.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

Mr N says paid the supplier a £2,200.96 deposit using his Tesco credit card. Tesco is concerned that Mr N may have already obtained a refund via section 75 from another bank because the contract paperwork seems to suggest the balance may have been paid via a loan. However I have seen the international payment instruction Mr N gave to a third party bank to pay the balance of the contract. Although it does not specify the source of the funds, I consider it unlikely that it was a loan which section 75 would apply to. I am therefore satisfied that I can consider the full extent of Mr N's section 75 claim.

Mr N has explained that he entered into the contract because he was told by the supplier that he would receive a refund of the full sum of the cost of the membership at the end of five years. At the end of that period, after following the correct procedure, Mr N claimed a refund under the cashback scheme but has not – he says – received any payment.

I have carefully considered everything Mr N has told this service and I believe his actions in applying for the money under the cashback scheme and the available evidence are consistent with his description of the misrepresentation. I am persuaded that the cashback scheme was misrepresented to him at the time of the sale and that it is likely he was induced into entering the contract through that misrepresentation when he would not otherwise have done so. I conclude therefore that he is entitled to a refund under Section 75.

As our adjudicator has explained already, the purpose of any award in respect of misrepresentation is to put the consumer back in the position they would have been in, so far

as is possible, had the misrepresentation not occurred. In this case, Mr N would, most likely, not have entered into the contract and would not have paid the supplier £5,100.96

I conclude that it is fair and reasonable to require Tesco Bank to pay Mr N £5,100.96, plus interest on that amount.

my decision

My final decision is that I uphold Mr N's complaint. In full and final settlement of it, I order Tesco Personal Finance PLC to:

- 1) Rework Mr N's credit card account as if the credit card payment of £2,200.96 had not been made. And pay him interest on that sum at the rate of 8% per year simple, from the date of payment to the date of settlement; and
- 2) Refund the balance of the cost of membership of £2,900 that Mr N paid by bank transfer and pay interest at the rate of 8% per year simple from the date of the transaction to the date of settlement.

If Tesco Bank considers that it should deduct tax from the interest element of my award it should provide Mr N with the appropriate tax deduction certificate. Mr N may then be able to reclaim the tax from the tax authorities, if appropriate.

Joyce Gordon
ombudsman