

Complaint

Mr A complains Tesco Personal Finance PLC ("Tesco Bank") turned down a claim he made under section 75 of the Consumer Credit Act 1974 ("CCA").

Background

In 2010 Mr A entered into a contract for an apartment purchase in Turkey. He was introduced to the purchase by a company I'll call "C", which was working with an associated company which I will call "P" and some property developers in Turkey.

Mr A says C assured him it would be no problem to get a mortgage so he could purchase the apartment, and that it would assist him in obtaining one. Mr A says this played a key role in his decision to go ahead with the purchase.

C (or P) arranged for Mr A to enter a contract for the purchase from the property developer in Turkey, at a price of £99,950, on 24 August 2010. The payments were to be made in instalments and the contract said P would be responsible for handling (i.e. receiving) the payments required. The contract further said that the developer could terminate it and retain 30% of the sale price in the event Mr A was more than 60 days late in paying an instalment.

Mr A paid a reservation deposit on his Tesco Bank credit card of £5,000 to P on 24 August 2010, and made further payments to P via bank transfer totalling £34,980 between September and December 2010. The final stage payment for the property was to be paid in February 2011, totalling £59,970. However, Mr A was unable to obtain a mortgage and the sale fell through. On 19 June 2012 he signed an agreement with the developer formally ending the contract and accepting a partial refund of £9,950 of what he had paid to date.

In December 2017 Mr A complained to Tesco Bank that he had been the victim of a misrepresentation by C. He said he had been incorrectly told it would be easy to get a mortgage when this wasn't true, and that he could have four people on a mortgage, which was also false. He said he had also been subjected to high pressure selling techniques. Mr A brought his claim to the bank under section 75 of the CCA.

Tesco Bank rejected Mr A's claim. It said he wasn't eligible to make a claim because of the value of his purchase. Mr A complained about this decision, but Tesco Bank maintained that it had been right to reject the claim because the contract it was in relation to had to be for no more than £30,000, but in his case it was nearly £100,000. Dissatisfied with this response, Mr A referred his complaint to this service for an independent assessment.

One of our investigators considered Mr A's case. She concluded there wasn't enough evidence there had been a misrepresentation about the mortgage and, in any event, it was likely by the time Mr A had brought his case to Tesco Bank, it would have been too late for him to bring a successful claim against C, P, or the developer. So it wouldn't have been fair or reasonable for Tesco Bank to uphold his claim.

Mr A appealed against the investigator's findings, and so the case has been passed to me to decide.

My findings

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

Mr A brought a claim against Tesco Bank under section 75 of the CCA. This law allows a consumer who has paid for goods or services on certain types of credit, to bring a claim against their lender for any breach of contract or misrepresentation by the supplier of the goods or services, subject to specific criteria being met.

Section 75 doesn't apply to Mr A's purchase

Tesco Bank says Mr A's claim doesn't meet one of these criteria – specifically that his claim relates to a purchase which has too high a value. The law says that a section 75 claim has to be in relation to a purchase which has a cash price of at least £100, and no more than £30,000. Mr A was purchasing a property with a cash price of £99,950, so his claim clearly fell outside of the criteria. As a result, the protection provided by section 75 of the CCA simply doesn't apply to his purchase and I can't therefore say the bank was wrong to decline his claim.

Section 56 does apply to Mr A's purchase

There is another section of the CCA which I considered might apply in Mr A's case, and would provide him some limited protection. This is section 56 of the CCA. Section 56 has the effect of making P the agent of Tesco Bank for the purpose of the negotiations leading up to the point Mr A made his credit card payment. While this section of the CCA is not often mentioned in the context of credit card transactions, it's clear enough from the examples contained in Schedule 2 to the CCA that it is intended to apply to such transactions.

What this means in practice is that Tesco Bank could be held responsible for any misrepresentations made to Mr A by P (or any associated company) prior to him paying the £5,000 reservation deposit.

One of the other criteria which must be in place for either section 75 or section 56 to apply is what is known as a *debtor-creditor-supplier* ("DCS") agreement. What this means is that the owner of the credit card account (Mr A in this case) needs to have used their credit card to pay the company they have a legal claim against, or an associate of that company as defined in section 184 of the CCA. This is not always straightforward to determine and I have concerns that such an agreement may not be in place in Mr A's case.

This is because Mr A has used his credit card to pay P (which was an associate of C, who he says made the misrepresentations to him), but I haven't seen he has any contract with P (or C) in relation to which he could make a claim. His contract was with the developer and all the payments he made were in relation to that contract, albeit made to P who were responsible for collecting the payments on the developer's behalf.

But I don't think I need to unravel these contractual relationships because, like our investigator, I think there are other reasons why Mr A is very unlikely to have had a valid claim against the bank.

There isn't enough evidence that a misrepresentation occurred

I don't think the evidence is strong enough to show that a misrepresentation was made to Mr A in relation to the mortgage arrangements. A misrepresentation is a false statement of fact which someone relies on when making a decision (such as entering a contract) which is to their disadvantage.

I have no doubt that conversations were had about using a mortgage to fund the purchase, as Mr A signed a document confirming he wanted assistance from C in obtaining a mortgage, and there is evidence he provided his family financial information presumably to support that process.

Mr A has said he was told a mortgage would be easy to obtain. This appears to have been the opinion of C or P at the time. An opinion is not a statement of fact and cannot normally amount to a misrepresentation, unless it can be shown that a person was stating an opinion they did not actually hold, or could not reasonably have held. I think it would be very difficult for Mr A to prove this. It is conceivable that C or P genuinely believed Mr A would be able to obtain a mortgage at the time, but the situation subsequently changed. Mr A has referred to "rapidly sinking into a recession, making it harder to acquire a mortgage in Turkey or the UK", so it does seem either Mr A's circumstances or the general economic outlook was changing for the worse at around this time. Ultimately it is difficult for me to conclude the likelihood of obtaining a mortgage was misrepresented to Mr A.

The other statement Mr A has said was made to him which was false, that he was told four people could be put on the mortgage. I haven't been supplied with evidence that this was untrue, so I'm unable to say this amounted to a misrepresentation either.

It's probable a claim for misrepresentation would have failed in any event as it was "out of time"

Claims in relation to misrepresentation are subject to time limits usually set out in national legislation. These are called limitation periods. In England and Wales a person generally has six years to bring a claim in relation to misrepresentation, from the point the misrepresentation caused them a loss.

The alleged misrepresentations in Mr A's case caused him to enter a contract he wouldn't have otherwise on 24 August 2010, so that is the date the clock would have started running. It means he would have had until August 2016 to bring his claim to C, P, or the bank. If he brought his claim after this point I think it is likely it would have been defended on the basis it had been brought too late. Mr A brought his claim to the bank in late 2017, by which point it was "out of time".

Finally, I've also considered that a claim for misrepresentation under section 56 is, in essence, a claim for misrepresentation against Tesco Bank directly. This means instead of national legislation relating to limitation, the equivalent rules of the Financial Ombudsman Service (known as the DISP rules) might apply instead. These rules would give Mr A the longer of six years from the date of the alleged misrepresentation, or three years from when he knew, or ought reasonably to have known he had a cause to complain.

Mr A brought his complaint to the bank more than six years after the alleged misrepresentation occurred, and more than three years after he ought reasonably have known he had a cause to complain, which would have been between February 2011 when he was meant to make the final stage payment, and June 2012 when the sale formally fell through.

Bearing this in mind, I think that even if Mr A had been able to provide stronger evidence to support a claim for misrepresentation, and a valid DCS agreement could be established with reasonable certainty, he would have been unlikely to be able to bring a successful claim against any of the parties involved in the matter. It's further possible that I would not be able to make any award or direction against Tesco Bank due to the section 56 aspect of Mr A's complaint falling outside of the Financial Ombudsman Service's own time limits. In other words, even if I concluded a misrepresentation had occurred, there wouldn't be anything I could tell Tesco Bank to do about it.

Other issues raised by Mr A.

Mr A has highlighted concerns he and others have had about C's sales practices. He has said he was subjected to a highly pressured sale for example, and he's given examples of other consumers' stories. I have to focus on Mr A's specific set of circumstances and can't attach much weight to accounts of others' experiences. And while I am sure the salespeople would have been persuasive, I don't find Mr A's recollections of the process specific enough for me to be able to make a finding that he was put under pressure. It is something which in any event would have been subject to the same time limits I've referred to above.

My final decision

I have considerable sympathy for Mr A. He has lost a large amount of money and did not get his apartment in Turkey. But I'm limited to considering whether Tesco Bank treated him fairly in declining his claim for reimbursement. For the reasons explained above, I don't think it acted unfairly in doing so.

It follows that I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 June 2021.

Will Culley
Ombudsman