

## **The complaint**

Mr O complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to him the money that he paid to enrol for a university course.

## **What happened**

Mr O used his Tesco Bank credit card to make three payments to a university as part of the enrolment fee for a course – he paid £4,000 in April 2020 and £500 and £1,000 in October 2020. He also made additional payments by other means. He says that he wasn't able to enrol for the course and he received a notice from the university in October 2020 which said that he'd failed to enrol within the enrolment period and hadn't provided acceptable evidence of the reason so it was withdrawing sponsorship of his visa.

He claimed a refund of the enrolment fee from the university and then claimed a refund from Tesco Bank under section 75 of the Consumer Credit Act 1974. It said that he hadn't paid the full £8,000 fees by the time enrolment closed so the university considered him to be a non-enroller and it didn't have evidence that Mr O was entitled to a refund or that there had been a breach of contract by the university. Mr O wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. He said that Mr O hadn't been able to complete enrolment and request a refund prior to his revised start date so he should be entitled to a full refund. He said that there was no evidence that the university had refunded Mr O and he was persuaded that he had a valid section 75 claim for breach of contract. He recommended that Tesco Bank should refund £5,500 and any interest paid on that amount to Mr O and if he'd settled the debt, to pay interest on the amount that he'd paid.

Tesco Bank has asked for this complaint to be considered by an ombudsman. It has responded to our investigator's recommendations in detail and says, in summary and amongst other things, that:

- it has spoken with the university and is satisfied that Mr O never met the requirements for the enrolment process;
- it has seen no evidence to confirm that he followed the cancellation process in line with the terms of his contract; and
- he hadn't paid for the course before it started so he wouldn't have been eligible for a refund.

## 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.

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- in certain circumstances, section 75 of the Consumer Credit Act 1974 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;
- to be able to uphold Mr O's complaint about Tesco Bank, I must be satisfied that there's been a breach of contract or misrepresentation by the university and that Tesco Bank's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr O's claim under section 75 as only a court would be able to do that;
- Mr O had a conditional offer to study as an undergraduate at the university and he paid the deposit of £4,000 using his Tesco Bank credit card in April 2020 – the balance of £4,000 was due in September 2020 before the start of the course;
- Mr O didn't pay the full balance before the start of the course but he paid a total of £1,500 to the university using his Tesco Bank credit card in October 2020 and he paid the balance by other means;
- the university confirmed that it had received the payment but two days later it sent him an e-mail which said: *"... it looks like our International team are still awaiting a number of documents and payment from yourself. I have copied our international team who will be able to support with your document checks and what is outstanding and also as the course started on [specified date in September] a team who can support with late enrolment and if this would be viable"*;
- Mr O contacted the university on its secure internet portal and asked for help because enrolment was ending and said that he'd *".. done all that was required of .."* him – the university replied to says that it had forwarded his message to its admissions team and: *"... can see that you have met all your conditions so we will work on sending you your enrolment link as soon as possible"*;
- the university also sent him an e-mail which said: *"I can understand your concern and frustration at not receiving the enrolment link to the September intake. Once your case is looked at by the admissions team, provided everything is in order, you might be able to enrol for the November intake. This would in fact be in your benefit, since the September intake sessions started on [specified date in September] and you would have hence missed out on many sessions and the first assessment is due end of October"*;
- seven days after he'd paid the £1,500, Mr O received an e-mail from the university which said: *"You have failed to enrol within the enrolment period and have not provided acceptable evidence of the reason for this failure"*; and it said that it was no longer sponsoring his visa for his studies;
- I'm not persuaded by the evidence that I've seen that the university had properly explained to Mr O what information he was required to provide at that time when he'd paid the required fees;
- Mr O and his brother asked the university for further help with the process but I've seen no evidence to show that any further help was provided to Mr O;

- Mr O then requested a refund of the money that he'd paid to the university but he didn't receive a refund and I've seen no evidence to properly explain why the university considered that he wasn't entitled to a refund;
- this is a finely balanced complaint with much of Mr O's evidence being in the form of screen shots of text message and e-mail exchanges with the university and it's clear that he hadn't paid the full enrolment fee before the course started – but the university told him that he'd met all of the conditions and was being considered for enrolment for the November intake;
- I don't consider that it's fair or reasonable in these circumstances for the university to have retained the money that it had been paid by Mr O and I consider it to be more likely than not that the university's failure to refund the money to Mr O is a breach of contract for which Tesco Bank would be jointly liable under section 75;
- Mr O says that he's received a refund of the £2,500 that he paid to the university by means other than his Tesco Bank credit card and I don't consider that Tesco Bank's response to his claim under section 75 has been fair or reasonable in these circumstances; and
- I find that it would be fair and reasonable for Tesco Bank to rework Mr O's credit card account as described below.

### **Putting things right**

I find that Tesco Bank should rework Mr O's credit card account as if £5,500 was refunded to his account at the end of October 2020 and to take the other actions described below.

### **My final decision**

My decision is that I uphold Mr O's complaint and I order Tesco Personal Finance plc, trading as Tesco Bank, to:

1. Rework Mr O's credit card account as if £5,500 was refunded to his account at the end of October 2020 and, if that puts the account into credit, to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit - it should also refund the credit balance to Mr O.
2. If Mr O has repaid the £5,500 (or any part of it) to Tesco Bank but doesn't have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.

HM Revenue & Customs requires Tesco Bank to deduct tax from the interest payments referred to above. Tesco Bank must give Mr O a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 4 May 2022.

Jarrold Hastings

**Ombudsman**