

The complaint

Mr L has complained that Tesco Personal Finance PLC (“Tesco”), has unfairly turned down a claim he made about something he bought using his Tesco credit card.

What happened

In April 2017, Mr L, along with his wife, bought membership with a holiday club called “E”. The total cost of the membership was £4,300 and Mr L paid £2,305.33 using his Tesco credit card and the rest by bank transfer. The payment didn’t go to E directly, but rather it went to another company called “RS”.

In July 2021, Mr L, using the help of a professional representative (“PR”), made a claim to Tesco. PR argued that RS were trading as E at the time of sale, during which it made misrepresentations that caused Mr and Mrs L to go on to buy the membership. PR said that under s.75 of the Consumer Credit Act 1974 (“CCA”), Tesco was jointly liable with RS to answer a legal claim for misrepresentation made by Mr L. That was because Mr L had used his credit card to partly pay for the membership.

In March 2023, PR referred a complaint to our service on Mr L’s behalf. When doing so, PR noted that Tesco hadn’t responded to the claim and so Mr L complained that Tesco hadn’t paid the liability he said it had under s.75 CCA. When the complaint was referred to our service, PR said again the claim was based on the misrepresentations made at the time of sale.

In September 2023, one of our investigators gave his view on the complaint. He didn’t think Tesco needed to do anything further, saying that based on the evidence available he wasn’t able to find that the alleged misrepresentations were made out.

PR responded on Mr L’s behalf to disagree. It said that our investigator had looked at the alleged misrepresentations, but that he failed to consider whether Tesco were liable for a breach of contract by RS. It said that E and RS were in liquidation and Mr L hadn’t been able to use the membership due to that liquidation. So it asked for an ombudsman to review the complaint afresh.

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.

Under the rules that govern how I decide complaints, I must take account of law and regulations, regulators’ rules, guidance and standards, and codes of practice and good industry practice, when I make my decision.

When I make a finding on what happened, I do so on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Here, Mr L says Tesco needed to pay him a liability due under s.75 CCA. That provision reads:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

So Mr L says that Tesco needed to assess the claim he had against both Tesco and RS arising out of RS's alleged misrepresentations. Mr L said that Tesco needed to do this as he paid RS using his Tesco credit card, which meant s.75 CCA applied to the transaction. And, finally, Mr L brought a complaint to our service that Tesco hadn't properly assessed the claim and paid what it owed to him.

The claim made to Tesco by PR was:

“The timeshare termination and leisure credit product were mis-sold to our client/s by [RS] also trading as [E].

But for the misrepresentations made to our clients, they would not have purchased the timeshare termination and leisure credit product.

The facts of the matter are that in April 2017, our client/s were contacted by representatives of [E]. These representatives had invited our client/s to come for a free week holiday to Barcelona on the condition that they attended a short meeting on site with [E] representatives, while they were over there. However, this meeting ended up lasting for several hours where our client/s were aggressively targeted with [E] Sapphire membership. It was represented to our client/s that this membership was an upgrade to their existing agreement and would give them access to a wider range of luxurious resorts. However, this was untrue, and our client/s were unable to ever book the holidays of their choosing.

Our client/s were pressurised by the representatives on site to purchase a Sapphire membership for the total cost of £4,300.00. Our client/s were asked to make an initial credit card payment of £2,305.33 using a card brokered by your company.”

PR also pointed out that two directors of E were sentenced in 2019 for criminal acts related to the operation of E. It said that the directors were found to have used aggressive trade practices, including creating the impression that customers could not leave premises until they purchased a membership, and refusing to provide fourteen-day cooling off periods.

PR also said:

“We also reserve our clients' right to claim breach of contract for any elements of written timeshare agreement that were specifically broken.”

So PR explicitly didn't raise an allegation that E or RS breached any contract with Mr L that Tesco could be responsible for under s.75 CCA. It follows, there can't be any complaint I can consider that Tesco failed to properly assess a breach of contract claim, as no such claim was made. Instead any breach of contract claim needs to be made to Tesco directly in the first instance.

In response to our investigator, PR didn't disagree with what was said about the alleged misrepresentations. It's not clear to me whether Mr L and PR still want an ombudsman to

consider those allegations, but I'll deal with them briefly. In short, I agree with our investigator that there isn't enough evidence to say, on balance, what untrue representations were made to Mr L.¹

Mr L has said that he was told membership would allow him to book a wider range of luxurious resorts than were available through an existing membership Mr L had with RS. But I've not seen any evidence that Mr L wasn't able to book holidays, nor that they didn't meet the expectations of what he was told.

I have considered the allegations of pressure and I note there is evidence to suggest that E/RS did apply pressure to some of its customers. But Mr L hasn't set out what the pressure was that he says he was put under in his actual sale and, even if I did find there was a pressured sale, I can't see how that could amount to an actionable misrepresentation. Similarly, I can't see how not providing Mr L with a fourteen-day cooling off period could amount to a misrepresentation. It follows, I can't see any reason for Tesco to have to pay anything to Mr L arising out of the claim he made.

My final decision

I don't uphold Mr L's complaint against Tesco Personal Finance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 April 2024.

Mark Hutchings
Ombudsman

¹ For Tesco to be answerable for a claim under s.75 CCA, it would need to be shown that RS and E were connected in the right way. I've not made a finding on that in this decision as, even if I did think they were connected, I don't think Tesco needs to pay anything for the reasons I've explained.