

The complaint

Mr W, who is represented by a professional representative (“PR”) complains that Tesco Personal Finance PLC trading as Tesco Bank (“Tesco”) rejected his claim under s.75 Consumer Credit Act (“CCA”) 1974 in respect of a holiday product. The purchase was made by Mr W and his wife, but the credit card account is in Mr W’s name and he is the eligible complainant. For simplicity, in this decision I have referred to him as the sole purchaser.

What happened

Mr W has made 13 purchases of points based holiday products from a company I will call M. The first was in December 2001 and the last in January 2019. This complaint concerns the purchase of 40,000 points in April 2016 costing £5,700. This was paid for using Mr W’s Tesco credit card.

In July 2022 PR submitted a letter of claim to Tesco on behalf of Mr W. The details are well known to both parties so I will set out a short summary here. It said Mr W had been aggressively targeted and told the new points would allow him to access exclusive luxury accommodation. This was false. He was not told that the contract was in perpetuity with unlimited liability for management charges.

Tesco asked for evidence of the misrepresentation in Mr W’s own words. It also pointed out that the management charges were not concealed as claimed since they were set out in the contract. It also said that the points could be surrendered after 5 years, as set out in the contract and it asked for evidence that Mr W tried and failed to surrender the contract. Tesco says it was open to considering the claim further, but it did not receive a reply to allow it to do so.

PR brought a complaint to this service where it was considered by one of our investigators who didn’t recommend it be upheld. He noted the payment had been made to a third party and the debtor creditor supplier chain may have been broken, but as he didn’t consider the claim succeeded he did not explore this point further. He did not believe PR had established that there had been misrepresentation and so he didn’t consider Tesco had been wrong when it didn’t uphold the claim.

PR didn’t agree and submitted an organogram which it said showed the payee was connected with M. It said it had raised several concerns about the sale with Tesco. It said that misleading statements had been made about the product and Mr W’s existing product. These included the new product being marketed as an investment and insufficient information being provided. It also said that these failings contravened the 2010 Timeshare Regulations.

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.

When doing that, I’m required by DISP 3.6.4R of the FCA’s Handbook to take into account

the:

“(1) relevant:

(a) law and regulations;

(b) regulators’ rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”

And when evidence is incomplete, inconclusive, incongruent or contradictory, I’ve made my decision on the balance of probabilities – which, in other words, means I’ve based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don’t think this complaint should be upheld. I will explain why.

I should point out first of all that Mr W has provided very limited documentation in support of his claim. I do not, for example, have complete copies of the 2016 purchase documents.

Sections 56 and 75 of the Consumer Credit Act

Under s. 56 of the Consumer Credit Act 1974 statements made by a broker in connection with a consumer loan are to be taken as made as agent for the lender.

In addition, one effect of section 75(1) of the Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions include:

- that the lending financed the contract giving rise to the claim; and
- that the lending was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.

I do not understand Tesco to dispute that the debtor creditor supplier agreement was intact. PR has supposed an organogram which it says shows the payee was connected with M. This may be true, but as I do not consider I can uphold this complaint I do not believe I need to explore this issue further.

S.75 only applies to purchases for which the cash price of the goods or service is more than £100 but no more than £30,000. This purchase falls outside these financial limits and so Mr W does not have a valid claim. Nor does he have a claim under s.75A.

Misrepresentation

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

PR says Mr W was told he was making an investment. I have noted the claims about misrepresentation are generic, lack detail, and are largely unsupported by any documentation.

I have not been given personal testimony from Mr W and have to rely on PR's claims as to what was said in 2016. I also do not believe I have been given the full purchase documentation. I also note that Tesco has not been given the information it sought in order to allow it to consider the claim in full.

I have seen a seven page purchase agreement which is for the supply of a service connected with immovable property. I cannot see any reference to the purchase being an investment. Obviously as I was not present I cannot say what was said by M's representatives, but I do not consider the assertions made by PR are supported by sufficient evidence which would allow Tesco to uphold the claim.

I have also noted that several of the claims made by PR are not supported by the agreement. For example it notes that the points can be surrendered in the fifth year of membership. That does not indicate that the product was to be held in perpetuity. It also states that Mr W can use all M's hotels without annual points fees or membership fees.

I note that Mr W made two further purchases after 2016 which does not indicate that he was unhappy with his 2016 purchase.

Conclusion

It is not for me to decide whether Mr W has a claim against M, or whether he might therefore have a "like claim" under s. 75 CCA. Rather, I must decide what I consider to be a fair and reasonable resolution to Mr W's complaint. In the circumstances, I think that Tesco's response to Mr W's claims was fair and reasonable.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 March 2024.

Ivor Graham
Ombudsman