

## The complaint

Mr B complains that Tesco Personal Finance PLC trading as Tesco Bank (“Tesco”) have not honoured a liability he says arises out of his claim made under section 75 of the Consumer Credit Act 1974 (“CCA”).

## What happened

Mr B was contacted by a supplier (who I’ll refer to as “P”) on 5 March 2018. P offered to meet with Mr B to discuss helping him get out of his existing timeshare agreement. So, Mr B agreed to meet with them.

During that meeting Mr B says P told him he needed to sign up to a membership with them. He says they also said they would give him three holidays to use wherever he wanted. To secure these benefits, Mr B says he had to pay the membership fee which P would later refund to him.

Mr B paid two payments to P – one for €3,360.10 (£3,007.29) using his credit card with Tesco. The second for €2,240.50 (£2,005.25) using another credit card in Mr B’s name provided by another financial business.

In April 2023, using a professional representative (the “PR”), Mr B submitted a claim to Tesco under section 75 of the CCA (“S75”). The PR said that Mr B had used his Tesco credit card to purchase a timeshare and a timeshare termination product with P. The PR said that during the meeting in March 2018, P made a number of representations about the benefits of the product Mr B purchased which turned out not to be true. And it was these misrepresentations that had induced Mr B to enter into the purchase contract with P. They believe that under section 75 of the CCA (“S75”), Tesco are jointly liable for any misrepresentation.

In particular, the PR allege Mr B was told:

- he would have access to luxurious holidays whenever he wanted;
- his funds would be returned to him once he’d returned home from the meeting; and
- P would help Mr B to exit his existing timeshare contract and recover some of the money he’d spent purchasing that timeshare.

The PR said that Mr B initially only paid half of the amount P had requested by using his Tesco credit card. And that P had suggested Mr B take out a loan with Tesco for the balance. Mr B struggled to secure a loan and later contacted P to cancel the purchase agreement. But P wouldn’t agree to that. The PR said P threatened Mr B with legal action if he didn’t pay the remaining amount. So, Mr B paid the balance using a credit card issued by another financial business. The PR allege that Mr B was pressured to enter into the purchase agreement with P.

Tesco were unable to progress Mr B’s claim as they weren’t provided with any evidence to support the various allegations. But they did offer to review any new and additional documentation previously not provided. As Mr B wasn’t happy with Tesco’s response, the PR referred Mr B’s complaint to this service.

One of this service’s investigators considered all the evidence and information available. Tesco confirmed that they’d completed Mr B’s claim but hadn’t received a complaint about

the outcome of it. They raised the complaint and undertook to issue a final response within 8 weeks. However, Tesco say they weren't able to access the details we'd sent to them. So, this was resent to them and subsequently resent again in October 2023.

Having received no further contact from Tesco or received their response after 8 weeks, our investigator issued a summary of their findings to the PR and Tesco and included a further copy of Mr B's complaint details for Tesco. In doing so, they didn't think Tesco had acted fairly. Our investigator was persuaded that Mr B believed he would recover sums paid towards an existing timeshare and that P had misrepresented this to him. Our investigator thought Tesco should refund the amount paid from his credit card with them together with any interest and charges. Further, that Tesco should refund the balance payment of £2,005.25 Mr B paid using his credit card with another financial business together with interest.

The PR confirmed Mr B's acceptance of our investigator's findings. Tesco said they'd still not investigated Mr B's complaint as they couldn't see they'd received his complaint details from this service, despite it having been sent to them on four separate occasions. So, as an informal resolution couldn't be achieved, Mr B's complaint was passed to me to consider further.

Having done that, I was inclined to reach a different outcome to that of our investigator. So, I issued a Provisional Decision ("PD") on 13 June 2024, giving both sides the chance to respond before I reached a final decision.

Both parties to this complaint acknowledged receipt of my PD and the PR confirmed they had nothing further to add. So, Mr B's complaint was passed back to me to issue my final decision.

### **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.

For completeness, I said the following in my PD:

#### Relevant considerations

When considering what's fair and reasonable, DISP<sup>1</sup> 3.6.4R of the FCA<sup>2</sup> Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

The CCA introduced certain protections that afforded consumers (like Mr B) a right of recourse against lenders (like Tesco) that provide the finance for the acquisition of goods or services (like the product purchased) from suppliers (like P).

The concerns Mr B has about the sale of the product he purchased only constitute a complaint that the Financial Ombudsman Service has the authority to consider if those concerns are considered with at least one of those provisions of the CCA in mind. So, that is what I've done in this decision.

S75 provides protection for consumers for goods or services bought using credit. Mr B paid for the product purchased under a pre-existing credit card agreement with Tesco. So, it isn't in dispute that S75 applies here – subject to any restrictions and limitations. So, where the requirements of the CCA are met, it means Mr B is afforded the protection offered to borrowers like him under those provisions. As a

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<sup>1</sup> Dispute Resolution: The Complaints sourcebook (DISP)

<sup>2</sup> Financial Conduct Authority

result, I've taken this section into account - together with any related provisions within the CCA - when deciding what's fair in the circumstances of this case.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made 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 evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address, in my decision, every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

No evidence has been provided by P. The only evidence relating to what was purchased, and the circumstances surrounding that, was provided by the PR (on Mr B's behalf) along with their summary of his recollections. I'm mindful that recollections may not always be an accurate representation of the precise sales process as memories can be imperfect. So, I've had to weigh up all of that when deciding what I thought most likely happened. I don't think it was unfair on Tesco for me to do that – ultimately I must decide the complaint based upon the specific evidence available in Mr B's case.

In considering Mr B's complaint, I think it's important to set out what I've found the evidence shows Mr B agreed to purchase from P. I've then considered any legal claims that Tesco need to consider, given the relationships between the various parties. Finally, I've considered whether Tesco need to anything more to resolve Mr B's complaint.

#### The circumstances of the sale

The PR have explained what Mr B recalls happening leading up to and including the point of the sale. They say he was contacted by P on 5 March 2018 with an invitation to meet with them. They suggest Mr B agreed to that meeting albeit this was to take place in Tenerife. The PR's letter of claim suggest that meeting also took place on 5 March 2018.

The PR go on to suggest that although Mr B paid part of the purchase price using his Tesco credit card, P had suggested he secure a loan from Tesco for the balance. But having not been able to do that, Mr B paid the balance once he'd returned home to the UK and once P had threatened legal action.

The PR have provided copies of Mr B's credit card statements showing the payments he made to P. However, these clearly show that both payments were made on 5 March 2018 – the date of the meeting and the date they suggest P originally contacted him.

#### What was purchased

I've seen a document on P's headed paper with the heading 'Accommodation Contract' which is dated 5 March 2018. An extract reads:

*"Included in the initial subscription fee is 1 week of accommodation in the Canary Islands, provided and used, a second week reserved and paid for today 5 March 2018 and the choice of 1 additional week of accommodation in any of the Canary Islands of your choice, reserved and paid for today, which can be modified if required."*

The reservation details show that the 'Tourist Agent' was P, and the price and other offers were also agreed by P. The total price is shown as £5,000 (€5,600.60) and it confirms payment was received on 5 March 2018. This amount equates to the sum of the payments shown on Mr B's two credit card statements.

So, I'm persuaded those two payments, and in particular the payment made using his Tesco credit card, related to the accommodation contract. And based upon this evidence, it appears Mr B in fact purchased accommodation from P for one week in the Canary Islands (already taken), and a further reserved two weeks in the Canary Islands.

The accommodation contract makes no reference to timeshares, either new or existing. And there's no reference at all to the provision of a service to assist in the cancellation of any pre-existing timeshare contract or the recovery of any associated financial outlay.

#### The pressured sale

An allegation like this isn't something that can be considered under S75. However, there are other provisions within the CCA that do address such allegations where there is evidence that this resulted in unfairness for Mr B. In particular, where that might lead to the credit relationship between Mr B and Tesco being unfair. So, I've thought about this particular allegation further.

The PR said that Mr B felt under a lot of pressure at the time of the sale. And, as a result of the threats of legal action, Mr B was put under huge pressure to enter into the contract.

At the outset, I don't find the PR's explanation of what happened plausible. The suggestion that Mr B had to make a further payment after he returned home isn't supported by the evidence available. The credit card statements show that Mr B had paid the full purchase price on the day of the meeting with payments from two different credit cards.

I can understand why it may be argued that a prolonged presentation might have felt like a pressured sale – especially if, as Mr B approached the closing stages, he felt he was going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date. However, against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mr B agreed to the purchase in 2018 when he simply didn't want to. I haven't seen any evidence to demonstrate that he went on to say something to P, after the purchase, to suggest he'd agreed to it when he didn't want to. And I haven't seen any evidence to suggest that P threatened Mr B with legal action, or an explanation of why they would do so given Mr B appears to have paid for the accommodation contract in full on 5 March 2018.

#### Summary

I've found no evidence to support any of the allegations included in Mr B's complaint. The product purchased appears to be an accommodation contract. And the PR haven't provided any evidence to suggest this wasn't fulfilled. Further, I've not seen any evidence that the purchase in question bore any relation to timeshare purchases.

In response to Mr B's claim, Tesco offered to consider any new documentation or evidence. This appears a fair response in the circumstances. While I do appreciate that Mr B will be very disappointed, I can't reasonably conclude that Tesco needs to do anything more.

In the absence of any further information, evidence or comments to consider, I've no reason to vary from my findings above. So, I won't be asking Tesco to do anything more here.

#### **My final decision**

For the reasons set out above, I don't uphold Mr B's complaint about Tesco Personal Finance PLC trading as Tesco Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 August 2024.

Dave Morgan  
**Ombudsman**