

## The complaint

Mr D complains that Tesco Personal Finance PLC ("Tesco"), unfairly turned down his claim under the Consumer Credit Act 1974 ("CCA") in respect of a purchase made in November 2014. Mr D is represented by a professional representative ("PR"). I gather the purchase was made by Mr and Mrs D, but as the credit card agreement was in Mr D's name he is the eligible complainant. In this decision for simplicity I will refer to Mr D as the sole purchaser.

## What happened

In November 2014 Mr D purchased a holiday product from a company I will call R. PR has set out in some detail the facts behind the purchase and they are well known to both parties and are not disputed. As such, I will not repeat that detail here, but will set out a short summary.

Mr D was invited to attend a holiday at a much reduced cost and in the course of that he was asked to attend a presentation. He already had another holiday product and he was persuaded to trade that in. The agreement shows the purchase price was £31,500. Mr D paid £4,461.04 using his Tesco credit card, £11,725 by means of a bank transfer and the balance of £15,200 came from trading in his existing holiday product. The agreement shows the deposit was £4,575, but PR has said the actual payment made was £4,461.04. The difference may be due to exchange rate differences, but it has no material bearing on my decision.

In April 2020 PR submitted a claim to Tesco under s.75 CAA. It noted there were three companies involved in the transaction and said they were associated. PR set out the reasons why it considered R to have misrepresented the product and to have breached the contract. It asked that the total cost of the contract which it put at £16,186.04 to be refunded plus interest. Tesco rejected the claim and said the cash price was in excess of £30,000 and so s.75 did not apply.

The product was sold on the basis that Mr D was told he ought to get out of his contract with Club la Costa and replace it with a product from R. Mr D and his wife both provided testimony and they have made it clear that they were persuaded that it was not wise to stay with their existing product and R was offering a solution by ending that and providing an alternative holiday product.

PR brought a complaint to this service on behalf of Mr D. It was considered by one of our investigators who didn't recommend it be upheld. He said that the upper limit for claims under s.75 was £30,000 and it didn't matter how much of that was paid using credit or how much a customer paid using other means. As the cash price for the package of services/products that Mr D purchased was over £30,000 Tesco was entitled to reject his claim.

PR didn't agree and said it believed the agreement contained identifiable separate items as expressly set out in the invoice. It itemised the items purchased. PR also said that the way the package was sold was in line with these types of agreements with separate items being sold together. It also said that the complaint should be upheld on a fair and reasonable basis. Mr D had paid out less than £30,000 and the trade in value must be considered in the

context of an industry which is riddled with fraud. S.75 should give protection to consumers against unscrupulous suppliers. Tesco had abundant resources and had a responsibility to carry out due diligence and take action where necessary.

### **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.

### **S. 75 of the Consumer Credit Act 1974**

Under this provision 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.

It states:

*“Subsection (1) does not apply to a claim—*

*(a) under a non-commercial agreement, .*

*(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000.”*

It is also important to note what the agreement between R and Mr D states

*“The Promoter hereby sells and the Applicant hereby purchases, under the following terms. Subscription Rights in the Company which will give the Applicant the right to a share in the Reimbursement Fund and to apply for and use the Leisure Properties which shall be*

*available from time to time in accordance with the Articles of Association of the Company ("Articles") and in accordance with the terms of (his Agreement and subject to the Terms and Conditions set out overleaf. The purchase of Subscription Rights includes membership of the Company."*

It then sets out the purchase terms

"R.P.P.A.	£4,575
Trade in Value	£15,200
Client Contribution	£11,725
NET PURCHASE PRICE	£31,500"

A separate a document with a company I will call E shows the £4,575 was paid for: "*admin cost for the relinquishment Club la Costa Fractions, Holiday Plus and enrolment into Dial an Exchange*", (this latter item was marked FOC). E was one of the three companies PR has said are associated.

PR has said it considered that what was sold to Mr D was not a single item. While I have some sympathy with this argument I am not persuaded that the package can be separated out as it suggests.

It seems the sales representative said to Mr D your current product is not suitable and it could cost you significant sums. Other allegations about the existing supplier were allegedly made. These arguments persuaded Mr D to take up the offer made by R. I am satisfied what he agreed to buy was an exit from his existing product and the acquisition of a new one. I do not believe he would have bought R's product without it agreeing to terminate the old one and I consider the agreement was a single package.

In summary Mr D was led to believe his existing product carried finance risks and he needed to end it and replace it with one more suited to him and his family. The claims made by R and its representatives didn't have to be true. What he was sold was a package which included ending the existing agreement and setting up a new one. It appears that he did not have the option of paying R to exit his agreement with Club la Costa and then if that succeeded of taking on the holiday product. The two elements were inextricably linked.

I also note the agreement shows that he paid a net purchase price. I am not persuaded that how R constructed the deal leads to the conclusion that it was made up of separate entities. Often when one makes a large purchase the agreement/invoice breaks the cost down into constituent parts. For example when one purchases a car it often sets out all the optional extras one has ordered. The fact they are itemised does not make them separate, but rather part of a single purchase. I believe R had a price for what it was selling and that was £31,500

I appreciate PR's argument that Mr D feels Tesco should offer some protection. I do not consider I can require Tesco to be responsible under s.75 when the claim is not covered by that legislation. As I have set out above I have to take into account the law amongst other things. Tesco does offer the protection afforded by s.75, but in this matter.s.75 does not apply and I cannot ignore that. Nor do I think it appropriate for me to direct Tesco to offer a gesture of goodwill.

It is not for me to decide whether Mr D has a claim against R, 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 D's complaint. In the circumstances, I think that Tesco's response to Mr D'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 D to accept or reject my decision before 15 January 2024.

Ivor Graham  
**Ombudsman**