

complaint

Mrs S has complained that Tesco Personal Finance plc, trading as Tesco Bank, has not refunded money that she paid for three plots of land. She paid for the deposits with her Tesco credit card. She's claiming the refunds under section 75 of the Consumer Credit Act 1974.

background

Mrs S bought three plots of land between 2009 and 2012, paying the deposits with her credit card. In 2012 just after Mrs S paid the deposit on her third plot, the company that sold Mrs S the land was wound up in the High Court. In 2013 her local trading standards told her the company's activities were being investigated. They advised her to contact the Financial Conduct Authority which she did. Mrs S also claimed £25,096 from Tesco Bank. She told them she was misled about the land. Tesco Bank rejected her complaint. They felt that she didn't have enough evidence to show that the land had been misrepresented to her.

They also asked Mrs S to provide a current valuation for the land. She told them that she couldn't see what this would achieve. And she was finding a valuation difficult to get. Tesco did offer her £250 as compensation for the delay in managing her claim. She rejected this offer. Mrs S referred her complaint to the ombudsman service.

Our adjudicator recommended that the complaint should be upheld. She felt that there was enough evidence to show Mrs S had been misled. She asked Tesco to reimburse Mrs S in full, along with £100 compensation.

Tesco never responded to our adjudicator's view. Mrs S's complaint has been referred to an ombudsman to review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence provided.

is Tesco liable under section 75?

Section 75 of the Consumer Credit Act 1974 provides that, under a specific set of circumstances, a consumer may claim a refund of money paid to a supplier by his or her credit card company. However there can only be a valid claim under section 75 if there is sufficient evidence to show that the supplier:

- said something about the goods or service being sold that wasn't true; and
- this is what made the customer enter into the contract; or
- had broken the terms of the contract.

That means that I can only hold Tesco responsible for what the supplier did if the company misled Mrs S and this is why she entered into the contract. Or if I believe that they didn't meet the terms of the contract.

Section 75 states that the cash price value of any single item purchased must be over £100 and under £30,000. I am in no doubt that the individual costs of the two plots are under £30,000 each, as demonstrated by the evidence. The third plot, for which Mrs S only ever paid a deposit on her credit card, was also priced under £30,000. This brings Mrs S's transactions within the scope of section 75.

misrepresentation

My role is to make a final decision based on all of the evidence before me. I have reviewed whether there has been misrepresentation or breach of contract in accordance with section 75. Mrs S believes that there was verbal misrepresentation. Specifically the supplier told her that they would ensure re-zoning and planning permission for the plots of land was obtained. This would lead to the plots of land being worth significantly more than she paid. She would then be in a position to sell them to a developer, as arranged by the supplier.

It's worth saying upfront that I am aware that Mrs S has limited documentary evidence. She does have some emails from the supplier confirming the price they expected to get for some of the land. But overall I don't think the lack of documentary evidence is an issue. I find her other evidence credible. I can easily see why she believed that the supplier would be managing the whole investment.

To assist my decision, I have considered the High Court judgment made on 8 February 2013 about Mrs S's supplier. I appreciate that the central aspect of that judgment is not about whether the supplier misrepresented the land to individuals who purchased land. The case was brought by the Financial Services Authority (now known as the Financial Conduct Authority). But the judgment does cover how the supplier operated and the type of statements being made to its customers about their investments.

I believe the judgment goes a considerable way in telling us about the mis-sale of the plots of land. The judge accepted that investors were told and understood that:

- the supplier would seek to progress planning procedures with a view to the sites being used for housing;
- the supplier would then procure their sale, probably to developers; and
- investors who sold the plots on the site would be paid a share of the total consideration paid by the purchaser.

I believe that in the light of these wider circumstances Mrs S's verbal submissions match what came out of the High Court judgment. I am persuaded that Mrs S had the same understanding when she agreed to enter into the contract and purchased the plots of land.

In other words, it's reasonable that Mrs S did not query any documentary evidence which appeared to contradict what she had been told – like disclaimers on the bottom of letters. It was reasonable for her to assume that this was not the whole story.

I believe she expected the supplier would provide documents at a later date dealing with how planning permission would be got and how the land would be developed for any proposed resale. It is also fair to note that Mrs S did not receive contracts for the land she purchased.

It's worth highlighting the following from the judgment:

“Different investors also had different understandings about quite how the sale of the plots would be organised, but essentially they understood that [XXX] would arrange the sale of all the plots in a site to a developer”

On balance I am satisfied it was this understanding that led Mrs S to enter into the contract. Had she known that she was simply being sold land and would in fact be responsible for arranging re-zoning; getting planning permission and finding a developer herself, I don't think she would have bought the land in the first place.

I am satisfied a misrepresentation has taken place, and that it is fair to hold Tesco liable. As I believe this, the fair redress is that Mrs S is put back where she would have been if she had not entered these contracts at all. Tesco will need to repay Mrs S £25,096 plus 8% simple interest from the date these payments were made until the date of settlement. They will also need to rework her credit card account as if she had not paid the three deposits – of £1,454, £900 and £1,550 – on her card at all.

Tesco offered Mrs S £250 for the way they'd managed her complaint. I believe they should continue to pay this amount for the inconvenience she has had. I am surprised that Tesco asked her to get valuations for the land. This took up a considerable amount of time and there was really no purpose to it. Tesco know what redress we'd propose if we believed that Mrs S had been misled.

I know that Tesco will be disappointed by this decision. However it is not unusual for us to consider that verbal evidence outweighs documentary evidence or to take account of court judgments which directly impact a decision. I am satisfied that this is the right course of action to take in this case.

my final decision

For the reasons set out above, my final decision is to uphold Mrs S's complaint and instruct Tesco Personal Finance plc, trading as Tesco Bank, to:

- a) rework Mrs S's credit card account as if the transactions of £1,454, £900 and £1,550 had not been made in terms of interest and charges;
- b) refund £25,096 for the three plots of land she bought;
- c) pay simple interest of 8% on £13,092 from 22 January 2010, the date of the cheque to the date of settlement;
- d) pay simple interest of 8% on £8,100 from 24 October 2010, the date of the cheque to the date of settlement; and
- e) pay Mrs S £250 for the inconvenience caused.

In turn, Tesco Bank may take ownership of the land and can make arrangements to do so with Mrs S at a mutually convenient time.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs S to accept or reject my decision before 3 July 2015.

Sandra Quinn
ombudsman