

The complaint

Mrs B has complained that Tesco Personal Finance Plc (trading as Tesco Bank) hasn't helped her recover the money paid for goods and services on her credit card.

What happened

In mid-January 2020 Mrs B contacted a supplier to provide parts and complete plumbing work in her home. The work was arranged over text messages and the following was agreed:

"Replace your shower pump (it will need to be moved) supply & fit 2 new toilet syphons supply & fit new hand basin taps supply & fit new radiator trv carry out a chemical flush on your heating system and complete a boiler service"

The cost for this work and the items supplied were not itemised, instead the supplier charged a single figure for completion of all the work. The amount detailed in the text message was £600.

Mrs B has provided a copy of another text message discussion with the supplier which detailed that Mrs B needed the shower pump to supply pressure between her showers. In addition, she's said they agreed the hand basin taps would be the same as the taps she already owned.

When the supplier came to Mrs B's home to complete the work, Mrs B has said the supplier brought an incorrect part. So, he asked Mrs B to pay £500 rather than the agreed £600 and he would return with the correct parts and complete the work. Mrs B has said he didn't return to complete this work. Mrs B has also complained that in the process of removing her daughter's radiator he caused a stain on her new carpet and whilst he tried to clean it, there are still marks on the flooring. Mrs B has provided a photograph of this stain.

Mrs B paid £500 on her Tesco Bank credit card on 16 January 2020 for the work which was completed. She's said she wasn't given a receipt or an itemised invoice at any stage. In the days and weeks following the work, Mrs B has experienced a number of problems. I have detailed them below together with the actions Mrs B took.

1. *Replace the shower pump*

Mrs B has said this initially worked, however it cut out on the second day of using it and this fault has continued. She's also said that the pump feels hot to touch. Mrs B said she contacted the supplier several times between 18 January 2020 and 27 January 2020 but didn't receive a response.

Mrs B has since contacted the manufacturer and described the pump which was installed. She has provided the response which says the pump installed was for single shower outlets and that a different pump type is used for numerous outlets.

2. Supply & fit new hand basin taps

Mrs B has said the hot water tap turns the wrong way and that her original taps were a better quality. Mrs B has provided a screenshot from a website showing her original taps and another screenshot to show what the supplier replaced them with. Mrs B has said she's since had to replace the taps fitted by the supplier and therefore cannot provide photographs to demonstrate the poor quality taps supplied. In addition, Mrs B is also unable to provide documentation relating to the subsequent replacement taps as she's said this was agreed verbally.

3. Supply & fit new radiator TRV

Mrs B has said this wasn't supplied or fitted. Mrs B has provided a photograph to show her radiator without a TRV.

4. Chemical flush on the heating system

Following the work Mrs B has said there was an imbalance in the radiators, so the supplier's father returned to correct this. The remedial work restored heat to radiators, but subsequently only the bottoms of the radiators heated, and they only became warm rather than hot.

The following day Mrs B said there was a loud knocking from the boiler and airing cupboard pipes after any water use. She said this now happens intermittently, but still feels it is regular. In addition, she's said the small header tank in the loft is overflowing out of the overflow pipe down the side of the house which is causing damp to the brickwork. Mrs B has provided photographs of the damp damage. Mrs B has said she's since had a full power flush completed on her heating system.

5. Boiler service

On 30 January 2020 Mrs B has said they woke up to find they had no central heating or hot water. She called their emergency insurance engineer who visited her home. Mrs B said when they removed the cover to her boiler, debris fell out and there was a build up of dirt inside the boiler. It was identified that Mrs B needed a new fan which was subsequently fitted and she paid £305 for the fan replacement.

Mrs B therefore believes the supplier didn't service the boiler as initially agreed and believes that if it had been serviced, it's reasonable that the supplier would have identified the need to replace the fan. Mrs B also obtained an email from the emergency engineer confirming that he attended the property to install the fan. The emergency engineer also didn't agree that the boiler was recently serviced.

Mrs B has said she tried several times to contact the supplier to resolve these issues, but the supplier didn't respond to these messages and hasn't returned to fit the taps, radiator TRV or rectify the issues she's described. As Mrs B paid the supplier using her Tesco Bank credit card, she asked Tesco Bank to either raise a chargeback or, if unsuccessful, refund the money paid under Section 75 (s75) of the Consumer Credit Act (CCA) 1974 as she feels the supplier breached the contract.

Tesco Bank considered the chargeback but didn't raise it. It felt that without an individual cost attributed to each piece of work/item it's only option would be to dispute the full amount. This could then be disputed by the merchant and it would have no evidence to dispute any amounts put forward by the merchant. As part of the chargeback rules, Mrs B

would also have needed to return the items installed which Tesco Bank considered would be difficult for her to do. And finally, it felt she hadn't provided sufficient evidence to support her claims that the goods and services provided weren't of satisfactory quality. Tesco Bank did provide £150 compensation to Mrs B for the customer service problems she experienced whilst it was considering her chargeback request. As this has been resolved, this decision won't consider the earlier customer service concerns.

With regards to the s75 claim, Tesco Bank declined Mrs B's claim. It argued that without clear details of what was agreed, and the cost associated with each item and work carried out, it couldn't establish if she met the criteria needed for a s75 claim. Specifically, it couldn't establish if she was the party that had contracted with the supplier (and so had the necessary debtor-creditor-supplier agreement in place) and it couldn't confirm if each of the items and work carried out were over £100 which is needed to make a s75 claim.

Mrs B was unhappy with Tesco Bank's response and so asked our service to consider her complaint. One of our investigators considered the complaint. She agreed with Tesco Bank with regards to the chargeback. She thought that based on the information Tesco Bank had at the time (including not having a breakdown of the costs) the chargeback was unlikely to be successful.

Our investigator didn't agree with how Tesco Bank had considered the s75 claim. She felt there was sufficient information about the contract and that there was a debtor-creditor-supplier agreement in place. She also felt that Mrs B's claim was over the £100 threshold as what was agreed was a various work and items supplied (listed above) for a set cost and this cost was over the £100 threshold.

She went on to consider the claim and whilst she felt some of the issues hadn't been sufficiently evidenced, she did think Mrs B had done enough to show a breach of contract with regards to the pump, chemical flush on the heating system and the boiler service. In order to determine fair redress the investigator tried to establish what percentage of the overall cost was attributed to this work/items supplied.

Tesco Bank disagreed with the investigator's opinion. It again argued it needed proof of the agreement in dispute, including a description of the work to be completed, evidence of who the supplier contracted with and the cost of each piece of work. Without this information it didn't agree that a s75 claim could be considered.

As part of her complaint, and in response to our investigator's assessment, Mrs B has also requested additional compensation for the distress and inconvenience she has experienced. She's explained that this matter has been outstanding for a considerable amount of time and that her family have only had one shower in use during this period.

As an agreement couldn't be reached, the complaint has been passed to me to consider. I issued a provisional decision on this complaint an extract of this is below and forms part of this decision:

Chargeback

Mrs B asked Tesco Bank to raise a chargeback on her behalf to recover the amount paid to the supplier. A chargeback is a dispute resolution scheme administered by the card network. The scheme sets out various rules which need to be complied with and whilst Tesco has discretion about whether or not to raise a chargeback, I'd consider it to be good industry practice for Tesco Bank to do so where there is a reasonable prospect of success. Prior to raising a chargeback Mrs B also needed to

demonstrate that she'd first exhausted attempts to try and resolve the issues with the supplier direct.

Mrs B has provided copies of text messages and call records made to the supplier which were unsuccessful or didn't receive a reply, so I think she did take steps to try and resolve the issues initially. In this case I can see that Tesco Bank didn't raise a chargeback as it didn't think there was a reasonable prospect for success. I agree this dispute wasn't well suited to a chargeback, as Mrs B would need to return the items supplied which would be difficult since the shower pump and taps had already been installed. I also don't think there was a reasonable prospect of success. The scheme rules say, although optional, documentation to evidence the chargeback is also beneficial. And, whilst some of the loss has been evidenced, there isn't evidence to demonstrate all the loss Mrs B has said she's incurred. So for these reasons, I think Tesco Bank was right not to raise a chargeback in this case.

Does Mrs B have a valid s75 claim?

Section 75 CCA makes the provider of credit (Tesco Bank in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of the goods or services. For a s75 claim there are a number of different criteria which need to be met. As detailed above, Tesco Bank doesn't agree Mrs B met this criteria as it can't establish if there's a sufficient debtor-credit-supplier agreement in place or if each piece of work or goods supplied are over the £100 threshold.

In order to make a s75 claim Tesco Bank is correct these are criteria that apply, but I think they are met in this case. I accept that a written invoice, clearly made out to the consumer, would help clarify these issues. However, looking at the information Mrs B has provided, I think she's done enough to evidence this.

- Contracting parties and work agreed

Mrs B has provided a copy of a text message she received from the supplier which is addressed to her. It details the work to be carried out and goods to be provided (detailed above) and the cost of £600. From this I think it's clear Mrs B has contracted with the supplier for the work/items described. Mrs B has said that when the supplier arrived at her home he didn't bring the correct toilet syphons and so £100 was deducted from the amount she needed to pay. Mrs B has said she paid on her credit card and I can see that just before she started chasing the supplier about the subsequent problems she was experiencing, there is a £500 payment. The name that appears on her bank statement for this payment includes the name detailed on the Homeowner Gas Safety Record provided to her by the supplier. And so it's clear this was the payment made to the supplier.¹

So I think there is sufficient evidence to show what was agreed and that it was Mrs B who contracted with and paid the supplier.

- Financial limits

Turning to the cost of the work agreed and goods supplied, whilst I appreciate why

¹ *I can see that in addition to detailing the supplier another party is also listed on the transaction on Mrs B's statement, but Tesco hasn't suggested this means Mrs B can't make a s75 claim. It appears that the payment was made to the supplier through a payment processor who I can't see offered Mrs B any other services, so I don't think this changes Mrs B's ability to make a claim.*

Tesco Bank reached the conclusion it did, I don't agree. It seems to me that what was agreed was for the work to be completed and the items supplied for a set single price of £600. Whilst another supplier may have broken this down and attributed a cost for each item/work to be completed, this isn't what happened in this case. The price was varied slightly with agreement between both parties when the supplier didn't have the correct toilet syphons. The total cost for the remaining items and work to be completed was £500. This is above the £100 threshold and so is over the amount needed to make a s75 claim. I should also explain that I can see a text message for what I think was an earlier discussion about the cost to supply and fit the shower pump. However, I can't see this for any of the other work and in any event, this amount was over £100. And I think despite earlier discussions, what was ultimately agreed (and paid) was a single cost of £500 for all the work excluding the toilet syphons. So I think this was within the financial limits needed to make a s75 claim.

So to summarise, I think Mrs B was the debtor and contracted with the supplier to supply items and complete the work agreed. I think the amount of the transaction was above the financial limits and there were sufficient arrangements in place between the parties required for a s75 claim. I've not seen anything else to suggest that Mrs B's claim didn't meet the criteria needed for a s75 claim and so I think Tesco Bank should've gone on to consider it. As Tesco Bank didn't, I've gone on to consider if it's likely this claim would've been successful.

Breach of contract – s75 claim

Based on everything Mrs B has said, I think she's arguing that the shower pump supplied wasn't fit for purpose, the hand basin taps weren't of satisfactory quality and the work agreed either wasn't carried out or wasn't carried out with reasonable care and skill. The Consumer Rights Act 2015 implies terms to this effect into a contract for goods or services (or digital content). So if Mrs B could demonstrate these arguments, she'd be able to show that the supplier breached the contract. I'll now go on to consider each of the items/ work.

- Replace the shower pump

Mrs B has provided a copy of a text message she sent to the supplier shortly after the work took place. This says that the shower keeps cutting out every 30 seconds or so and asked when he will be coming back to fix it. In addition, Mrs B has also provided an email from the manufacturer of the shower pump. This email says that based on the details Mrs B provided of the shower pump, the wrong shower pump was installed. It states that the pump installed was for single showers and if Mrs B wanted numerous outlets she needed a different pump. Mrs B has provided a copy of a text message detailing that she needed the pump to supply pressure between her showers, so I think it was agreed that a pump which could accommodate this would be needed. And taking everything into consideration, I don't think the pump supplied was fit for its intended purpose in light of this. So I think the contract was breached with regards to the supply and installation of the pump.

- Supply & fit new hand basin taps

Mrs B has said the hot water tap turned the wrong way and that her original taps were a better quality. Mrs B has provided a screen shot from a website to show her previous taps and another screen shot to show what was installed by the supplier. However, she's since replaced the taps provided by the supplier and can't provide

evidence that this work was completed as she has no documentation from the subsequent plumber.

I've taken into consideration what Mrs B has said and what she is able to provide. However, unfortunately I don't have sufficient evidence to show the installation problems she's described or enough to demonstrate that the taps provided were of a poorer quality. So I can't conclude there's been a breach of contract regarding this.

- *Supply & fit new radiator TRV*

Mrs B has said this wasn't supplied and fitted when the supplier visited her home. I've reviewed her email detailing her claim to Tesco Bank and whilst this has been referenced as being included in the original work, Mrs B didn't provide any details about any problems relating to this within the email. Mrs B has said this was raised when she initially spoke to Tesco Bank. I've listened to a call recording of this call and I've noted that it was raised. Mrs B said that the radiator TRV was not installed when speaking to the representative at Tesco Bank. So whilst I accept it wasn't detailed in her subsequent email, it was raised when she initially spoke to Tesco Bank and so should've been considered as part of her claim.

I have therefore considered whether the supplier breached the contract with respect to this. Mrs B has provided a photograph to show her radiator doesn't have a TRV on it which suggests to me it wasn't initially supplied. So I think Mrs B has done enough to evidence her claim in respect of the radiator TRV.

- *Chemical flush on the heating system*

Mrs B has provided a message to show that in the evening after the work was initially completed she experienced problems with the radiators. Some of her radiators were cold or warm and others were only hot at the top. She also said that she tried to run a bath and the cold tap was hardly working. I understand the supplier's father came out to fix this, but Mrs B has said that following this work there were banging and whirring noises coming from the airing cupboard and boiler. She's also said the small header tank in the loft was overflowing out of the overflow pipe down the side of the house which is causing damp to the brickwork and she's provided photographs of this.

I've thought carefully about the concerns Mrs B has raised and I've noted she's provided a text messages to show she contacted the supplier about this. However, she's also said the supplier's father subsequently visited to try and fix the issues and I've not seen enough to determine the impact this had on the prior issues or if any action (by the supplier or his father) caused the further problems. For example, Mrs B hasn't provided an independent report which could have provided commentary on this. I understand Mrs B was unhappy that Tesco Bank requested an independent report after she initially spoke to it and she's said this wasn't requested until around three weeks later. Mrs B has said that by this time she had already had engineers in her home. So in light of this, she didn't think she could get an independent report. Mrs B has therefore argued that her failure to provide supporting evidence of some of the issues she's experienced, was due to Tesco Bank's initial delay.

Whilst I accept it would've been helpful for Tesco Bank to have requested this earlier, I also think it was reasonable for Mrs B to have expected she would have needed to provide some further evidence to support her claim. Particularly as Mrs B has raised a number of issues including further damage/ problems she believes the work undertaken has additionally caused.

In addition, I note from listening to her initial conversation with Tesco Bank that the representative told Mrs B an independent report might subsequently be needed. Mrs B was also told that if she got different suppliers in to rectify any of the issues, she should gather evidence from them on the work they completed (which she did do in relation to the boiler). I also don't agree that an independent report would have been of no value, even after work had been completed, provided Mrs B had obtained clear details from the various engineers about what had been done and why.

So taking all this into consideration, I don't think Tesco Bank is responsible for Mrs B failing to provide sufficient evidence of some of the problems she's attempting to claim for. And with regards to the chemical flush on the heating system and the damage Mrs B has said this has caused, I don't have enough evidence to conclude there's been a breach of contract in relation to this. I have noted Mrs B has said she subsequently needed a full power flush completed on her heating system. However, my understanding is this is much more powerful than a chemical flush and so I don't think it provides any clear conclusions about whether or not the chemical flush was completed properly.

- Damage to Mrs B's daughter's carpet

Mrs B has provided photographs of the spots to the carpet which she's said were caused by the supplier's work. I've noted that the spots are close to the radiator and this is something Mrs B has consistently raised as being caused by the supplier. So taking everything into consideration, I think Mrs B has done enough to evidence this and I'll be taking this into consideration when awarding compensation below.

- Boiler service

Around two weeks after the initial work Mrs B's hot water and central heating stopped working. An engineer visited her home and Mrs B has said that when they removed the cover to her boiler, debris fell out and there was a build-up of dirt inside the boiler. In addition, Mrs B needed a new fan for her boiler.

Mrs B has provided an email from the engineer which said that in his professional opinion "it did not appear the boiler had been serviced for some considerable time." I therefore think it's clear from this that Mrs B has evidenced that either the supplier didn't complete the work agreed or that if he did, he didn't do so with reasonable care and skill. So in either event, I think there has also been a breach of contract in respect to this. I have noted that the boiler needed a new fan and Mrs B paid an additional cost for this. However, supplying and fitting the fan wouldn't have been included as part of a standard boiler service. So I don't think Mrs B should be additionally compensated for the cost of this.

So to summarise, I think there has been a breach of contract with respect to the shower pump, boiler service and TRV and I think Tesco Bank should refund what Mrs B has paid in relation to this.

I asked Mrs B and Tesco Bank to provide anything further they wished for me to consider in response to my provisional 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.

Neither Mrs B or Tesco Bank have provided anything else for me to consider in response to my provisional decision and so I see no reason to depart from the provisional findings I made.

For the reasons explained, I think there has been a breach of contract regarding Mrs B's shower pump, boiler service and TRV. I therefore think it was unfair of Tesco Bank to decline Mrs B's claim in respect of these issues and that Tesco Bank should put things right in the way I've described below.

Putting things right

As explained above and in my provisional decision, the work to be completed and items supplied were not itemised. So it becomes difficult to decide what fair compensation should be.

Mrs B has provided a more recent quote for this work, and although these figures represent a substantial variation from what Mrs B paid, they do demonstrate that shower was likely to have made up a larger proportion of the cost. I therefore propose to attribute £300 for the shower pump and £50 for each of the remaining items. I accept that this isn't a perfect solution, however in the absence of anything to show how the supplier might've attributed values to each item/work, I think this represents the fairest way to apportion the cost.

As I think Mrs B has demonstrated a breach of contract in respect of the shower pump, boiler service and TRV, this comes to £400. I invited both Tesco Bank and Mrs B to provide any further evidence or arguments in response to my provisional decision should either party wish to dispute these values. As Neither party has done so, I think this represents a fair way of calculating values for the work completed/items supplied which I think should have been upheld.

Mrs B has also asked for additional compensation for the length of time it's taken to resolve this matter (which she feels would've been avoided if Tesco Bank hadn't declined her claim.) She's told us about the impact this has had on her physical and mental health and the additional risk she's been exposed to by not having separate washing facilities to her family. I don't underestimate her strength of feeling in this matter or the challenges she's experienced during this period. In circumstances where I'm considering the liability of Tesco Bank for a 'like claim' against a supplier for breach of contract, I have to be mindful of what the courts might award against the supplier in similar circumstances. Whilst there are limited circumstances where the courts would award compensation for non-financial losses, one area where compensation may be awarded is for physical inconvenience or discomfort in the home. It's important to highlight that where this is the case the award is likely to be modest and there is still a requirement on the claimant to mitigate their loss. Therefore, when it became possible to, Mrs B would've been expected to have taken steps to rectify some of the problems she's experienced.

In addition, as explained above, I have considered what Mrs B has said about the stains to her daughter's new carpet and the photographs she's provided showing some small stains. This occurred as a consequence of the work completed and I appreciate it is likely to have been disappointing for Mrs B. As with the shower, I would have expected Mrs B to have mitigated her loss as soon as she was able to. However, even taking that into consideration, rectifying this is still likely to incur a cost.

So, having thought about these issues, I think an additional compensation payment of £200 is also fair to reflect the impact of only having one shower and the potential cost involved in rectifying the carpet.

As Mrs B paid for this work on her credit card I don't know if she's incurred additional fees or interest payments resulting from this payment. So to put things right Tesco Bank should:

- Rework Mrs B's credit card account as though £400 had been refunded from the date Tesco Bank declined her claim.
- Any interest, fees or charges which have been caused by the transaction must be refunded, and any negative credit file information removed.
- If the step above results in Mrs B ever having had a credit balance on her credit card account, then Tesco Bank must pay 8% simple interest per year* on this balance, from the date it would have arisen to the date it would have ceased.
- Additionally pay Mrs B £200 compensation.

*If Tesco Bank considers it is required by HM Revenue & Customs to deduct tax from this interest then it must tell Mrs B how much tax it has taken off, and give her a certificate showing how much tax it has taken off, if she asks for one, so she can reclaim this tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mrs B's complaint and I require Tesco Personal Finance Plc to put things right in the way I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 19 April 2022.



Claire Lisle
Ombudsman