

The complaint

Mr H complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to him the money that he paid for a barbecue.

What happened

Mr H used his Tesco Bank credit card in April 2021 to pay £153.83 for a barbecue. He didn't receive the barbecue so he contacted Tesco Bank. It asked him to provide more information about the purchase. There was a delay in him providing the requested information and, by the time that he did so, the time-limit in which Tesco Bank could make a chargeback claim had expired so it considered his claim under section 75 of the Consumer Credit Act 1974.

It said that Mr H had been unable to provide an invoice showing what goods were ordered from the supplier so it was unable to establish a breach of contract. Mr H wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. He thought that there was enough evidence for Tesco Bank to have proceeded with a section 75 claim and he recommended that it should refund the cost of the barbecue to Mr H, with interest from when it originally declined the claim. He said that Tesco Bank had acknowledged its delay in dealing with the claim and had credited £50 to Mr H's account which he thought was appropriate compensation.

Tesco Bank has asked for this complaint to be considered by an ombudsman. It says, in summary, that the text messages that have been relied on don't tell it anything about the purchase, the contract or how it has been breached. It says that, given the lack of proof of what was purchased and what the contract entailed, it's unfair to determine that a breach of contract has occurred and it's not fair to hold it liable for a breach of contract that hasn't been substantiated.

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.

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- Tesco Bank initially considered a chargeback claim for the payment that Mr H had made to the supplier and it asked him to provide more information about the purchase;
- there was a delay in him providing the requested information and, by the time that he did so, the time-limit in which Tesco Bank could make a chargeback claim had expired and I don't consider that Tesco Bank acted incorrectly in not making a chargeback claim in these circumstances;

- Tesco Bank then considered his claim under section 75 - in certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mr H's complaint about Tesco Bank, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier and that Tesco Bank's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr H's claim under section 75 as only a court would be able to do that;
- Mr H used his Tesco Bank credit card in April 2021 to make a payment of £153.83 to a supplier and he says it was for a barbecue – he's provided a text message from the supplier which says: "... *thanks for your purchase of £153.83 from [name of supplier]! We'll notify you when it ships. View order (#1136)*" and a link to a web-site was provided – but the link no longer works;
- Mr H has also provided a text message that he received from the supplier five days later which said: "*Your order from [name of supplier] has been shipped*" and a tracking number was provided;
- Mr H sent an e-mail to the supplier in May 2021 in which he asked for advice on the delivery as he said that the order hadn't been received and, when he checked with the delivery company, it said that the shipping number doesn't relate to a shipping item;
- Tesco Bank said that Mr H had been unable to provide an invoice showing what goods were ordered from the supplier so it was unable to establish a breach of contract – but Mr H says that he didn't receive the barbecue that he'd ordered and I consider that that would be a breach of contract by the supplier;
- I consider that Mr H had provided enough information for Tesco Bank to be able to investigate a section 75 claim and it has provided no evidence to show that Mr H received the barbecue or that the supplier fulfilled its contract with him;
- I don't consider that Tesco Bank's response to Mr H's section 75 claim was fair and reasonable and I find that it would be fair and reasonable in these circumstances for it to rework his account as described below; and
- Tesco Bank has acknowledged that there was a delay in its response to Mr H's claim and it credited £50 to his account – I consider that to have been a fair and reasonable response to the customer service issues and I'm not persuaded that a higher award of compensation is justified.

Putting things right

I find that it would be fair and reasonable for Tesco Bank to rework Mr H's credit card account as if the payment of £153.83 had been refunded to his account on the date that it issued its final response letter to him and to make the payments described below.

My final decision

My decision is that I uphold Mr H's complaint and I order Tesco Personal Finance plc, trading as Tesco Bank, to:

1. Rework Mr H's credit card account as if the payment of £153.83 had been refunded to his account on the date that it issued its final response letter to him, and - if that puts the account into credit - to pay interest at an annual rate of 8% simple on the

credit balance for the periods that the account was in credit – it should also refund the credit balance to Mr H.

2. If Mr H has repaid the £153.83 (or any part of it) to Tesco Bank but doesn't have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.

HM Revenue & Customs requires Tesco Bank to deduct tax from the interest payments referred to above. Tesco Bank must give Mr H a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 December 2022.

Jarrold Hastings
Ombudsman