

The complaint

Mr F complains that Tesco Personal Finance PLC trading as Tesco Bank declined his claim under section 75 of the Consumer Credit Act 1974.

What happened

Mr F entered into a contract with a merchant to design, supply and install windows and doors at his property. The contract price was £31,896.99. Mr F paid £12 using his Tesco credit card. Two further payments of £11,664.71 were made by bank transfer.

In March 2023 Mr F received notification that the merchant had ceased trading and gone into liquidation.

Mr F raised a section 75 claim with Tesco. Tesco declined the claim on the basis that the total contract price exceeded the £30,000 limitation under section 75.

Mr F complained to Tesco. He said he'd agreed a change of product specification prior to the merchant going into liquidation which had reduced the contract price by £2,650.

Tesco reviewed the section 75 claim but said it wasn't changing its decision. It said the original contract amount was over the threshold and Mr F hadn't provided an updated invoice evidencing a reduction.

Mr F remained unhappy and brought his complaint to this service. He said the change in product specification and the reduction in the contract price had been agreed prior to the merchant going into liquidation.

Our investigator upheld the complaint. He said he thought the evidence supported Mr F's position that the total contract value was reduced to below £30,000 prior to the merchant going into liquidation. The investigator said that Tesco had made an error by not progressing the section 75 claim and recommended that Tesco pay Mr F the sum of £23,371.42.

Tesco didn't agree. It said that although there was evidence of an agreement to change the windows, there was no evidence of an agreement or a contract regarding a reduction in costs. Tesco said that section 75 was evidence based and that it would need evidence that there was an agreed reduction in the contract price prior to liquidation. Tesco said that none of the evidence provided supported a reduction in the contract price prior to liquidation.

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.

The issue between Tesco and Mr F is whether the reduction in costs was agreed before the merchant went into liquidation, and whether there is sufficient evidence to show this.

Tesco has accepted that there was a change in product specification which was agreed prior to liquidation. But it says it doesn't have any evidence to show that the contract price

changed prior to liquidation.

Mr F says he agreed the change in product specification in a phone call with the merchant prior to liquidation. He says that during the call, the merchant stated that there would be a cost reduction of a couple of thousand pounds. Mr F's position is that the change in product specification and the reduction in cost was agreed and effected during this call.

I can see that the agreed change in product specification from RAICO to ALUK is evidenced by emails between Mr F and the merchant dated 1 March 2023. The date of liquidation was 23 March 2023.

I've also seen an email from the merchants' solicitors which includes a breakdown of the project cost from a Director of the merchant. This shows the saving as a result of the change in specification from RAICO to ALUK as £2650, resulting in a total contract price of £29,246.97.

Tesco has said that it isn't able to accept a change of contract terms including pricing which has been generated after a merchant has ceased trading.

I've reviewed all of the available information. Having done so, I don't agree with Tesco that the contract terms changed post liquidation. I think it's clear from the email dated 1 March 2023 that the product specification was changed. Mr F has given clear and consistent testimony that the change in product specification brought with it a reduction in the contract price and that this was discussed and agreed in a call with the merchant prior to the date of liquidation. The letter from the merchants' solicitors includes a breakdown of costs which supports what Mr F has said about the change in contract price.

I appreciate the point that Tesco has made about section 75 being an evidence based process. Evidence can take many forms, both written and oral, and in this case, I think Tesco is wrong when it says it can't proceed with the claim unless it has an updated invoice evidencing a reduction. The evidence of Mr F and the merchants' solicitors should also be taken into consideration here. I find this evidence to be persuasive. I think there's enough evidence here to show that there was a verbally agreed reduction in the contract price prior to the date of liquidation. I'm also satisfied that the reduction in the contract price brings the claim within the section 75 threshold.

For these reasons, I think Tesco made an error by not progressing the section 75 claim.

Putting things right

The merchant is in liquidation and therefore unable to complete the works. Mr F has since arranged for a third party to complete the works at similar cost.

In the circumstances, I think the fairest resolution is for Tesco to pay the sum of £23,371.42 to Mr F.

My final decision

My final decision is that I uphold the complaint. Tesco Personal Finance PLC trading as Tesco Bank must pay the sum of £23,371.42 to Mr F.

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

Emma Davy
Ombudsman