

The complaint

Mrs C complains Tesco Personal Finance Limited trading as Tesco Bank ('Tesco') failed to treat her fairly when she disputed transactions she made towards the purchase of a solar panel system.

What happened

I'll summarise the background, which is well known to all parties, only briefly:

- Mr and Mrs C agreed to purchase a solar panel system from a solar panel installer I'll call 'EGS'. The full cost was to be £12,780, according to the proposal document ('contract') I have seen. That contract was from EGS to Mr C.
- Mrs C paid a sum of £4,473 on her Tesco credit card on 10 February 2023 and a further amount of £2,000 on 28 February 2023. Mr C had paid an amount of £6,000 on his credit card with a different lender on 25 February 2023.
- Mrs C's payments show up as having been made to a different company I will call 'PPS'. The payments show as having been made to PPS on Mrs C's Tesco credit card statement.
- The installation was not to Mrs C's liking and EGS has gone into liquidation before things were put right.
- Mrs C wrote to Tesco to make a claim under section 75 of the Consumer Credit Act 1974 ('CCA'), in relation to the above. The bank considered the claim and then declined it. It said this was because the fact Mrs C's credit card payment had been made to PPS and not EGS she was unable to make a claim.
- Mrs C did not accept this answer and referred the complaint to this service for an independent assessment.

One of our investigators looked into the matter. They concluded that the fact Mrs C's credit card payment had been made to PPS broke the necessary debtor-creditor-supplier ("DCS") agreement which needed to be in place for her to be able to make a claim against the lender under section 75.

Mrs C disagreed and so the case has been passed to me to decide.

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.

I would like to thank Mrs C for the clear and detailed submissions she provided, which have been very helpful for me in obtaining an understanding of her contract with EGS and the sequence of events.

Having considered all the submissions made in this case, I don't think Mrs C has a claim against Tesco under section 75 of the CCA, for essentially the same reasons as explained by our investigator and Tesco. I'll explain why I say that.

Mrs C's section 75 claim

Section 75 of the CCA allows consumers a degree of protection when they purchase goods or services on a credit card, so long as certain technical conditions are met. If these technical conditions are met, then they can make a claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of the goods or services. In this case Tesco has said one of the technical conditions, the need for there to be a valid DCS agreement, has not been met.

What having a valid DCS agreement in place generally means is that the person making a claim needs to have used their credit card to pay the same company they say has breached its contract with them or misrepresented something to them. This is a basic explanation, but it is sufficient for the purposes of this decision.

If the payment has been made to a third party, then this will often cause the chain of connections to be broken, and for there to be no valid claim against the credit card provider.

In Mrs C's case, her credit card payment has not been made to EGS. Her payment instead went to PPS. On the face of it then, the necessary criteria for her to be able to make a claim against Tesco under section 75 of the CCA, are not in place.

There are some exceptions however, to this general rule. If two companies are "associates" as defined in section 184 of the CCA, then for the purposes of a claim under section 75 of the CCA, a payment to one can be treated as being the same as a payment to the other.

This is because section 187 of the CCA has the effect of making companies which are associates interchangeable for the purpose of the DCS agreement.

What exactly is meant by "associates" is very specifically defined in the CCA. Just being linked in some way, or having a commercial relationship, isn't enough by itself to make companies associates. As defined in the CCA, two companies will be associates of one another if they are controlled by the same people, or if people who control one company are associates of people who control the other company. People are associates of one another if they have certain familial relationships, or if they are "in partnership".

Our investigator looked into the question of whether or not the two companies were associates. They found that they were not. The two companies are listed at Companies House as two separate entities. They have separate corporate addresses and the managing directors are different. And neither of the managing directors shows up in the listing of the other company as a significant officer of that company.

I have noted the email exchanges that Mrs C has provided. In one of them the director for PPS welcomes Mr C (who the contract was with) to EGS as a customer. It is not in doubt that there was, from this evidence, some sort of relationship between the two businesses. However, for the reasons given above, I have seen insufficient evidence to be able to find that the two companies meet the specific definition of 'associates' as defined in the CCA, for us to consider the claim against the lender under s 75.

My final decision

For the reasons explained above, I do not uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 18 February 2025.

Douglas Sayers
Ombudsman