

## **The complaint**

Ms E complains Tesco Personal Finance PLC, trading as Tesco Bank, has not treated her fairly when she made a claim under section 75 of the Consumer Credit Act 1974 ("CCA") in relation to the purchase of a sports car which turned out to have defects.

## **What happened**

The parties to the complaint are familiar with the background, so it is not necessary for me to narrate the events leading up to this point in great detail. A large amount of information has been provided, so what follows is necessarily a summary.

Ms E used her Tesco Bank credit card to pay a £500 deposit for a used sports car which was advertised for sale at a car dealership ("O"). O was quite far away from where Ms E lives, so in August 2023 she negotiated a deal for the car remotely, by a combination of emails and phone calls.

On the day the purchase was due to be completed, Ms E says she was unable to go the dealership due to an illness. Her son went to the dealership with another person who has been described as his carer, and completed the purchase. Ms E says that although she was not present physically, she did speak to O on the phone that day to discuss the details.

Ms E says it was agreed that her son's name would appear on the paperwork relating to the sale, because the car was going to be stored at his address, even though the intention was that it would be her car. The purchase was completed and payments totalling £27,375, including the credit card deposit, were made from accounts in Ms E and her son's name, with Ms E being the main contributor financially.

There were problems with the car which included a defective air conditioning system, and issues with the brakes being worn out. Ms E also considered promises had been broken by O in relation to the preparation of the car prior to completion of the sale, and that thousands of pounds of work was required to get the car into a satisfactory state.

A complaint was made to O and there was some back and forth, but ultimately O refused to agree that the car could be rejected. Ms E contacted Tesco Bank with a view to making a claim under section 75 of the CCA, early in October 2023. After an investigation which involved considering submissions from Ms E and from O, Tesco Bank provided its outcome to the claim on 14 December 2023.

Tesco Bank concluded it didn't have any liability to Ms E under section 75 of the CCA, because it considered Ms E's son had been the purchaser of the car, not Ms E. It said section 75 covered only the primary cardholder for purchases in their own name.

Ms E complained about the bank's decision and about how her claim had been handled. The bank, in a final response to the complaint of 31 January 2024, stood by its decision on the section 75 claim, but accepted there had been a period of time where it ought to have acknowledged contact from her sooner, especially as she had provided an update on some very difficult family circumstances. The bank offered Ms E £50 compensation in respect of

this, which I understand was not accepted.

Dissatisfied with this response, Ms E referred the complaint to the Financial Ombudsman Service for an independent assessment, where it was looked into by one of our investigators.

I could summarise our investigator's conclusions as follows:

- For the protection of section 75 of the CCA to apply to a credit card purchase, there needed to be an agreement between the debtor who is liable to pay for the credit card, and the supplier of the goods in relation to which there is a dispute.
- Ms E was the debtor in this case, but all the documentary evidence pointed towards her son being the person who had a contractual agreement with O for the purchase of the car. There was insufficient evidence to conclude it had been a joint purchase, and no basis for concluding Ms E had a contract with O for the purchase. As a result of this, our investigator considered the criteria for section 75 protection to apply had not been met and Tesco Bank's response to the claim had not been unreasonable.
- The compensation offered by the bank in relation to it not keeping Ms E better updated, was a fair amount.
- Tesco Bank could have considered claiming back the £500 deposit using the chargeback process, but this would have been unlikely to succeed as the £500 had been intended to secure the car, and it had served this purpose.

Ms E disagreed with our investigator. She insisted that she was a party to the contract of sale and that O had lied about the circumstances of the purchase, including saying her son had made significant payments for the car. Payment had been made from his account, this was primarily from money she had sent to him for this purpose. Our investigator looked at everything again but ultimately reached the same conclusions for much the same reasons.

As no agreement could be reached, the case has been passed to me to decide. Before making this decision, I requested some further evidence of the negotiations leading up to the purchase of the sports car, which Ms E has kindly provided.

### **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.

When a consumer buys goods or services using a credit card, and something goes wrong with the purchase, they can approach their card issuer for assistance. The card issuer may be able to help in obtaining a refund of any card payments made via a chargeback, or it may need to honour a claim under section 75 of the CCA.

Our investigator's initial conclusions on the matter of the chargeback have not really been challenged by either party, so I have not found it necessary to present detailed findings on this point. I will say only that I agree a chargeback was unlikely to be successful in this scenario. A chargeback would also not have achieved what Ms E is seeking to achieve, as the largest amount of money which could have been reclaimed in this way would have been £500.

For similar reasons, I will not dwell on the customer service elements of Ms E's complaint. I'm also of the view that the compensation already offered by the bank is adequate in the

circumstances, taking into account the nature of the service failings (a failure to respond to communication or keep Ms E updated for a period of time) and their impact.

This brings me to the matter of Ms E's section 75 claim, and whether Tesco Bank acted fairly and reasonably in declining this claim. Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of the goods or services, subject to certain technical conditions being met.

One of these technical conditions is the necessity for there to be a debtor-creditor-supplier ("DCS") agreement. This is a somewhat complex legal concept, but it can be put in the following way: it means that the person who owes the debt on the credit card account (the debtor) needs to have used the credit advanced under the credit agreement to pay an entity (the supplier) they have a claim against for breach of contract or misrepresentation.

In this case Ms E is the debtor, and O is the supplier. So for Tesco Bank to have any liability to her under section 75 of the CCA, she needs to have a relevant claim against O. In order to have a claim against O, she needs to have a contract with O in respect of which such a claim could be made. This has been the key issue in this case, and it's a hurdle which Ms E needs to clear before going on to look at whether the complaints about the car are justified.

I thank Ms E for all the information she's provided to support her argument that she was a party to the contract for the purchase of the car. I accept that she was closely involved in the negotiations prior to the purchase, and has handled communications by email and over the phone with O throughout. However, I have found it difficult to conclude that she was a party to the contract to purchase the car. I think it is more likely that her son was the party to the contract of sale, and Ms E acted as her son's representative or agent in the negotiations leading up to the sale itself. I'll explain why.

As both Tesco Bank and our investigator noted, the documentary evidence indicates the car was intended to be the son's and he was the person who purchased it. These documents include:

- **The contract of sale itself.** This invoices the sale to Ms E's son and says the car is to be delivered to his address (Ms E lives at a different address). The contract contains statements which include "*I declare that I am the buyer of the vehicle described above...*" and "*I certify that I am the buyer of [the vehicle] at the price stated*". This document was signed by the son. Ms E's phone number and email address are given as contact details.
- **The vehicle registration document.** This is in the son's name and address.
- **The insurance policy for the car.** This names the son as the policyholder, with Ms E as a named driver on the policy.

There is also circumstantial evidence which I think would lead a reasonable person to conclude that the car was intended to be for Ms E's son. He was the person who completed the purchase at O's premises, and the car is kept at his address, which is several miles away from Ms E's address. While I don't doubt that Ms E intended to drive the car as well, the circumstances do suggest to me that it was her son's car. In her testimony, Ms E states she would mainly be driving it, but in my view this isn't consistent with the insurance policy or with the car being kept at her son's address, several miles from where she lives.

I know Ms E has said there's an explanation for all of these things, but to an impartial person looking at the situation from the outside, it's difficult to escape the conclusion that this was

her son's purchase, because that is what it looks like.

Ms E has said that her son has complex mental illness and mental disabilities, and lacks the capacity to enter a contract. I don't doubt that Ms E's son has the conditions Ms E says he has, or that these could cause him difficulties in transactions like this. I am not sure if Ms E is maintaining this line of argument, but I don't think the circumstances demonstrate that her son lacked capacity to buy a car. The bar for finding that someone does not have mental capacity is quite high, and it can be the case that a person may have capacity for one kind of decision but not another. While I appreciate what Ms E's said about the circumstances on the day of the purchase, it seems unlikely to me that she would have allowed her son's name to appear on the contract, or that she'd have sent him to O to complete the purchase, if it were the case that she did not think he had the capacity to do so.<sup>1</sup>

As I've said above, Ms E conducted all the email and telephone negotiations with O prior to the purchase. Her contact details were given on the contract of sale. She was clearly closely connected to the transaction. But I think the analysis of the situation which is most likely to be correct is that Ms E was assisting her son with the purchase. In effect, she was acting as his representative and agent, but she was not a party to the contract of sale itself. It's not uncommon for a parent to make a large contribution to a car purchase for their child, nor is it unusual for a parent to lead on negotiations in a situation like this. Given what Ms E has said about her son's conditions, I could understand why she would have wanted to be involved in things, but it doesn't necessarily make her a party to the contract of sale. For the reasons I've explained, I conclude that she was not.

While I don't lack in sympathy for the situation Ms E is in, and I am aware she's had difficult personal circumstances which have coincided with the purchase of the car the problems that have resulted, I don't think she has a valid claim against Tesco Bank under section 75 of the CCA, due to her not being a party to the contract of sale. It follows that I do not find that the bank acted unfairly or unreasonably in declining her claim.

### **My final decision**

For the reasons explained above, I do not uphold Ms E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 29 August 2024.

Will Culley  
**Ombudsman**

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<sup>1</sup> I should add here that there is no intention on my part to diminish the significance of any conditions Ms E's son has – I am simply saying that I don't think Ms E has proven that his conditions meant he was unable to enter a contract (and that therefore she was more likely to be the contracting party).