

## **The complaint**

Mr D says that building work on his home was not completed to a satisfactory standard. Because he used his credit card, issued by Tesco Personal Finance PLC, to pay part of the price for the work, he says that it is liable, along with the builder.

## **What happened**

Mr D and his wife had had some building work done on their house. They were not happy with the work that had been done and looked for a different builder to carry out remedial work and complete some work that was outstanding.

In January 2024 they engaged a new builder, J, to do the necessary work. That included roofing repairs, completion of windows, some joinery, and some electrical work. A price of £6,860 was agreed. (There is a second estimate of over £10,000 on the case file, but the exact price agreed does not materially affect my findings.)

Mr D paid £2,000 to J using his Tesco Bank credit card on 22 January 2024, although it appears that the work had already started by then. Further payments were made by bank transfer.

There were a number of SMS exchanges towards the end of January 2024, discussing the progress of the works, the options for fixing the roof and work schedules – which appear to have been disrupted somewhat by the weather.

Those exchanges culminated with an exchange when, on 2 February 2024, Mrs D told J not to return to do any more work. She said that the work done had not been satisfactory and that she and Mr D would be looking for someone else to complete it. She asked for a £4,000 refund.

J said in reply that he had not completed the work that he had been engaged to do. It was not, he thought, fair that he was not allowed to complete that work. He did not in the event do any more, and Mr and Mrs D engaged a different builder to take up the unfinished work.

Mr D referred the matter to Tesco Bank, as he had paid for it in part with his Tesco Bank credit card. Tesco Bank said however that it could not seek a refund under the chargeback scheme, since J had not been given an opportunity to carry out remedial work – as the scheme required. And, the bank said, section 75 of the Consumer Credit Act 1974 (“section 75”) did not apply because J’s contract was with Mrs D, but the credit card was in Mr D’s name.

Mr D referred the matter to this service, where one of our investigators considered what had happened. She agreed with Tesco Bank that chargeback was not appropriate, for broadly the same reasons the bank had given. She did not make a finding on whether Mr D had a contract with J, but concluded that, in any event, there was no breach of contract which would make Tesco Bank liable under section 75.

Mr D did not accept the investigator's view and asked that an ombudsman consider the complaint.

### **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.

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Tesco Bank) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is however primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods have been paid for but not delivered. It can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

The Mastercard chargeback rules say that a chargeback can only be raised for defective goods or services where a supplier has refused to carry out repairs, replace the goods, or adjust or refund the price. That was not the case here; on the contrary, J said that the work was not complete and that he wanted to complete it. I believe therefore that Tesco Bank's decision not to raise a chargeback was reasonable.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider.

Tesco Bank said that the necessary conditions did not apply in this case. Mr D, as the cardholder or debtor, needed to show that he had a contract with J, and that J was in breach of it. Tesco Bank took the view that it was Mrs D, not Mr D, who had the contract with J.

I note that the estimate for the work was addressed to Mrs D and that the SMS exchanges while the work was being carried out. Those facts support the argument that J's contract was with Mrs D alone. Against that, the work was done on Mr and Mrs D's home, and they both had an interest in it being completed to a satisfactory standard. It is, in my view, at least arguable that the contract was with both of them, and I've approached the complaint on that basis.

This is not, however, a case where work was not completed to a satisfactory standard. Rather, Mr and Mrs D took the view – based on what had been done up to 2 February 2024 – that J could not complete the work to the required standard. Mrs D then told J not to return – in effect, bringing the contract to an end. J remained willing to complete the work.

A breach of contract does not generally entitle the party not in breach simply to bring the contract to an end. That remedy is usually available only where it is clear that one party

cannot fulfil the contract, and I am not persuaded Mr D has shown that was the case here. J clearly thought that it was possible to complete the work to a proper standard.

In fact, there is little evidence to support Mr D's assertion even that the work which J had done was not satisfactory. The photographs I have seen appear consistent with work which has not been completed, not with work that has been completed but which is unsatisfactory.

Further, in her SMS message of 2 February 2024 Mrs D said:

*"We have had a building inspector here today to look at the work you have done and he was appalled with the standard of work that has been done... Our inspector has done a thorough investigation and report and has all photographic evidence of this and will use it in our case against you if necessary..."*

However, when our investigator asked for a copy of the report referred to, Mr and Mrs D said there was none. And the reference to a building inspector had been to another builder, whom Mr and Mrs D subsequently engaged to take on the work.

It is not for me to say whether Mr D does in fact have a claim against J. Nor is it for me to decide whether he has a claim against Tesco Bank under section 75. What I must do is decide what I consider to be a fair resolution of Mr D's complaint about Tesco Bank's decision to decline his claim.

As I have explained, I think that the bank's conclusion that Mr D did not have a contract with J was arguable. But, even if he did (and I have reached no view one way or the other), I think it would have been reasonable for Tesco Bank to decline the claim.

### **My final decision**

For these reasons, my final decision is that I do not uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 December 2024.

Mike Ingram

**Ombudsman**