

## **The complaint**

Mr O complains Tesco Personal Finance Limited (trading as “Tesco Bank”) failed to help him recover a deposit he paid for sofas he ordered from a furniture shop.

## **What happened**

On 6 January 2024, Mr O visited a furniture shop (which I’ll call “S”) and ordered two sofas for £4,185, including delivery. He used his Tesco Bank credit card to pay the required £800 deposit. The remaining balance was due later.

The next day, Mr O noticed the sofas were described as “static, no electrics” on his copy of the order form. This was different from the shop’s electric display model with a functioning recliner he was interested in. He said he specifically negotiated a discount for the three-seater electric with recliner version, and agreed to buy a pair for £4,185. And he didn’t notice the error on the form because he had the wrong reading glasses with him at the time.

Mr O believes the salesperson misrepresented the order, as she verbally agreed he was buying electric reclining sofas, but wrote down the non-electric version on the order form.

Between 8 and 19 January 2024, Mr O entered into a dialogue with S about the possibility of cancelling his order and refunding his deposit. S confirmed the sofas hadn’t yet gone into production, but declined his refund request. It didn’t accept it did anything wrong and it considered the deposit to be non-refundable under the agreed terms and conditions.

S instead offered Mr O the opportunity to choose alternative furniture of equal or higher value. Mr O declined because he no longer trusted S after what happened. He asked S to proceed with the cancellation and turned to Tesco Bank for help getting his money back.

Mr O claimed through Tesco Bank’s website on around 5 February 2024. The bank looked into whether refunding the deposit was possible through the chargeback process, but didn’t pursue it further as it thought the claim was unlikely to succeed.

It also considered a section 75 Consumer Credit Act (CCA) claim – which, if applicable, could make the bank responsible for a breach of contract or misrepresentation by S. But it thought Mr O’s evidence and account of events were insufficient to support such a claim.

However, Tesco Bank agreed it should have acknowledged Mr O’s claim sooner, and that it should not have assured him on 21 February 2024 that a chargeback would be raised when it had already decided not to raise one. Mr O said he relied on the information in the call when he ordered sofas from a different shop later, and was upset to find out Tesco Bank wasn’t pursuing the claim. Tesco Bank paid him £100 in compensation for the errors.

As Mr O was still unsatisfied, he referred his complaint to the Financial Ombudsman Service. Our investigator considered his concerns, but thought the £100 Tesco Bank paid was fair and didn’t think Tesco Bank needed to do anything further. As Mr O disagreed, his complaint has come to me for a decision.

## **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 think it's worth clarifying that I'm deciding whether Tesco Bank acted fairly in assisting Mr O with his dispute against S. I'm not making a finding on the underlying dispute Mr O has with S. Tesco Bank did not supply the sofas, so when considering what's fair and reasonable, I'm only considering whether it acted in line with its obligations as a financial services provider.

As Mr O used his credit card to pay the deposit, the main ways open to him for seeking a remedy through Tesco Bank are through a chargeback or section 75 CCA claim.

### Chargeback

When someone buys something with their credit card, and something goes wrong, the card issuer can sometimes help them obtain a refund through raising a chargeback on their behalf. There's no obligation for a card issuer to raise a chargeback for a customer – but I'd expect it to do so if a chargeback is likely to succeed.

The chargeback process is run by the relevant card scheme – in this case, that would be Mastercard. The Mastercard chargeback scheme is outside the jurisdiction of the Financial Ombudsman Service, so I make no finding on how it's run. But I can consider if Tesco Bank applied the scheme rules correctly and conducted the process fairly.

It's worth noting the circumstances under which a chargeback can be raised is limited, because chargebacks only apply to certain types of dispute. They don't, for example, specifically cover complaints about a supplier's customer service.

I'm not certain what dispute category Tesco Bank would have raised the chargeback under if it had pursued things further. But having looked at the options under Mastercard's chargeback scheme, I think it would have been reasonable to raise it under the reason code "Goods or Services Were Either Not as Described or Defective" for a refund of the £800 deposit. This code covers claims for misdescribed goods and aligns with Mr O's claim.

The main issue is whether Tesco Bank was fair in deciding the chargeback was unlikely to succeed and discontinuing the process. I've reviewed the reason code's main requirements to help me decide the issue, and I can see it emphasises the importance of documents for proving a misdescription. So I'm satisfied supporting evidence is particularly relevant here.

The main documentary evidence at the time of sale describing the sofas is on the order form Mr O signed. Two places on the form describe the sofas as "static, no electrics". And it's clear Mr O agrees with how the form described the sofas as it's the basis for his cancellation request. So to satisfy the chargeback's requirements, Mr O had to provide enough evidence to show the sofas were misdescribed in light of the competing description on the order form.

In support of his claim is his account of the salesperson saying the sofas would be electric, an explanation for why he didn't challenge the sofas' description on the order form, and emails showing his attempts to cancel the order soon after. But as there's no documentary evidence describing the sofas as electric - and a static non-electric version was a valid option - I don't think he has a strong claim and I think S would have defended it successfully.

I'm sympathetic to Mr O's wider circumstances, including his frustration with S for not issuing a refund for sofas that hadn't yet been produced. I appreciate S could have possibly cancelled at no cost to it, but I don't think this helps determine if the sofas were

misdescribed, the key consideration for whether a chargeback would succeed here. In the circumstances, I don't think a chargeback would likely succeed under this reason code.

I've also considered the other reason codes Tesco Bank could have attempted a chargeback under. The only alternative that I think is reasonably applicable is "Credit Not Processed". This code covers various claims, including a merchant's failure to accept a cancellation where it failed to disclose its refund policy at the time of purchase.

However, S did disclose its refund policy. I say that because the order form, which was signed by Mr O, discloses that deposits are non-returnable. And the care advice sheet Mr O also signed further requires Mr O to tick a box next to a declaration stating "Order is unable to be cancelled or amended" – so I think the refund policy for the deposit was disclosed, and that it clearly doesn't allow Mr O to cancel his order and get his deposit back.

I'm aware of Mr O's recent comments that he wasn't emailed the care advice sheet until 11 January 2024. But the fact he signed the care advice sheet and ticked a box next to the relevant declaration at the time of sale suggests the policy was disclosed to him. And Mr O not receiving a copy until afterwards doesn't mean the policy wasn't initially disclosed to him.

It also appears S went beyond what it had to under the terms by offering Mr O the chance to change his current order to different sofas – such as the electric, reclining sofas he wanted – and pay the difference. In these circumstances, I don't think a chargeback under this alternative reason code would have likely been successful either.

As I don't think raising a chargeback had any reasonable prospects of success, I find that Tesco Bank acted fairly when it discontinued the chargeback process.

### Section 75 Consumer Credit Act (CCA)

I've considered what Tesco Bank said about Mr O's prospects under section 75 CCA – and whether its decision to decline the claim was fair in the circumstances.

Under section 75, Mr O can hold Tesco Bank responsible for a "like claim" he would have against S for breach of contract or misrepresentation.

Certain criteria must be met for section 75 to apply relating to matters such as the cash price of the goods Mr O bought, and the relationship between the parties to the transaction. I'm happy those are met here, so I've gone on to consider whether there's evidence of a breach of contract or misrepresentation.

### Misrepresentation

For a misrepresentation to have occurred, Mr O must show S likely made a false statement of fact that caused him to buy the sofas.

He claims the salesperson said the sofas would be electric with a reclining function, and he wouldn't have purchased them otherwise. However, in an email dated 8 January 2024 that Mr O sent S, he claims something different had happened:

"I was pressured by your...[salesperson] into making a deposit for a static leather sofa instead of the displayed electric sofa we discussed, and my wife not happy about purchase."

So it's not clear if Mr O knew he was buying static sofas, but is unhappy because he was pressured into buying them, or that he didn't know he was buying static sofas because he feels the salesperson misrepresented what he was buying.

A pressured sale that doesn't involve a false statement of fact would not constitute a misrepresentation. But even if I accept Mr O's claim he didn't know he was buying static sofas, and the salesperson represented the sofas as electric with a reclining function, I don't think there's sufficient evidence to show there's been a misrepresentation. I'll explain.

Mr O complained about the sale shortly after making the purchase, so I accept he's likely to recall the events more clearly than if he had waited. He's also explained his difficulty reading the order form when signing it, and trusted the salesperson to note his order accurately.

I accept his version of events could have happened. But S disputes it, and I must consider if it's at least equally likely the conversation didn't involve S making a misrepresentation. I think that's the case because there are a number of other plausible explanations for what happened – for example, Mr O might have misheard or misunderstood what the salesperson said, or some other miscommunication occurred that didn't involve S saying something false.

I cannot say for certain what was said in the shop. However, I'm not persuaded that the strength of Mr O's account and his actions after the purchase is enough to prove his version of events is more likely. In concluding this, I've taken into account that the signed order form is the only clear evidence for what was probably agreed, and it states in two places the sofas were going to be static and not electric.

I appreciate Mr O doesn't think his carbon copy of the order form is clear and that S ought to have sent him the original white copy. I cannot tell if Mr O should have received the original copy, as I'm unaware of S' policy on this. But I don't think it's material because the key issue for a section 75 claim is whether there's been a misrepresentation or breach of contract, and not whether S handed over the wrong copy of the order form. I also think the carbon copy is clear enough to determine what was ordered and that it's unlikely the white copy would have said anything materially different.

I've also considered that in usual circumstances, a salesperson is likely to record on the order form the same items the parties verbally agreed to, and a customer usually won't sign it unless they also agree with what's written down. For me to decide something different happened, I would need to see more in support of any alternative explanation.

While I've considered Mr O's full explanation for his actions, it doesn't persuade me that S likely described the sofas differently from what was written on the form. And so I don't find it likely that S made any misrepresentation.

### Breach of contract

Under section 75, Tesco Bank is responsible for any breach of contract by S. This includes breaches of explicit terms of the contract, or terms implied into the contract by law.

Tesco Bank considered if the Consumer Rights Act 2015 (CRA) implied terms into the contract that could support Mr O's claim. It concluded they didn't. I've reviewed the CRA myself, and although I think there are some implied terms that could have been explored further, I don't think doing so would have made any material difference to the outcome.

The CRA does imply a term into the contract that goods must match their description. It also implies a term that the goods must match a model seen or examined before a consumer enters into the contract – unless the differences between the model and what's being bought is brought to the consumer's attention before they enter into the contract.

To show a breach of these implied terms, Mr O would need to prove the sofas were misdescribed or that any differences between the model and what he was buying wasn't highlighted to him. I've already decided there isn't enough evidence to show the goods were misdescribed. I can also see the sofa's customizable options are detailed on the order form, so I think the differences complained about were sufficiently highlighted there and were likely also discussed before Mr O signed for the sofas. Without sufficient evidence to show otherwise, I don't think there's been any breach of these implied terms.

For some contracts, consumers have a right to cancel within 14 days of receiving the goods they ordered under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. If a supplier refuses a refund after a valid cancellation, this could amount to a breach of contract, for which the finance provider might be responsible under section 75. However, this cancellation right doesn't apply to face-to-face sales on business premises, so it isn't relevant here.

The question of whether S could rely on the agreed terms and conditions to refuse Mr O's refund request is disputed. I've therefore focused on what the terms say about this.

The terms and conditions are detailed on the order form. The relevant terms say:

"It is important that you appreciate and understand that your order is a firm and legally binding contract...Your deposit is non returnable and we reserve the right to apply for your agreed further deposit and any balance outstanding from your original payment Card."

The terms go on to state:

"The customer must appreciate that our representatives are only employed to advise on the size and colour of your goods. It is the customer's responsibility to check all the product codes from our Point of Sale schematics, the sizes and colours before signing this form because it is you the customer who makes the final decision. Any amendments to this Order or the terms and conditions of this written contract must be agreed in writing and signed by both parties."

These terms place the responsibility on the customer to check their order is correct, and emphasise that any changes to the order must be agreed in writing. They also highlight that the deposit is non-returnable.

While the printed terms are smaller than the form's other writing and are more difficult to read, they were still included on a single-page order form, so I don't think they were hard to find. The terms and conditions about the deposit being non-returnable is also more prominent because it's highlighted in bold. And to further ensure Mr O knew the order was non-cancellable, he had to sign a care advice sheet and tick a box next to a declaration on it stating "Order is unable to be amended or cancelled".

I don't think the terms describing the deposit as non-returnable are either unclear or unusual. These terms are common in contracts for custom-made or made-to-order goods, as is the case here. And I think they've been made especially prominent given Mr O had to sign the care advice sheet and tick a box showing he understood he couldn't cancel the order.

Given the above circumstances, I don't think the terms were unfair and I don't think Mr O had a contractual right to cancel for a return of his deposit. It follows that that I don't think S refusing to give a refund of the deposit amounts to a breach of contract.

In summary, I don't think there's been a misrepresentation or breach of contract here. So I don't think Tesco Bank acted unfairly in refusing Mr O's claim under section 75 CCA.

## Customer service

Tesco Bank accepts it provided Mr O with poor service, and I agree for similar reasons.

Tesco Bank's chargeback team emailed him on around 5 February 2024 and said it would get in touch within 10 days, but it didn't. And it wasn't until Mr O called to chase his claim on 21 February 2024 that Tesco Bank gave an update. I think this would have caused Mr O some inconvenience, as he had to follow up on the matter himself.

During the 21 February 2024 call, Tesco Bank should not have said the chargeback claim was approved when it had already been declined. As Mr O subsequently bought new furniture a few days later, I think it's likely the misinformation was a factor in his decision over when to buy new furniture.

That said, I'm not minded to say it caused him to buy new furniture. Mr O was interested in new sofas, and had already cancelled his order with S. So I think it's likely he was planning on buying new sofas elsewhere at some point. But I accept Mr O might have bought new sofas at a later date if not for the misinformation, so I think he has been impacted.

Compensation isn't a science, but in deciding what's fair I've considered the guidance on our website and the circumstances here.

I've kept in mind that there's always going to be some element of frustration and time spent when asking for a chargeback claim to be raised. And while Tesco Bank's customer service issues would have been upsetting to Mr O, there will be a significant element of disappointment due to the actions of S, which I cannot fairly attribute to Tesco Bank.

After considering this carefully, I think the £100 in compensation Tesco Bank already paid sufficiently reflects the distress and inconvenience it caused Mr O.

As I also didn't find that Tesco Bank unfairly declined Mr O's claim under either chargeback or section 75 CCA, I'm not recommending Tesco Bank do anything further.

## **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 3 March 2025.

Alex Watts  
**Ombudsman**