

## The complaint

Mr P complains about the way Tesco Personal Finance PLC trading as Tesco Bank ('TB') handled a claim he made to it.

## What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr P is unhappy with three double glazed windows he bought from a glazing company ('the supplier'). Mr P paid it the deposit of £966.50 (including a survey fee of £199) using his TB credit card. In summary, he says the fitted windows are of poor quality and the supplier was not able to remedy matters because it went into administration.

Mr P approached TB for help getting his deposit back. It said Mr P had contacted it too late to raise a chargeback. And that he didn't have a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') because he didn't appear on the contractual paperwork with the supplier.

A complaint about the claim was escalated to this service and our investigator upheld it.

TB disagrees with the outcome so the matter has been passed to me for a final decision.

I issued a provisional decision which said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.*

*I understand Mr P has been in very poor health and as a result his wife is representing him in this dispute. I wish Mr P well and note that references to him will also, where relevant, be taken to include those actions taken by his wife on his behalf.*

*I am sorry to hear about Mr P's issues with the windows and fitting. However, it is worth noting here that TB is not the supplier of the goods and services. So when looking at what is fair I consider its role as a provider of financial services only – and what it could have done to help with the information that was reasonably available to it at the time. As Mr P used a credit card to pay for the windows in dispute I consider the protections of chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75') to be particularly relevant here.*

## Chargeback

*I am upholding this case on the basis of Section 75 so don't consider it necessary to dwell on chargeback.*

*However, in brief I do agree with TB that Mr P was too late to raise a chargeback for defective goods/services. Generally there are 120 days to raise a dispute relating to defective goods/services from the date of the transaction or when the goods/services are delivered.*

*Mr P appears to have made the payment to the supplier in January 2023, and the windows were fitted in June 2023 but he contacted TB in November 2023 to raise a dispute. So here TB was clearly out of time to raise one. So I don't think it could have done more in this regard.*

## **Section 75**

*Section 75 in certain circumstances allows Mr P to hold TB liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.*

*There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or the way payment was made. After considering these factors I think the requirements are in place for Mr P to have a valid Section 75 claim against TB.*

*TB has said it doesn't consider there to be the correct 'debtor-creditor-supplier' agreement for Mr P to have a valid claim against it. Effectively it points out that the paperwork for the windows shows Mr P's wife's name rather than his. Meaning he doesn't have the required contractual agreement with the supplier to have a Section 75 claim against TB for its actions.*

*However, I disagree with TB here. An assessment of whether Mr P has a contractual agreement with the supplier is fact specific. And while Mr P does not appear on the paperwork this is not the only measure of whether someone is contracting. Here Mr P has explained that he should have appeared on the paperwork but due to his serious health condition his wife was managing his affairs and leading the conversation with the window supplier. This would credibly explain why Mr P did not appear on/sign the paperwork, rather than a strong indication that he was not a party to the contract. I think it quite unlikely that Mr P's wife had not made the supplier aware of such a situation – or that Mr P had no involvement in the initial sales conversations or decision making with the supplier about the windows.*

*I also note here that underlining the likelihood of Mr P being considered a party to the contract is that the purchase is not for an individual item for one person but home improvements for a property which Mr P co-habits with his wife. It indicates that this purchase was unlikely to have been agreed without Mr P's involvement.*

*Overall, I think here there is sufficient evidence to show that Mr P and his wife were contracting with the supplier based on their joint household affairs. So I don't consider that the Section 75 claim fails for lack of a relevant 'debtor-creditor-supplier' agreement in respect of Mr P.*

*So I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation which would reasonably have been available to TB at the time it considered the claim. And if so, what TB should fairly do now to put things right.*

*The Consumer Rights Act 2015 ('CRA') is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom*

*from minor defects, safety, and durability can be aspects of the quality of goods.*

*The CRA also says that services should be performed with reasonable 'care and skill' which isn't defined in law but is taken to be the reasonable level of care and skill expected in a particular industry.*

*It has come to my attention that Mr P did initially participate in a dispute resolution process via a separate expert window scheme. However, he has explained that this process was ceased without any detailed investigation, inspection or the publication of any ruling. And there appears to be no expert report otherwise assessing the extent of the issues with the windows, the causes or the extent of any remedial action required to fix these.*

*Because of the lack of an expert report it makes it more difficult to assess any claim about a specialist product like windows in respect of satisfactory quality and reasonable care and skill.*

*However, although there is no expert report to draw from I am satisfied that certain evidence available to TB would have shown the goods and/or services likely did not comply with the provisions in the CRA. Namely:*

- Mr P's photos of the windows – showing what appear to be mainly cosmetic defects and poor finishing (including some distortion of the frames); and*
- the supplier's agreement in writing to swap out all three windows for new ones (something it never ended up doing as it went into administration).*

*So overall, I am comfortable that there is a breach of contract that needs to be remedied here. For me the key question is how that should be remedied.*

*When services are not performed with reasonable care and skill – a usual remedy specified in the CRA is repeat performance. And when goods are not of satisfactory quality a repair or replacement can be an option. However, as the supplier is in administration these are likely not practical remedies now.*

*I think there are two possible remedies here:*

- Mr P keeps the windows and receives a price reduction; or*
- Mr P decides to replace the windows and receives a refund (and compensation for inconvenience) once this is confirmed.*

*Option 1 – Mr P keeps the windows*

*I note the following points:*

- The full price agreed for the windows with the supplier was £3,070 – Mr P to my knowledge has only paid £767.50 of this to date and an additional £199 survey fee;*
- Mr P has not had the windows replaced to date.*

*A price reduction can be a fair remedy for goods or services which did not go to plan. However, telling TB to repay Mr P the deposit and survey fee would effectively be granting a full refund. And at this stage I don't think that is fair. While I don't doubt that the look of the windows is not ideal – the windows to my knowledge are not of such an unusable condition that would justify a total refund.*

*And while I acknowledge that there are questions over the lack of an ongoing warranty and maintenance and possible other related costs– the amount paid to date versus the amount*

*agreed still represents a sizeable discount on the windows to compensate for this.*

*So one option is that TB do not pay Mr P anything and Mr P chooses to keep the windows and accept the substantial price reduction which he has already received. He may use the additional funds towards refurbishing the existing windows if he wishes.*

#### *Option 2 – Replacement of windows*

*For Mr P to get a full refund he needs to show he has committed to a replacement. I think that is only fair.*

*Therefore, Mr P will have 12 months to have replacement windows fitted from the date of my decision. He will produce to TB:*

- a contractual agreement for fitting said replacements with a fit date within 12 months of my decision; and*
- an invoice to show a deposit has been paid.*

*On provision of this TB will pay Mr P the £966.50. It will also need to add 8% simple yearly interest to this amount from the date Mr P paid the new deposit to the date of settlement.*

*I have considered if it is reasonable that Mr P pay for a deposit for new windows before receiving TB's payment but I note that he did not pay over £2,000 of the balance for the windows owed to the original supplier. And presumably he would need available funds to pay the balance for any new windows. So I don't think it is unreasonable making this a requirement of the arrangement here.*

*When considering damages for breach of contract via Section 75 I consider what a court might award and it is generally established that a court will not make awards for distress and inconvenience as a matter of course when it comes to breach of contract. This sort of award is more likely to occur where the contract is for something specifically meant to give enjoyment – like a holiday or a wedding. And even where a court is minded to make such an award – these will usually be modest.*

*In the case of building work/home improvements – it is generally expected that there will be a level of disruption and inconvenience that comes with such a contract. However, where the level of disruption is so great as to cause physical discomfort then a court might make a modest award to reflect the distress and inconvenience that has occurred.*

*I think that having three windows fitted all over again will cause additional disruption to Mr P. I also think the disruption to Mr P is likely to be physically uncomfortable due to his serious health condition. So it seems fair that in the event of the windows being replaced TB will pay out further compensation.*

*It isn't clear what a court might award in such a situation, and we won't know exactly the level of disruption Mr P will experience, but based on what has been said and Mr P's condition I think that an additional payment of £400 compensation is not unreasonable to reflect the likely distress and inconvenience caused by having to replace the windows.*

*In the interest of completeness I am aware that Mr P has also made part of his claim about what he says is a wasted £90 cash payment to the supplier to fit end caps and window boards (and the estimated cost to correct the error). However, there are challenges asking TB to fairly pay for these because:*

- it isn't really clear to me that this work forms part of the original contract for services*

- paid for using Mr P's credit card;
- there is not a lot of detail (such as an expert report) about the nature of the issues with the window boards – how these came about and the likely additional cost to Mr P in any event;
- Mr P has not shown that he incurred these expenses.

So at this point I am not going to direct TB to pay these other claimed amounts in the event of replacement windows. However, I am aware that due to Mr P's condition extra dust sheets were purchased for about £13.50 for the original work. So in the event that the windows are replaced Mr P will likely require these to be purchased again – I think it fair that TB should pay an extra £15 for this.

### **My provisional decision**

*I uphold this complaint against Tesco Personal Finance PLC trading as Tesco Bank as follows -*

*In the event Mr P confirms to TB replacement of the three windows in dispute is due to take place within 12 months of him accepting my decision (by showing TB a signed contract for replacement windows with an install date and confirmation of deposit paid) TB should:*

- Refund Mr P £966.50 and pay him 8% simple yearly interest on said refund calculated from the date he paid the deposit for the replacement windows to the date of settlement;*
- pay him £400 compensation; and*
- pay him £15 for additional dust sheets.*

*If TB considers it should deduct tax from my interest award it should provide Mr P with a certificate of tax deduction.*

Mr P responded to say (in summary):

1. If he replaces the windows then due to the passage of time he will be disadvantaged as the cost of doing this has increased and could go up more.
2. He would still like to recover the cost of the window boards and the cost of overboarding and end caps. And if £15 is being paid for additional dust sheets (which he didn't pay for) then why can he not recover costs for over boarding and end caps which he also didn't pay for?
3. He was present when the supplier's salesman visited and when the paperwork was signed and deposit paid and would testify that he was contracting with the supplier based on joint household affairs.

TB responded to say (in summary):

1. It would be reasonable for TB to be allowed to commission an independent report to ascertain what remedial work needs to be carried out, or if in fact the windows need to be replaced. As part of a Section 75 claim where 'DCS' is confirmed it would look to obtain an independent report to allow it to fairly consider the options available.
2. It considers £400 compensation is excessive given that it has operated on the basis that there is no 'DCS' by definition, and this is not the 'standard remedial action' for these types of claims.

### **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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below.

I will deal with Mr P's key points in accordance with the numbering above:

1. I acknowledge Mr P's point regarding the cost of replacement windows. However, I do not think it is fair to make an award in respect of this. I think there are many variables impacting price – and it isn't certain that it is not possible to spend the same on like for like windows when Mr P chooses to replace them. However, even if I were mistaken on that, although I think in the circumstances it fair that Mr P has the option to replace the windows if he wants, I also note he also has the option of keeping the windows at a substantial price reduction and having some refurbishment conducted. Currently, there is no persuasive expert inspection or otherwise that shows this is not a viable and potentially more cost effective remedy for Mr P to choose in mitigation of his loss. I also note that Mr P has had possession of the balance payment for the windows and (despite the cosmetic defects) use of windows during this dispute. So in the round I think it would be disproportionate to direct TB to pay a refund of the deposit and an additional sum on top of this for any brand new replacements.
2. Mr P has described how the situation with the need for replacement window boards/overboarding and end caps came about including the cash payment of £90. And why it isn't detailed in the contract. However, the key points in my provisional decision still stand in respect of these things, namely:
  - a. it isn't really clear to me that this work forms part of the original contract for services paid for using Mr P's credit card (and to add further clarity to this point – TB is not liable via Section 75 for separate agreements not funded by its credit card);
  - b. there is not a lot of detail (such as an expert report) about the nature of the issues with the window boards – how these came about and the likely additional cost to Mr P in any event;
  - c. Mr P has not shown that he incurred these expenses.

I also think these points stand regardless of what Mr P says the supplier agreed to do before it went into administration.

I note (presumably in reference to point 'c') Mr P has pointed out that he did not pay for the dust sheets – so why then can he not recover these other costs if I am directing TB to pay for dust sheets. I thank Mr P for drawing my attention to who paid for the dust sheets. I need to point out that it would only be fair for TB to pay for the dust sheets if Mr P can show TB he is out of pocket for the original purchase (such as the original payment being made from a joint bank account or him reimbursing the payer). However, even if Mr P were able to do the same in respect of the other things including the end caps and overboarding, it doesn't follow that he should be reimbursed for these. I say this because my points a + b (above) still stand as to why it would not be fair to reimburse these costs in any event.

3. I thank Mr P for clarifying his position in respect of the contractual agreement. This gives me further confidence that the correct 'debtor-creditor-supplier' agreement is in place for him to have a Section 75 claim against TB for the actions of the supplier in respect of the contract funded by the credit card.

My role here is to resolve disputes with the minimum of formality. I am aware my redress may not be exactly what Mr P would like, but I consider it to be broadly fair in the circumstances here and noting the lack of expert information to say otherwise. Mr P is free to disagree and reject my decision if he wishes, and explore more formal routes he might have to pursue his dispute against TB.

I will deal with TB's key points in accordance with the numbering above:

1. What I am looking at here is TB's response to the claim Mr P made to it. And here I have concluded that TB did not come to the correct outcome on the 'debtor-creditor-supplier' agreement. As a result I have looked at what it fairly should have done. I don't think it fair now that the matter is passed back to TB for it to investigate further and seek a report – when TB already had the opportunity to do this when it originally handled the claim.
2. I am unsure why TB has said the £400 compensation is excessive in reference to how TB has operated in respect of the 'debtor-creditor-supplier' agreement. To be clear my award is not directly a result of TB's approach to this. The compensation is in respect of what I think a court might award for the 'like claim' which Mr P also has against TB. I also note TB has said this is not the 'standard remedial action' for these types of claims. I am not sure what it means by this exactly as it has not elaborated. However, I have gone to some lengths in my provisional decision to acknowledge that this type of award is not usual – and why in the particular circumstances here I consider it to be fair (if Mr P goes ahead with the window replacement).

### **Putting things right**

TB should put things right as I have set out below.

### **My final decision**

I uphold this complaint against Tesco Personal Finance PLC trading as Tesco Bank as follows -

In the event Mr P confirms to TB replacement of the three windows in dispute is due to take place within 12 months of him accepting my decision (by showing TB a signed contract for replacement windows with an install date and confirmation of deposit paid) TB should:

- Refund Mr P £966.50 and pay him 8% simple yearly interest on said refund calculated from the date he paid the deposit for the replacement windows to the date of settlement;
- pay him £400 compensation; and
- pay him £15 for additional dust sheets (as long as he can show TB he is out of pocket for the original purchase as I have specified above).

If TB considers it should deduct tax from my interest award it should provide Mr P with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 November 2024.

Mark Lancod  
**Ombudsman**