

The complaint

Mrs S complains Tesco Personal Finance Limited (trading as Tesco Bank) unfairly declined her claim under section 75 Consumer Credit Act 1974 (CCA) relating to the installation of a water sewage treatment plant at her home.

What happened

On around 5 April 2024, Mrs S paid approximately £5,350 up front with her Tesco Bank credit card to a company that provides sewage and drain services (which I'll call D), to install a water sewage treatment plant at her home address.

Mrs S was unhappy with the installation for a variety of reasons, including:

- The installation took a lot longer than the estimated three days to carry out, due to a variety of issues that arose over many weeks.
- D supplied the wrong treatment tank. It was oversized with a gravity outlet unsuitable for the tank's location – the tank should have had a “pumped” outlet.
- The non-functioning gravity outlet meant an additional pump system had to be installed to compensate – which was too big, too powerful and noisy.
- The pump system's electricals had also been wired incorrectly, weren't properly weather-proofed, and parts of the system didn't work. An alarm system warning against any pump or power failure was also missing and the system didn't comply with electrical certification requirements.
- The sewage treatment plant was installed in an illogical location – far from any power source and misaligned with the waste pipes, compromising the system's efficiency and breaching building regulations.
- The ground around the system wasn't filled in properly. Instead of correctly using concrete, sand and ballast were used, causing the pipes and tank to move.
- The old septic tank hadn't been backfilled properly and is still visible.
- While carrying out the works, consequential damage was caused to the property, including to some recently planted trees and a gate.

The above list of issues is not exhaustive. Mrs S had also commissioned two independent reports to validate the problems she identified – with one report saying it would cost more than £10,000 to fix everything.

Tesco Bank raised a chargeback on Mrs S' behalf for the amount she paid D. Mrs S confirmed the chargeback was successful, but said the refund didn't cover the financial cost for putting things right – which she said was more than double the refund she received.

She raised a section 75 CCA claim with Tesco Bank to cover her remaining loss – presumably based on there being a breach of contract. However, Tesco Bank declined her claim because it didn't think she met the requirements for section 75 CCA to apply.

In short, it said that because she didn't have a contract with D (her husband did), it wasn't liable under section 75 CCA. Our investigator also looked into Mrs S' concerns, but agreed with Tesco Bank's position for broadly the same reasons.

Mrs S disagreed. She said that because she jointly contracted with her husband (who I'll call "Mr S"), she feels she can make a valid section 75 CCA claim – so the complaint's 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.

Mrs S isn't complaining about the chargeback. I understand she was refunded the full amount she paid D – the maximum amount recoverable under the chargeback process. In the circumstances, I don't feel I need to say anything more about the chargeback.

The main issue for me to consider here is whether Tesco Bank acted fairly when it concluded Mrs S could not make a valid section 75 CCA claim.

Section 75 of the Consumer Credit Act 1974 – relevant criteria

Under section 75 CCA, Mrs S can hold Tesco Bank responsible for a "like claim" she would have against D for a breach of contract or misrepresentation. Certain criteria must be met for section 75 CCA to apply, which are set out in law. One of these is for there to be a valid "debtor-creditor-supplier" or "DCS" agreement.

I think it's helpful to first set out the relevant legal provisions in the CCA for determining whether there's a valid DCS agreement in Mrs S' circumstances.

Section 75(1) CCA states:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

Section 12(b) CCA states that a debtor-creditor-supplier ("DCS") agreement is a regulated consumer credit agreement being:

"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier."

An agreement is a section 11(1)(b) restricted-use credit agreement if it's a regulated CCA agreement used "to finance a transaction between the debtor and a person (the "supplier") other than the creditor."

The significance of these provisions is that they illustrate Mrs S cannot hold Tesco Bank liable under section 75 CCA unless there's an agreement that financed a transaction between the debtor (Mrs S) and the supplier (D). If the credit Tesco Bank provided Mrs S instead financed a transaction between Mr S and D, then Mrs S cannot hold Tesco Bank liable under section 75 CCA. The relevant transaction here is the contract for the supply and installation of a sewage treatment plant.

Put simply, Mrs S doesn't have a valid claim unless she also has a contract with D. She thinks she does have a contract, but Tesco Bank and our investigator disagree.

The contracting parties

The strongest evidence for who the contracting parties are is usually found in a written contract naming the relevant parties. But as Mrs S pointed out, the relevant paperwork here (the pro-forma requesting payment) lists their address but doesn't name either Mr S or Mrs S as contracting parties.

It's clear D, given it carried out the works, had intended and agreed to contract with someone living at the address. But the pro forma alone doesn't identify if D contracted with Mrs S, Mr S, or both parties jointly. So I think who D contracted with can only reasonably be derived contextually based on how the pre-contract negotiations were likely conducted.

Mr S told our investigator that because Mrs S has no understanding of construction work, and he does, it was he who asked D for the original estimate. All the subsequent correspondence I've seen appears to be conducted largely by email and is between Mr S and D. This includes Mr S' initial request for an estimate, pre-contract negotiations over what will be supplied and when, and D's agreement to send Mr S the pro forma for the works.

These negotiations took place between around 27 March 2024 and 5 April 2024 – the date the pro forma was sent to Mr S and the date Mrs S made her credit card payment. A further payment for the works was due on completion, but I understand this was never made.

Further, the emails from D solely names Mr S and are always addressed to Mr S' email address – Mrs S isn't mentioned during the pre-contract negotiations (only later). And I haven't seen anything that suggests D was aware of Mrs S as a potential contracting party, until the point she made a payment by credit card. So as a starting point, based on the pre-contract negotiations, I think it's likely the contract was between D and Mr S alone.

I've considered whether Mrs S paying by credit card means she's a party to the contract. There are a couple possibilities here. Mrs S' credit card payment might have concluded a contract agreed between D and Mr S only. Alternatively, as Mrs S contends, her payment, with a credit card registered to her home address, means she was added as a party to the contract. The key issue for me to consider is which situation is more likely here.

I accept there are some situations where a party who isn't named on a contract might still be considered a party to the contract. It's clear Mrs S does derive a benefit from the sewage treatment plant as a person living at the address. And as someone whose financial affairs might be intertwined with her husband's, it's plausible that if they had jointly negotiated the supply contract with D, it could be implied that all parties (including D) understood Mr S and Mrs S were jointly contracting, regardless of whose name appeared on the paperwork.

However, while it's understandable that spouses often share financial responsibilities, that doesn't by itself mean a supplier has contracted with both individuals. There still needs to be evidence the supplier intended to deal with each of them as a contracting party. On balance of probabilities, I don't think that's the case here.

For the reasons I've already stated, the pre-contract negotiations, which I can see had gone on for a period of around nine days, appear to be between Mr S and D. Mrs S doesn't appear to be involved, and from what I've seen – it appears Mrs S likely had no desire to be involved due to a lack of understanding of construction work.

I cannot see how I can reasonably conclude, on balance, that Mrs S was involved in the negotiations to the extent she's impliedly a contracting party. Not when it appears she wasn't involved either at the start or at the point D made an offer by sending a pro forma to Mr S on 5 April 2024. It's clear to me D could not have intended to form contractual arrangements with Mrs S when it compiled and sent its pro forma to Mr S, as it could not know and had no reason to believe Mrs S was involved. And I don't think Mrs S making a credit card payment afterwards has the effect of unilaterally inserting herself into the contract.

I don't think Mrs S has a contract with D. It follows that I don't think Tesco Bank acted unfairly when it declined Mrs S' section 75 claim.

Mrs S' recent objections

I say all this while keeping in mind the additional comments Mrs S sent the Financial Ombudsman Service following our investigator's assessment. I have thought carefully about everything she said, but I wasn't persuaded by her arguments.

Mrs S said that because she was living at the property, would benefit from the works, and had a clear interest in the works being completed properly, it would imply she's a contracting party. As explained above, I don't think a supplier having knowledge that a household's occupants would benefit from the works, even if one of those occupants' financial affairs are intertwined with the person the supplier is contracting with, necessarily implies the supplier has agreed to contract with that occupant or any of the other ones. Mrs S' circumstances do make it possible that she might be a contracting party, even if she's not named on any paperwork, but I don't think it follows that it's probable that she was.

Mrs S also said that D must have thought she was a contracting party because Mr S mentioned her in some emails he had sent to D. Specifically, Mrs S referred to Mr S' email to D dated 15 April 2024 that mentioned how upset she had been about the installation.

I don't think the email has much relevance here as it was sent after the contract was concluded. If the content of that (or other) emails alluded to Mrs S somehow being involved in the initial pre-contract negotiations, that might add some weight to her being a contractor. But they don't. The relevant emails highlight Mrs S was distressed about the problems, and not that she was upset something she had agreed with D herself wasn't carried out properly.

Mrs S also referred to a previous decision written by our service, in support of her request for me to make a finding that, on balance of probabilities, that she was probably a contracting party. I've carefully read the entirety of that decision, but I don't find that it provides much assistance. That decision deals with different circumstances involving a dispute over the existence of a contract for a purchased item, rather than who was party to the contract. The ombudsman felt, on balance of probabilities, a contract existed.

I agree the key issue for me to consider is whether, on balance of probabilities, Mrs S is a party to the supply contract. But for the reasons I've already given, I think that was unlikely.

In summary, I'm not persuaded Mrs S has a contract with D. That means I think Tesco Bank was acting fairly when it declined her section 75 claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 28 April 2025.

Alex Watts
Ombudsman