

## The complaint

Mrs C complains about how Tesco Personal Finance PLC trading as Tesco Bank ("Tesco") handled a claim she made in relation to a transaction on her credit card.

Mrs C is being represented in the complaint by her husband. However, for clarity, I've only referred to Mrs C throughout this decision.

## What happened

Mrs C purchased a hot tub in July 2023, from a company I'll refer to as "S", through her Tesco credit card. The cost of the hot tub was £5,698.

Upon delivery in August 2023, Mrs C said she rejected the hot tub as S didn't bring all the items for the hot tub. Mrs C said S agreed to provide a full refund, but it didn't do this. So, she complained to Tesco in September 2023.

Mrs C said she wanted Tesco to raise a chargeback, that the delivery was aborted because S had arrived with missing parts and that S had refused to connect the hot tub to a previously agreed electrical port. Mrs C said she rejected the goods and didn't sign to accept the purchase. She said S agreed a refund but hadn't refunded the funds to her within 30 days.

A chargeback was initiated by Tesco and the money was refunded to Mrs C's account. In December 2023, Tesco told Mrs C that S had challenged the chargeback. As, the chargeback was unsuccessful, the money was re-debited from Mrs C's account. Tesco also reviewed the claim under section 75 of the Consumer Credit Act 1974 ("s75"). It also told Mrs C that the supplier was willing to refund the cost of the hot tub once it had collected it from Mrs C. And following this, it said it would refund any difference that S had deducted.

Tesco issued its response to Mrs C's complaint in May 2024 and said it shouldn't have processed a chargeback, as this caused a significant delay and impacted the chargeback claim being successful. It said it could only process a not as a described chargeback claim if S was unwilling to resolve the dispute. It said it couldn't process any other chargeback as the rules didn't allow it to in these circumstances. It credited £150 in compensation to Mrs C's account for processing an invalid chargeback.

Mrs C responded and said that Tesco should be pursuing a chargeback because goods and services weren't provided and the purchase wasn't completed. She said it shouldn't be a condition of the refund that S would be allowed to inspect the goods. She also said that Tesco had re-debited her account in June 2024 for the cost of the hot tub. And she said that Tesco had set aside a payment of £3,698 to S, in the event there was a difference in the amount Mrs C paid and the amount S deducted. However, Mrs C said this amount should be paid directly to her and she would accept this as compensation instead.

Unhappy, Mrs C referred a complaint to this service. She reiterated her complaint and said that Tesco had raised a chargeback incorrectly as it used the wrong reason code. She said Tesco told S mistakenly that it could keep the funds. And she said Tesco told her it would fraudulently remove funds from her account for the cost of the hot tub in June 2024.

Our investigator looked into the complaint but didn't think Tesco had acted unfairly. She said S challenged the chargeback attempt and although Tesco progressed the case to arbitration stage, MasterCard denied the claim and said S's offer to refund the amount paid by Mrs C

following an inspection of the hot tub was fair. She said a chargeback attempt under credit not processed or goods/ services not received wouldn't have been successful as the goods were provided to Mrs C. She said she didn't think Tesco should have raised a chargeback and this led to a delay as the s75 claim wasn't resumed until April 2024. She also said she was satisfied that S breached its contract as it didn't provide the steps it had agreed to provide. Our investigator said the remedy offered by S, which was initially to inspect the goods and then pay a refund and then later to inspect the hot tub but refund the payment before it removed it, was fair. She also said the offer to pay Mrs C £300 for the service it provided was fair and reasonable.

Mrs C disagreed. She reiterated her complaint and said that whilst Tesco had agreed to make up any of the deductions made by S, it refused fair compensation for the pain and suffering caused to her as she was unable to use the hot tub as a medical aid.

As Mrs C remains in disagreement, the case has been passed to me to decide.

### **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've read and considered the whole file and acknowledge that Mrs C has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

Generally, where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute in two ways – chargeback and s75.

What I need to decide in this case is whether Tesco correctly raised a chargeback, whether Tesco fairly handled Mrs C's claim under s75 and whether it acted unfairly in any other way. If I think it has acted unfairly, I'll need to decide what's fair, if anything, to put things right.

#### ***Chargeback***

A card issuer can attempt a chargeback in certain circumstances when a cardholder has a dispute with a merchant – for example where goods never arrived or where goods are faulty and not as described. Before a chargeback can be initiated by a card issuer, like Tesco, it's generally expected that the cardholder has attempted to resolve matters with the merchant first.

Chargebacks aren't decided on the merits of the dispute between the cardholder and merchant, but rather they're decided on the relevant card scheme's rules. Chargeback isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. The guidelines are set by MasterCard and Tesco have no power to change them.

Mrs C says she rejected the goods because S didn't have all the agreed items. She also said S had agreed to a refund and to collect the goods, but it hadn't done this.

When there is a dispute about goods not being as described, generally the rules of the MasterCard chargeback scheme require the cardholder to return the goods to the merchant. But the rules do allow for circumstances where the cardholder has attempted to return the goods to the merchant, but has been unable to.

In this case, Tesco raised a chargeback claim under the reason code "*not as described*". However, S challenged the claim and said it would be willing to make a refund to Mrs C once the hot tub was back with it and it had carried out an inspection. Tesco challenged this through the chargeback arbitration process. However, S also challenged the arbitration. It

said that it had tried to collect the hot tub for inspection, but Mrs C wanted a full refund prior to the inspection taking place. It said it was happy to issue a full refund upon inspection of the hot tub.

In this case, the case went to arbitration. This is a process where a card issuer asks the card scheme to decide the outcome of the claim. The chargeback was challenged and the challenge was accepted. This wasn't a decision made by Tesco, instead it was a decision made by the chargeback scheme. So, I don't think Tesco acted unfairly here, as once the claim failed under arbitration, it couldn't do anything further.

Having said this, I have also considered whether Tesco acted incorrectly when it raised the chargeback under goods not as described. I've considered whether it should have raised the chargeback under the reason code for goods or services not received or credit not processed.

Having reviewed the chargeback rule for goods or services not provided, the rule states that the rule can be used when the purchased goods or services were not received. In this case, the hot tub was delivered to Mrs C's house and so, the goods were received by Mrs C. I appreciate Mrs C has said she rejected the hot tub when it was delivered to her and so, she didn't receive the goods. She has referenced the Consumer Rights Act 2015. However, this isn't implied into the chargeback scheme rules, as the rules are set out by the scheme providers and, in any event, the scheme rules are separate to any contract of sale between Mrs C and S. So, I don't think it would have been appropriate for Tesco to initiate a chargeback claim under goods or services not provided.

I've also reviewed the chargeback rule for credit not processed. This chargeback code is suitable for instances where a claim is made that the merchant agreed to provide a refund and failed to process that refund. Proof of an agreed refund from the supplier must be provided. Where this isn't provided, which was what happened in this case, if there is a refund policy in place which is disclosed to the cardholder, this must be followed. I've reviewed a copy of S's refund policy which states that a customer has 14 days to cancel an order. However it also says that a refund for faulty items, will be made within 14 days of having received the returned product.

So, I don't think this chargeback code would have been appropriate, as S's refund terms and conditions say that a refund would be provided after 14 days of receiving the items back. S hasn't had the hot tub back yet, so I don't think it is likely that a chargeback claim for credit not processed would have succeeded given Mrs C still has the goods. I appreciate Mrs C says she only has the goods because S didn't collect them, however, this isn't an allowance made by this chargeback rule.

Overall, I think Tesco raised the chargeback correctly with the most appropriate reason code at the time Mrs C made the chargeback claim. As I don't think Tesco acted unfairly here, I've gone on to consider whether Tesco fairly handled Mrs C's claim under s75.

## S75

In order for there to be a valid claim under s75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Mrs C made the purchase on her credit card which was supplied by Tesco. I can see the invoice from S is in Mrs C's name. Tesco have shown the credit card transaction was in Mrs C's name to S. So, I'm satisfied a valid DCS agreement exists here.

I've then considered the financial limits that apply to a valid s75 claim. Mrs C needed to have purchased a single item with a cash price of over £100, but no more than £30,000. I can see

from the invoice that the amount is within the financial limits. So, it follows this that I'm satisfied the financial limits have been met for a valid claim concerning the hot tub purchase.

Overall, I'm satisfied Mrs C has a like claim against Tesco, as she does against S. And that S were acting as an agent of Tesco.

Under s75, it can be considered whether there was a breach of contract or misrepresentation that took place. However, in this case, there is no dispute that Mrs C communicated to S that she didn't want the hot tub and that S accepted the rejection of the goods. As S has accepted rejection of the hot tub, I haven't considered whether a breach of contract or a misrepresentation has occurred.

What's left for me to decide is whether the remedy Tesco has suggested is reasonable. I've considered this based on all the evidence provided by Mrs C and Tesco.

I'm satisfied that S did agree to refund Mrs C. This is detailed in S's responses to the chargeback attempts and in an email it sent to Tesco in early November 2023, explaining that it had agreed to refund Mrs C in full for the hot tub, but only if she allowed it to inspect the hot tub first and after it was satisfied it could remove the hot tub safely without any issues. Following this after Tesco looked into the case, it said it would be willing to refund any deductions made by S following its inspection.

I've thought about this carefully and I consider that Tesco's proposal is fair and reasonable in the circumstances.

S offered a refund of the hot tub after it had inspected the goods in November 2023. Its refund policy states:

*"3.3 (a) You will only be entitled to a full refund if you have handled and inspected the products in the same way as we would allow in one of our showrooms. If you use and or inspect the products beyond what we would allow in one of our showrooms, we may make deductions to reflect the reduction or diminution in value to the products. An example of inspection and use which we would not allow in one of our showrooms is where you have filled up the hot tub and used it..."*

*4.4 (a) If you are entitled to refund and have not bought the product with the benefit of finance, we will aim to refund you within 14 working days of having received the returned products if you exercise your right to change your mind during the Cancellation Period (if you are eligible to do so) or in the case of the products being faulty or mis-described if you return it within 30 days of purchase. We will refund any monies due to you via the same method of purchase."*

S wouldn't be aware of whether the hot tub was handled or inspected by Mrs C as it would allow in its showroom, until it received the hot tub back and inspected it.

I don't think it's unreasonable for any supplier to want to inspect goods before agreeing to a refund in full. For example, when goods are returned in the post or instore, there is generally no automatic refund. The refund is provided after the goods are inspected. Similarly, when a rejection of goods takes place, the instruction to the lender is to cancel the agreement, collect the goods and then make any applicable refunds, in that order.

I appreciate that this could have all been avoided if S took the hot tub back the same day it was delivered. Mrs C said the hot tub was abandoned by S on her property. However, S said although it agreed to a refund, it couldn't take the hot tub back the same day it delivered it, as it was too dangerous to take it up the steep slope that day. S agreed that due to human error no appointment was made to collect the hot tub. So given S's testimony, I'm satisfied that S should have arranged to collect the hot tub shortly after it accepted rejection of the hot tub. However, this isn't an error I can hold Tesco liable for.

Mrs C has said the hot tub has been exposed in her garden since August 2023 and that her house is in a coastal area. She also said she was concerned the hot tub may have been damaged when it was delivered or it may become damaged when it is removed and uplifted.

However, Tesco has said it will refund the difference that S may deduct for the value of the hot tub. It has said if S doesn't accept the refund, it will refund Mrs C in full. In either case, Mrs C will receive a full refund. So, I think Tesco has done enough to try and put things right here.

Mrs C says she should have been entitled to a full refund within 14 days of the rejection. However, Mrs C would need to return the hot tub to S. S has already said it will process the refund after they have collected the hot tub and so, it is likely that the refund will be paid within 14 days of it collecting the hot tub.

I also appreciate that Mrs C has said a sale wasn't completed. However, the CRA states under section 5 (1) *"A contract is a sales contract if under it – (a) the trader transfers or agrees to transfer ownership of goods to the consumer, and (b) the consumer pays or agrees to pay the price."* In this case, there is a sales contract as Mrs C contracted with S to supply her with a hot tub and she paid a price in return for it. So, I'm satisfied that the sale was completed.

In any event, taking all of this into consideration, I think Tesco's offer is fair and reasonable and I'm satisfied that Mrs C should receive a refund within 14 days after the hot tub has been returned to S. It follows that I'm not asking Tesco to do anything further in respect of Mrs C's claim under s75 and this means I'm not asking it to make a refund payment to Mrs C before S collects the hot tub.

*Did Tesco act unfairly or unreasonably in any other way?*

Mrs C says that Tesco should pay her as compensation, the amount it has set aside to cover the difference in the amount S may refund Mrs C and the amount it may likely have to pay. This is around £3,698. I understand that Mrs C purchased the hot tub as a medical aid and I'm sorry to hear of her personal circumstances and the impact this hot tub remaining in her garden has had to her life. But I think S made a reasonable offer to put things right in November 2023 and unfortunately, I don't consider that Mrs C has mitigated her loss by suggesting that S should make a refund before it has collected the hot tub from her.

Tesco also re-debited Mrs C's credit card account in June 2024. I don't think it acted unfairly here, as it isn't required to do this when investigating a claim under s75. It generally does this when a chargeback claim is being processed. However, the outcome of the chargeback process was decided by January 2024.

In relation to the chargeback, Tesco said it processed Mrs C's claim as a s75 claim initially and so it reached out to S. It says it shouldn't have done this because this may have impacted the outcome of her chargeback claim as S made an offer to collect the goods and refund Mrs C in full. However, for the reasons I've explained, I don't think there would have been a reasonable prospect of success regardless of whether a chargeback had been processed first or not. Tesco agreed to pay Mrs C £300 in total for its handling of the claim and I think this is fair and reasonable in all the circumstances.

I appreciate Mrs C is likely to be disappointed with my decision. However, I hope she understands my reasons for reaching this conclusion.

### **My final decision**

I do not uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 January 2025.

Sonia Ahmed  
**Ombudsman**