

## The complaint

Miss C complains about the way Tesco Personal Finance PLC ('TB') handled a claim she 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.

Miss C made a claim to TB in respect of a sofa purchased in January 2023 (and received in late April 2023) using her credit card from a retailer ('the supplier'). Miss C says that the couch arrived damaged and without the leather care kit promised.

TB looked at things under Section 75 of the Consumer Credit Act 1974 ('Section 75') but declined the claim. It said that Miss C did not have the required agreement with the supplier for a valid Section 75 claim.

Miss C escalated a complaint about the claim to this service. Our investigator said that Miss C does have a valid Section 75 claim against TB and that it should pay for repairs to the sofa.

TB does not agree so the matter was escalated 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 am sorry to hear about the issue Miss C has with the purchase. TB is not the supplier of furniture. So when looking at what is fair I consider its role as a provider of financial services – and what it reasonably could have done to help with the information that was reasonably available to it at the time. As Miss C used a credit card to pay for the service in dispute I consider the protections of chargeback and Section 75 to be particularly relevant here.*

*I note that our investigator concluded that TB was too late to carry out a chargeback and that it wasn't at fault for this (due to when it got the specific information it needed to raise a chargeback). I don't see it necessary to go into chargeback in detail right now. I say this because I am upholding the case via Section 75 and I don't think that Miss C would have obtained a more favourable outcome through chargeback than the one I am proposing here in any event.*

## Section 75

*Section 75 in certain circumstances allows Miss C 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 Miss C 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 Miss C to have a valid claim against it. Effectively it points out that the paperwork for the sofa shows the name of a third party rather than hers. Meaning she 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 Miss C has a contractual agreement with the supplier is fact specific. And while Miss C does not appear on the paperwork this is not the only measure of whether someone is contracting. Here it appears that the third party is Miss C's partner. And Miss C has explained that:*

- She and her partner had numerous conversations with the supplier about the purchase;*
- the purchase was for their jointly owned home;*
- the only reason her partner's name was on the invoice rather than her own was likely because he made the initial contact to request a brochure.*

*While paperwork can be very persuasive in showing who was contracting in any situation I consider that Miss C has credibly explained why she did not appear on the paperwork here. And I don't think her absence in these circumstances is to fairly be taken as the ultimate indication that she is not a party to the contract.*

*Furthermore, it appears that Miss C has provided persuasive information about her involvement in the purchase, and to show it related directly to her own affairs (including providing evidence to show joint ownership of the property the sofa was for).*

*Overall, I am satisfied that Miss C was contracting with the supplier alongside her partner on the basis of joint affairs. 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.*

*Here I note that TB told Miss C she didn't have a valid Section 75 claim – which I think fairly impacted the evidence and information she provided it. However, had TB allowed and progressed her claim (which I think it fairly should have) I expect Miss C would have sent TB similar information to that which I have based my findings on here.*

*Miss C has sent us credible photos showing the sofa is scuffed and there are rivet pins missing or dislodged. Miss C said it arrived like that and has provided credible information to show that is likely in the form of an email to the supplier on 29 April 2023 which says that she received her sofa that day:*

*'and the side corner has arrived damaged. It looks like it has been scuffed against something'*

*The supplier responds to offer to collect and repair or pay for a local upholsterer to fix things. Miss C says a repair might be easier and quicker – and also says there is 'still the matter of the leather care kit which was purchased and never received'.*

*Miss C says that the supplier didn't respond to this. I can see she sent a chaser email to the supplier saying she tried many channels to get in touch but had heard nothing. TB appears to have looked into this and found the supplier went into liquidation in June 2023.*

*Overall, I am satisfied that the supplier likely breached its contract with Miss C by providing goods that were damaged (not of satisfactory quality) and not providing her with the leather care kit either. The contractual price for the sofa was £1,843.60 including the care kit valued at £9.99 and shipping.*

*Under the CRA a repair can be a reasonable remedy. But Miss C has got a recent quote from an upholsterer to repair the sofa and says she was told it can only be re-upholstered completely. The cost of the quote is over £2,000. This is a disproportionate remedy in the circumstances under the CRA as it exceeds the cost of the goods. So although Miss C is open to a repair I am not going to recommend TB fairly pay for this.*

*If a repair or replacement is not appropriate or possible the CRA gives a consumer a final right to reject with a refund. Or a price reduction. Initially Miss C was happy to accept a price reduction of £600. But that was before she found out the cost to repair the sofa. She says she wants a sofa that isn't damaged, so I propose that Miss C have the option to reject the goods for a refund. In this scenario Miss C agrees to have the sofa collected by TB (which can then dispose of it how it sees fit) and it issues her with a refund by re-working her card at the date it declined her Section 75 claim. Miss C has indicated because of the damage she has not really used the sofa much to date – so in the circumstances I don't think that a deduction from the refund to reflect usage to date would be fair.*

*If on reflection Miss C does not want to do this I think she should have the option of agreeing to keep the sofa and accepting a price reduction to reflect the cosmetic imperfections. Miss C has suggested £600 – which is about 30% of the cost of the sofa. Miss C has also said about the stress caused to her and claims for lost days of work. I want to clarify that generally with breach of contract, claims for distress and inconvenience are limited. I don't think they would be awarded by a court in these circumstances (so it isn't fair to hold TB liable for them via Section 75). Furthermore, I think claims for loss of earnings are too remote as reasonably foreseeable consequential losses here. However, I do note the scuff and broken rivets has likely devalued the item and does not look as Miss C wants – and Miss C did not get the leather kit either. Overall (and this is not a science) I think that £500 is a reasonable amount to reduce the price by if Miss C wants to accept this as a remedy instead.*

### **My provisional decision**

*I uphold this complaint and direct Tesco Personal Finance PLC trading as Tesco Bank to:*

- 1. Arrange to collect the sofa at no cost to Miss C and re-work her credit card account as if it had refunded £1,843.60 to it when it gave her the Section 75 outcome In September 2023 – if this results in a credit balance it should refund this to her with 8% simple yearly interest on this refund from the date of the credit balance to the date of settlement.*

**OR** if Miss C chooses in the alternative:

2. Arrange to pay Miss C £500 as a price reduction with her keeping the sofa.

*If TB chooses to deduct tax from the interest element of my award it should provide Miss C with a certificate of tax deduction.*

The parties responded as follows:

TB said it had no further comments to add.

Miss C said she agreed with the decision and wishes to accept the option of a £500 price reduction.

### **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 my comments below.

### **Putting things right**

Miss C has clarified she wants to accept the price reduction option as it took a long time to choose the sofa and she wants to avoid the hassle of returning it and finding a similar one. She has indicated she will look for a cheaper repair option. So I have directed TB to pay her for the price reduction.

### **My final decision**

I uphold this complaint and direct Tesco Personal Finance PLC trading as Tesco Bank to arrange to pay Miss C £500 as a price reduction with her keeping the sofa.

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

Mark Lancod  
**Ombudsman**