

## The complaint

Mr W complains that a holiday lodge he intended to buy did not comply with the description it had been given. Because he had paid a deposit in part using his credit card issued by Tesco Personal Finance Limited (which I'll call Tesco Bank), he says that it should return that deposit

## What happened

On 1 August 2023 Mr W entered into a contract for the purchase of a new holiday lodge with a company, L. The purchase price was £160,000. Mr W paid a deposit of £16,000, of which £7,000 was paid using his Tesco Bank credit card for payments of £4,000 and £3,000. Mr W would take possession of the holiday lodge and pay the balance of the purchase price on 1 October 2023.

The contract between Mr W and L recorded, amongst other things, that the lodge would be fitted with a TV aerial and outside tap and would be furnished with a double bed, rather than the two single beds which were in it when Mr W had viewed it. The contract also recorded, in a section headed *Holiday Home Details* – “Year: 2023”.

Before he completed the purchase, Mr W identified that the items specified in the contract – the outside tap, TV aerial and change of furniture – had not been completed. And there were other issues with the condition of some parts of the lodge as well. Mr W told L that he would not be paying the balance of the purchase price and would not be taking possession of it. He asked for the return of the deposit, which L refused.

In January 2024 Mr W referred the matter to Tesco Bank, seeking a refund of his deposit under section 75 of the Consumer Credit Act 1974 (“section75”), or under the chargeback scheme, or a combination of the two.

Tesco Bank said that it could not seek a refund under the chargeback scheme because more than 120 days had passed since the card payments had been made. And section 75 did not apply, because the value of the transaction was more than £30,000.

Mr W referred the matter to this service. One of our investigators considered what had happened and, initially, did not recommend that the complaint be upheld – for broadly the same reasons which Tesco Bank had given.

Mr W did not accept the investigator’s recommendation, and so the investigator reviewed the case. Having done so, the investigator concluded that, since Mr W was not due to take delivery of the lodge until 1 October 2023, that was the date from which the relevant time limit for a chargeback claim should be calculated. Accordingly, the claim had been made in time. The investigator went on to conclude that, if Tesco Bank had pursued a chargeback claim, it is likely it would have succeeded. He recommended that Tesco Bank refund Mr W £7,000 – the amount of the deposit he had paid using his Tesco Bank credit card.

Tesco Bank did not accept the investigator’s revised opinion and asked that an ombudsman review the case.

I did that and, because I thought it likely that I would reach a different conclusion from that reached by the investigator, I issued a provisional decision in which I said:

*I shall deal first with Mr W's claim under section 75. One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The relevant legislation says:*

***"75 Liability of creditor for breaches by supplier.***

*(1) 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.*

*...*

*(3) Subsection (1) does not apply to a claim—*

*...*

*(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ... "*

*The price of the lodge in this case was £160,000 – that is, far more than the limit of £30,000 in subsection (3)(b). Mr W says that the credit card payment was part of the deposit of £16,000, which is within the financial limits. In my view, however, the correct analysis here is that the "single item" to which L attached a price was the lodge itself and that price was £160,000. It follows that Tesco Bank's decision to decline the section 75 claim was reasonable.*

*I turn then to chargeback.*

*Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Tesco Bank) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.*

*Chargeback is however primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods have been paid for but not delivered. It can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.*

*There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.*

*Time limits for chargeback claims generally run from the date of the transaction, but, where goods or services are delivered at a later date, they can run from the date of delivery or intended delivery.*

*In this case, Mr W was due to take "delivery" of the lodge – by paying the balance due and acquiring the right to occupy it – on 1 October 2023. I think therefore that it is arguable that*

*this was the date from which the time limit ran and that Tesco Bank made an error in concluding that 1 August 2023 was the relevant date.*

*Mr W did not however take possession, because of his concerns about the lodge. He has provided evidence that the work he had requested had not been completed. He also has confirmation from the manufacturer that his lodge was built in 2022, not 2023 – although I think it is arguable that the reference to the year in the contract is to the model and specification, not the year of construction. The lodge in this case was built in late 2022 to a 2023 specification.*

*In my view, there is persuasive evidence therefore that, had Mr W taken possession, he would have been within his rights to require L to carry out some work on the lodge or otherwise to compensate him for the costs of doing so. What is much less clear, however, is whether Mr W was entitled to walk away from the sale and seek a return of his deposit. That appears to have been his decision; he has not suggested, for example, that L refused to complete the sale.*

*In the circumstances, it seems to me far from clear that a chargeback claim would have been successful. And I do not believe that it would be fair for me to make an award on the basis that it would have been. Indeed, I think it more likely that it would have been successfully defended.*

Mr W did not accept my provisional decision. He provided further evidence and arguments in support of his case that L had misled him and that, at the intended date for completion of the purchase of the lodge, it did not meet the description provided and needed significant work. He said too that he thought it had been used to provide spare parts for other lodges and that he had been wrongly assured that it was brand new.

### **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.

Having done so, however, I am not persuaded that I should my view from that which I set out in my provisional decision.

I remain of the view that the relevant financial conditions in section 75 have not been met. The price of the item which Mr W agreed to buy – the holiday home – was well over £30,000. So, even if Mr W were able to show that he had a claim against L, that would not give rise to a "like claim" against Tesco Bank.

The second issue I must consider is whether Tesco Bank should have sought a refund from L through chargeback and, if it had done so, whether it would have been successful.

Mr L has provided evidence that the holiday lodge was not in the condition it should have been in at the date scheduled for completion. At the very least, there was outstanding work needed on it, including the installation of an outside tap and a television aerial which he had expressly specified. And some internal repairs were needed as well. As I said in my provisional decision, I find much of Mr L's evidence on these points persuasive.

However, the issue I must consider is not whether the lodge was presented to Mr W in the condition it should have been in. Rather, I must consider whether, given the factual background, Tesco Bank should have made a chargeback claim.

Chargeback may be appropriate where, for example, goods are not received because the seller does not send them or otherwise make them available. In this case, however, Mr W did not take possession of the lodge because he chose not to complete the purchase. I can understand why he might have taken that decision, but I have seen nothing to show that he was entitled to do so.

In my view, a chargeback claim based on Mr W's claim that the lodge did not meet its description or needed work to be completed is unlikely to have been successful. It follows that it would not be fair to require Tesco Bank to treat Mr W as if it would have been.

I stress that I have not formed any view on the dispute between Mr W and L. I don't have enough information to do so, and I have not seen L's evidence or arguments. But, even if I accepted everything that Mr W has said about his dealings with L, I still do not believe that a chargeback would have been successful.

### **My final decision**

For these reasons, my final decision is that I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 March 2025.

Mike Ingram

**Ombudsman**