DRN-5599126

The complaint

Mr W has complained that Barclays Bank UK PLC trading as Tesco Bank "Tesco Bank" rejected his claim for money back in relation to a garden pod he bought using credit it provided.

What happened

Mr W bought a dome shaped garden pod (the pod) from a supplier (who I'll refer to as G), in January 2023 for £1,497. The purchase was funded using Mr W's Tesco Bank credit card.

Mr W says he contacted G when he received the pod saying it failed within two weeks of being built. I understand G worked with Mr W and provided replacement parts to help rectify matters. After being unable to resolve matters with G directly, he contacted Tesco Bank in January 2025, to ask for a full refund believing the pod had failed and had been misrepresented to him. Mr W said the pod had been advertised as *highly durable, built to last 10+ years and resistant to diverse weather conditions.*

Tesco Bank considered both a chargeback claim, and a claim under section 75 of the Consumer Credit Act 1974 (s.75).

Tesco Bank declined Mr W's chargeback claim as he had contacted Tesco Bank to request a refund more than 120 days after the product was delivered to him, so he was now out of time under the relevant rules. It also considered his s.75 claim and declined this on the basis that it didn't feel he met the requirements to make a s.75 claim (as it felt there was a break in the debtor – creditor – supplier agreement). Tesco Bank also said that the merchant had informed it that the product was not designed to sustain severe weather conditions and exposure to coastal climates – and Mr W lived in a coastal area. So, it indicated that the damage caused wasn't as a result of inherent product failure but due to it not being used for its intended design – and suggested Mr W contact his home insurer for help.

Unhappy, Mr W referred the matter to our service. He said that the product was represented as being able to withstand a diverse range of weather conditions. He provided pictures of how the pod failed as well as reviews from other customers asserting the pod couldn't withstand typical weather conditions. He added that G had offered him £300 as a gesture of goodwill and sent him replacement parts to make the pod stronger – which indicates an admission of fault. He also said he raised his claim within a reasonable timeframe once he realised he couldn't fix the pod with support from G and the replacement parts it sent.

Mr W's complaint was considered by one of our investigators. He didn't think Tesco Bank needed to do any more in relation to Mr W's chargeback claim. He also felt there was insufficient evidence to show what caused the pod to fail and normally he'd expect to see a report from an independent expert that supported Mr W's claim that the pod was faulty or not represented accurately.

Mr W responded that he'd provided evidence in the form of pictures and reviews from other customers. That it wasn't fair to ask him for an independent report almost two years after it failed. He added that he had a medical condition that was worsened by the stress this situation had caused and the ongoing contact from Tesco Bank.

Our investigator explained that G had, in response to Mr W's claim for a refund, requested verifiable evidence of the cause of the damage as well as proof that the pod had been installed and maintained correctly – but Mr W hadn't provided this. He also explained that he would expect Tesco Bank to make any reasonable adjustments to meet Mr W's different needs due to his medical condition and if he could explain exactly what he needed and what Tesco Bank had done wrong, he would look into this further. But from what he could see from the file, Tesco Bank had communicated with him in the way he would expect.

Mr W explained Tesco Bank was aware of his condition but had continued to communicate with him worsening his condition, and that given his vulnerable status it wasn't fair for Tesco Bank or G to expect him to commission a report at his expense when he felt it was obvious that he had a valid claim.

As the complaint couldn't be resolved, the complaint has been passed to me to make 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.

Firstly, I'd like to reassure Mr W, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of this complaint in this decision as I'm required to decide matters quickly and with minimum formality.

Chargeback

Firstly, it may be helpful to explain that each credit card provider acts under specific chargeback rules that may be different with other credit scheme providers. Chargeback allows for a refund to be requested where money was paid using a plastic card in certain scenarios, such as when goods or services are defective or not as described. Chargeback is designed to be a simple process to settle complaints. The only matters to be considered are the rules set by the card scheme to which the consumer's card belongs, along with the facts of the case. It is not designed to settle complex disputes or to consider legal arguments. The rules are very specific and detailed and usually there's little room for discretion – and they are simply applied to a case as they are.

In this case Tesco Bank said that the rules under which it operates (Mastercard), Tesco Bank had 120-days from delivery of the goods/services to raise a chargeback claim. But as Mr W didn't raise his concerns until January 2025, it was unable to raise a chargeback.

I understand Mr W initially tried to resolve matters with G directly before contacting Tesco Bank and feels he raised his concerns within a reasonable timeframe. But having checked the rules, I'm afraid the rules do, as Tesco Bank says, only provide a 120-day time limit to issue a chargeback request. The rules are made and enforced by the card scheme rules and not Tesco Bank – so Tesco Bank is unable to apply any discretion here. So, while I sympathise with Mr W's position, given the card scheme rules, I don't think Tesco Bank could have done anything differently here. I think by the time Mr W contacted Tesco Bank for help, he was out of time under the scheme rules to make a chargeback request.

So, like our investigator, I don't think Tesco Bank's response to the dispute was unreasonable under the scheme rules.

Section 75 claim

It may be helpful to explain that I need to consider whether Tesco Bank – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr W's claim. S.75 is a statutory protection that enables Mr W to make a 'like claim' against Tesco Bank for breach of contract or misrepresentation by a supplier because he paid for the goods using a Tesco Bank credit card. So, I need to consider whether, based on the available evidence, it was fair and reasonable for Tesco Bank to respond to his claim in the way that it did, and if not, if there's grounds for me to uphold Mr W's complaint and order a remedy.

There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met. I understand Tesco Bank initially felt that Mr W could not make a claim under s.75, as he had used an online marketplace to make the purchase. To make a claim, there needs to be a direct link between the debtor (Mr W), the supplier (G) and the creditor (Tesco Bank) – often referred to as the DCS agreement. Tesco Bank felt using the online marketplace broke the DCS agreement, which is required to make a claim. But as explained by our investigator, we generally felt this method of purchasing items did not break the DCS agreement. Tesco Bank has seen our investigators view and had the opportunity to comment and hasn't since disputed this, so I don't think I need to explore this any further. But while I do think Tesco Bank's approach to this issue may not have been entirely correct, I still don't think there's enough evidence to show Mr W's claim should succeed so I don't direct Tesco Bank to do anything further in any event.

<u>Misrepresentation</u>

To make a claim for misrepresentation, Mr W would need to evidence that the pod has been misrepresented to him and that this caused him to suffer loss. We generally assess cases using the definition of a misrepresentation as, an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

<u>Breach of contract</u>

In order to uphold Mr W's s.75 claim on the basis that there has been a breach of contract, Mr W would need to evidence that G breached a term of the contract – and that caused him to suffer loss. He would have to show that either, there was a breach of an express term of the contract (for example a breach of a specific guarantee under the written agreement) or whether there has been a breach of an implied term. The Consumer Rights Act 2015 (CRA) implies terms into the contract that the goods must be of satisfactory quality, aspects of which include goods being durable and free from minor defects. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

<u>Evidence</u>

However, in order to assess either a claim for misrepresentation and/or a breach of contract – I'd need to see evidence that the pod was faulty to begin with and usually would require details of what caused the damage. I would then need to look into whether any alleged damage and the cause of the fault means either the pod was misrepresented to Mr W by G, and/or whether such damage amounts to a breach of contract as well.

I understand Mr W has sent in pictures of the damaged pod (which does show noticeable amount of damage) as well as reviews from other customers claiming their pod hasn't been able to withstand typical weather conditions. However, in order to make a successful claim for either breach of contract or misrepresentation, it is not sufficient to show that the structure has suffered damage. Mr W would need to demonstrate with evidence that the damage was as a result of a breach of contract or misrepresentation by G to make a claim.

The pod may have been damaged for an array of reasons, such as not being assembled correctly, not being maintained correctly, not being used for its intended purpose (such as coastal areas like Tesco Bank has mentioned). Mr W's claim will not succeed solely because there has been damage, but he'd have to show that the damage was caused by either the product being faulty to begin with, or that it hadn't been accurately described as asserted by Mr W (i.e. it failed to withstand typical weather conditions as it was advertised to do). While I've looked at the customer reviews sent in by Mr W, G also has a number of positive reviews on its website showing the opposite.

I understand on receipt of his claim for a full refund earlier this year, G made a gesture of goodwill offer of £300 but said to consider any further claims, it would need verifiable evidence of the cause of the damage as well as evidence that the product was assembled and maintained correctly in line with G's guidance. It is not unusual for commercial businesses like G to make gestures of goodwill in the interests of good customer services, but this does not mean it agreed that the pod is faulty. Especially as it went onto specifically request evidence as to the cause of the damage before looking into the matter any further. Requested evidence of the cause is normally what I would expect to see for a successful claim to be made under s.75 – and I don't think it's unreasonable that Tesco Bank didn't uphold his claim based on the available evidence.

I appreciate Mr W feels it's unreasonable to ask a vulnerable consumer like himself to commission a report at his expense to demonstrate the cause of the damage – but while I sympathise with his position, s.75 is a legal claim, and the onus is on Mr W to provide evidence to support his claim. I am not an expert in garden pods (neither is Tesco Bank) and I'm reliant on the evidence produced by both parties to help me reach my conclusions. While I can see there has been damage, I'm afraid this doesn't show what caused the damage so I can't safely conclude there has been a breach of contract, or misrepresentation that would enable me to uphold Mr W's complaint and order Tesco Bank to offer a remedy.

As Mr W is making a claim a number of years after the sale, Tesco Bank would only be liable to offer a remedy, if Mr W could establish with evidence that the pod was either, defective to begin with or was of unsatisfactory quality at the time of sale, or show that the pod isn't durable as would be expected - rather than becoming damaged due to mis-use, poor maintenance, or not being assembled correctly. Or he'd have to show that the pod had been misrepresented to him, and he relied on the misrepresentation that caused him loss.

I don't think it is unreasonable to conclude that Mr W hasn't submitted sufficient evidence to demonstrate that in this case. I appreciate it's not easy to obtain an independent report two years after he's assembled it and tried to rectify it with G's support, but unfortunately, the onus is on him to provide this evidence – rather than for Tesco Bank to defend it. And I would reiterate that I'm looking at a complaint against Tesco Bank, not G. I want to clarify that I am not asserting that Mr W didn't assemble or maintain the pod correctly. I can see he's put considerable effort in to working with G to try to ensure the structure stays up and in working order. But my point is that he'd have to provide verifiable evidence that the structure failing amounted to a breach of contract or had been misrepresented to him. But he's only provided evidence that the structure failed but not why it failed – which would be needed to make a successful claim.

While I appreciate Mr W believes the pod is faulty and isn't designed to stand typical weather conditions as it's advertised to do, I'm afraid the very existence of the damage isn't proof that it's not of satisfactory quality or was inaccurately described. So, I'm not satisfied that he has evidenced this. As explained above, I can only assess Mr W's complaint, on a narrow basis – whether there is a breach of contract or misrepresentation that G made that Tesco Bank would now be responsible for. And I'm afraid I don't think there is sufficient evidence here to support either claim. So while I think Tesco Bank's view of the DCS agreement may have been incorrect, I still don't think his claim should've succeeded based on the evidence currently available, so I don't think Tesco Bank's overall decision to not uphold his complaint was unfair.

I want to be clear, that I am not concluding that something hasn't gone wrong, I can see Mr W feels strongly that the pod hasn't been accurately described and is of poor quality. And given how much he paid for it – I can see why he is so disappointed. But under the CRA, Mr W must demonstrate that this is as a result of the goods being of unsatisfactory quality, or not being accurately described – and that is usually done with an independent report from an expert detailing the damage and the cause for the damage – and based on what I've seen, I don't think he has.

Reasonable adjustments

I understand Mr W suffers from a medical condition and he says his symptoms have been worsened due to the way Tesco Bank has dealt with his complaint. I don't doubt that this has been a worrying time for him, and I sympathise with his position. But while I would expect Tesco Bank to make reasonable adjustments to communicate with Mr W in a way that meets his needs, Mr W hasn't provided any details of what Tesco Bank specifically did/didn't do, to worsen his circumstances. I understand it wrote to him to decline his claim, and it wrote to him to respond to his disagreements. But I don't think Mr W provided sufficient evidence to enable Tesco Bank to uphold his claim, so the declinature isn't in any event incorrect. So, any stress or disappointment caused by the declinature of his claim is unlikely something Tesco Bank could have avoided. But if Mr W would prefer Tesco Bank to communicate with him in a specific way that would help him manage his symptoms, he would need to discuss this with Tesco Bank and see what (if any) adjustments can be made to support him going forward. Without this, it looks like Tesco Bank has continued to communicate with him as it would normally do and I can't safely conclude it did anything unreasonable here.

Overall, I agree that Mr W was out of time to raise a chargeback claim under the card scheme rules. I don't think there's sufficient evidence that there's been a breach of contract or misrepresentation. So, I don't think Tesco Bank acted unfairly for declining this claim. While I am sorry to hear Mr W is unhappy, with s.75 in mind, I don't find there are grounds to direct Tesco Bank to offer a remedy at this stage. And I also haven't seen anything that suggests the way Tesco Bank communicated with Mr W was unreasonable.

If the pod is still available (as in Mr W hasn't disposed of it), he can now obtain an independent report and ask Tesco Bank to reconsider his claim. And I would also encourage him to speak to Tesco Bank about any adjustments it can make to ensure it communicates with him in a way that meets his needs.

Alternatively, I should point out Mr W doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 September 2025.

Asma Begum
Ombudsman