

The complaint

Ms F complains about the way Barclays Bank UK PLC trading as Tesco Bank ('Tesco') handled her claim for a refund.

What happened

In 2008, Ms F engaged the services of a merchant I'll refer to as 'T' to carry out building works at her home. A dispute arose between Ms F and T. A judgement concluded Ms F owed T monies basing its judgment upon an expert report (the 'report' or the 'expert report') authored by a firm I'll refer to as 'the expert'. T was still obliged to carry out the works but failed to do so. Ms F instructed a solicitor's firm ('S') to represent her. The initial instruction from S was dated 9 July 2012. In 2015 Ms F made a payment to S for its services using her Tesco credit card.

In 2016, regulatory action was taken against S by its regulatory body (the 'RB') leading to it being closed down as a result of it breaching accounting rules. So, Ms F instructed new solicitors to continue with her action against T. In 2021, it was found that the expert had been negligent. Ms F came to an agreement with the expert who agreed to pay her (Ms F) almost £83,000 in 'full and final' settlement. This award was confirmed by a court order. Amongst other things, the settlement included an award for Ms F's legal costs.

In 2021, Ms F made a claim for breach of contract against Tesco under section 75 of the Consumer Credit Act 1974 ('section 75'). She said Tesco was jointly liable for S being in breach of contract. But Tesco refused to raise a claim on the basis that there wasn't sufficient evidence of any financial loss. No final response letter was issued at this point. Ms F raised the matter again with Tesco in 2024. On this occasion, Tesco issued a final response letter and again declined the section 75 claim. So, Ms F referred matters to our Service.

Our investigator thought the matter should be dismissed under our rules. But I said we should consider the merits. I issued my initial findings in this case letting both parties know I wasn't intending to uphold the complaint. Tesco agreed with my initial findings. Ms F did not. So, the matter has been passed back to me to finalise.

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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our Service. However, I've given careful consideration to all of the submissions made before arriving at my decision.

As I noted in my initial findings, I've to decide what, if anything, Tesco should do to resolve Ms F's complaint. To do that, I've to decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. In this case, relevant law includes section 75 of the Consumer Credit Act 1974 ('section 75'). Section 75 says that in certain circumstances

the credit card holder has an equal right to claim against the credit card provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Ms F's claim against S (and by extension Tesco) is for reimbursement of legal costs of just over £20,000 in respect of services she says were defective. I did say in my initial findings that I don't think there was sufficient evidence to show S didn't provide the legal services it was paid to provide to Ms F. I also said there was insufficient evidence of its service being defective. Ms F said in response to my initial findings that her claim is S's service was defective as it should've known the expert report was negligent. But as I said in my initial findings, in terms of the advice Ms F received from S this isn't a straightforward matter. It involves complex legal issues and there isn't sufficient evidence to show that S was in breach of contract vis-à-vis the advice it provided to Ms F.

Further, from what I can see, Ms F did seek recovery of losses against the expert. As part of the agreement she reached with the expert, which was confirmed by way of a court order, Ms F received compensation for the legal costs she incurred. The legal costs were calculated to be around £27,810 and then through mediation Ms F agreed to take around £4,000 less than that. She also received a further amount of £27,000 related to legal costs bringing the total amount claimed (and received) to over £50,000 for legal costs – these were legal costs connected to her action against the expert who provided the report which was used as part of her claim against T. To my mind, if Ms F wasn't happy with the agreement she had with the expert, then this is something she could've raised at that point. Instead, she agreed to take less from the expert for the part of the legal cost related to *“having to re-open, re-investigate and resolve the issues of remedial work [with T]”*.

So, I don't think Tesco was acting unfairly or unreasonably when it said it wasn't going to be held liable for consequential losses in this case. I don't think Ms F has provided sufficient evidence that the service she received from S was defective as she claims it was and/or that she wasn't, in fact, reimbursed for her legal costs received from S as part of her claim against the expert. I also don't consider it would be fair or reasonable to ask Tesco to make up any losses Ms F said she has suffered as a result of the expert's report being negligent when she had the opportunity to have these costs, including legal costs, covered as part of her claim.

I want to reassure Ms F that I've taken all her further submissions and evidence into account, but I don't think anything she has said changes my mind in this case. Ms F clarified that the expert who authored the report in 2014 had been negligent and the claim for breach of contract and negligence was settled by consent without the court involvement although confirmed by a court order. I thank Ms F for this clarification. However, I don't think this changes the outcome as against Tesco. I note she says her claim against Tesco isn't for the services not being received rather the fact S has provided inadequate and incorrect advice relying on the report that turned out to be negligent. As noted above, this is not a straightforward matter. And whilst I note what Ms F says about the action taken by S's RB, she hasn't shown any of the reasons for this was related to the service she was provided with by S. I don't think she's provided persuasive evidence of S (and by extension) Tesco being in breach of contract.

For all the above reasons, I'm not upholding the complaint. I know this is not the outcome Ms F wants. However, she doesn't have to accept my findings and may pursue this matter through alternative means, such as court (taking appropriate advice), should she wish to do so.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or

reject my decision before 2 March 2026.

Yolande Mcleod
Ombudsman