

complaint

Mr G has complained that Tesco Personal Finance plc, trading as Tesco Bank, did not refund the costs of remedial works carried out to his daughter's kitchen. He paid for part of the overall costs with his Tesco credit card. He made a claim under section 75 of the Consumer Credit Act 1974.

background

Mr G ordered a new kitchen to be installed in his daughter's house. This involved initial building works as well as the supply and installation of the kitchen. After problems with the quality of the work, Mr G complained to the supplier but never got a response. He complained to Tesco Bank in May 2014.

Tesco arranged for an independent report to be carried out. This report confirmed the works were not satisfactory. Throughout this period Mr G stayed in regular contact with Tesco. He has also got quotations from another company to carry out the work necessary to get the kitchen into a proper condition. Tesco also talked to the new company about their quotation.

Mr G felt that it was only a short time before Tesco gave him the go-ahead to get the work done. In October they told him that they could not pay his claim. Mr G paid for the kitchen but the kitchen was for his daughter. Tesco explained that there was no debtor-creditor-supplier link as required by section 75. They credited £200 to his account because of the delay in managing his complaint.

Mr G brought his complaint to the ombudsman service. Our adjudicator asked Tesco to process a chargeback on Mr G's behalf as this hadn't been done. Tesco didn't believe this would be successful so declined to do this. Our adjudicator told them that she felt that they should pay Mr G the cost of the remedial works, £8,429.05. They should also pay him £500 for inconvenience caused in dealing with his complaint and £100 costs.

Tesco rejected this outcome and asked an ombudsman to consider the complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

There are two aspects to this case and I will deal with them separately.

section 75 claim

Section 75 of the Consumer Credit Act 1974 provides that, under a specific set of circumstances, a consumer may claim a refund of money paid to a supplier from his or her credit card company. Firstly there can only be a valid claim if payment was made under what is known as a *debtor-creditor-supplier* agreement. Then there should be sufficient evidence to show that the supplier:

- said something about the goods or service being sold that wasn't true; and
- this is what made the customer enter into the contract; or
- had broken the terms of the contract.

The simple meaning of the *debtor-creditor-supplier* agreement is that the person who paid for the goods, the debtor, should have a contractual relationship with the company who supplied the goods, as well as the credit card company, the creditor.

It's worth stating upfront that I may have reviewed Tesco's assessment of Mr G's claim not meeting the requirements of section 75 differently if I wasn't considering the chargeback aspects as well. Whilst the kitchen was supplied to Mr G's daughter, I believe the evidence supports my view that Mr G was a contracting party too. The kitchen was a gift and Mr G played a key role in managing its installation.

In any case I think Tesco's view was clear on this aspect as soon as Mr G submitted his claim. Their customer notes back this up. At no stage did he say this kitchen was anything but his daughter's. I can imagine how frustrated he must have been to be told his claim was unsuccessful more than five months after contacting Tesco. Mr G's initial submission was reasonably substantial. An independent report was undertaken: this is also substantial and cost a large amount.

I don't believe there's any dispute that the independent report confirmed there was a breach of contract and that remedial works would be needed.

It does seem that Tesco were acting as if they were going to meet Mr G's claim. Particularly as they engaged with the company Mr G had chosen to carry out the works needed. I appreciate that Mr G feels he was misled.

I agree with our adjudicator that £500 is a fair amount for Tesco to pay him for this inconvenience. This is in addition to the £200 they've already credited to his account.

chargeback

There are a number of reasons that a bank, on behalf of its customer, can challenge a payment made on a debit or credit card. This is known as charging back the original transaction to the merchant who received the funds. The rules for chargeback are run by the global card schemes. They cover the relationship between themselves, the banks that offer debit and credit cards to their customers and the banks that offer facilities to companies who accept card payments. The chargeback rules are complex but we generally expect a bank to make a pragmatic decision whether to process a chargeback or not. It's worth stating that this is not a customer right. And many customers are not aware that chargebacks exist and would not ask for one to be carried out.

One of the foolproof ways of finding out whether a chargeback would be successful is by processing one. This is what our adjudicator asked Tesco to do. Tesco argued that this would not have been successful. I don't believe that it was reasonable for them to say this without attempting to help Mr G. The rules do allow a partial refund to be requested and there is a category of chargeback requests where either the goods or services are not received or where they are defective or not as described.

And in any case Mr G first contacted Tesco in April 2014. At that stage any chargeback would have been within the timescale set by the rules. And I believe Tesco were already aware that they weren't going to agree to Mr G's section 75 claim. Even later on I think there was scope to attempt a chargeback.

Tesco feel that the original supplier would have been able to defend any chargeback. And they were willing to carry out additional work. I don't believe the evidence supports this as Mr G found it very difficult to get them to sort out problems early on. I'm in no doubt that the original kitchen work was defective. This is supported by the independent report although I believe the breach of contract was clear before the report was completed.

I believe that Tesco should refund Mr G the cost of the remedial works, along with 8% interest. Tesco will know when Mr G made these payments as he paid three separate amounts (£1,945.35, £3,890.72 and £2,592.98) on his credit card.

Mr G also spent other money on sorting out the kitchen and managing this complaint. I have looked at what Mr G has spent and decided to increase the costs to £250. I have done this as I feel that Tesco's actions have partly contributed to what Mr G has had to spend.

my final decision

For the reasons stated above, my final decision is to uphold Mr G's complaint. I instruct Tesco Personal Finance plc, trading as Tesco Bank, to:

- rework Mr G's credit card account as if the transactions of £1,945.35, £3,890.72 and £2,592.98 had not been made in terms of interest and charges (I note that Mr G generally pays his bill off in full);
- refund £8,429.05 for the remedial works;
- pay simple interest of 8% on £1,945.35, £3,890.72 and £2,592.98 from the date these payments were made to the date of settlement;
- reimburse Mr G £250 for his costs; and
- pay Mr G £500 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 8 July 2015.

Sandra Quinn
ombudsman