

## **complaint**

Mr S complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to him the money that he's claimed for repairs to a motorbike. His complaint is made against Tesco Bank under section 75 of the Consumer Credit Act 1974.

## **background**

Mr S used his Tesco Bank credit card in November 2016 to pay £2,850 for a motorbike. He says that there were various defects on the bike, including rust, but that the supplier wouldn't honour the warranty. He asked Tesco Bank to pay for the costs of the repairs and he arranged for the bike to be inspected by an independent expert. But he wasn't satisfied with Tesco Bank's response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. She said that Mr S used his credit card to gift his son a motorbike and that the supplier had contracted with his son (and not Mr S). So she said that there didn't appear to be a direct link between Mr S and the supplier and because his son isn't the debtor he doesn't have a direct link with the creditor.

Mr S has asked for his complaint to be considered by an ombudsman. He has responded in detail and says, in summary, that:

- his son was only just old enough to enter into a contract and he had no money to buy the bike;
- he put a limit on how much his son could spend - if his son was the contracting party then he would've decided how much he was going to spend;
- he put a condition that his son must buy a new bike, not a second hand one – if his son was the contracting party then that decision would've been his;
- he insisted that the bike should be comprehensively insured - if his son was the contracting party he would've made that decision;
- the credit card receipt shows that he paid for the bike; and
- in terms of contract law, the bike was purchased by him and was his the minute he purchased it.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a relevant relationship between the debtor, the creditor and the supplier. That requirement is specified in section 75. So unless there is such a relationship, a claim under section 75 can't succeed.

In this case, Mr S is the debtor because he's used credit provided by Tesco Bank to buy a motorbike, the creditor is Tesco Bank because it's provided credit to Mr S and the supplier is the supplier of the motorbike. But I consider that the evidence shows that the motorbike was supplied to Mr S's son – and not to Mr S.

Although it's clear that Mr S paid £2,850 to the supplier for the bike, other evidence shows that the bike was supplied to his son. The invoice for the motorbike is made out to his son, the motorbike was to be delivered to his son and the first owner details and warranty have been completed in the name of Mr S's son. Mr S's son has been dealing with the supplier about the issues with the bike and in his October 2017 letter to the supplier Mr S's son says: *"I purchased the ... motorbike ..."*. As I consider that the bike was supplied to Mr S's son, I'm not persuaded that there's a relevant relationship between the debtor, the creditor and the supplier as there's no relevant relationship between Tesco Bank and Mr S's son.

So I find that Mr S's claim against Tesco Bank under section 75 can't succeed in these circumstances. And I find that it wouldn't be fair or reasonable for me to require Tesco Bank to pay to Mr S and of the money that he's claimed – or to take any other action in response to his complaint.

### **my final decision**

For these reasons, my decision is that I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 August 2019.

Jarrold Hastings  
**ombudsman**