

complaint

Mr B complains that Tesco Personal Finance PLC ("Tesco") have not upheld a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

background

Mr B bought bespoke sofas from a company I'll call "T" in July 2018. He paid with his Tesco credit card and the sofas were delivered on 5 September 2018.

But Mr B was disappointed with the sofas. He complained to "T" that the fabric was wrong as the stripe was too wide. They accepted that the goods were wrong and offered to replace them. But Mr B wanted "T" to collect the goods and provide a full refund and, unable to get through to "T", he made a like claim to Tesco under section 75.

Tesco rejected his claim. They explained that there wasn't the necessary link between the debtor (Mr B); the creditor (Tesco) and the supplier "T". They said the invoice was made out to "T" but the funds were paid to another company "M" and whilst they'd tried to contact "T" to clarify the situation they had not received a response.

So Mr B referred his complaint to this service and our investigator provided her opinion. She noted that "M" shared the same phone line and address as "T" and that this was the number on the invoice. She also noted that when she searched for "M" on the internet the primary result linked her to "T". So she thought it was most likely that the two companies were associated and the d-c-s link hadn't been broken.

She therefore went on to consider Mr B's claim. She thought that the photographs he had provided demonstrated the sofas he received weren't the ones he'd ordered. So she thought Tesco should uphold his claim; take receipt of the sofas and refund the full amount Mr B had paid including any interest that had been charged on the debt.

Tesco didn't agree with the investigator. They looked for the businesses on the Companies House website but could not find "T" and therefore said that they were unable to associate the businesses and the link could not be demonstrated.

my findings

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

I know it will disappoint Tesco but I agree with the investigator's view of this complaint. Please let me explain why. Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account

when I think about what's a fair way to resolve the complaint but I don't have to reach the same view as, for example, a court might reach if Mr B made a claim through them for breach of contract or misrepresentation.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

One of those circumstances is that there must be a valid debtor, creditor, supplier relationship. For the creditor, Tesco in this case, to have liability it needs to have a relevant relationship with the supplier of the goods and here Tesco argues that it hasn't, as the payment was made to "M" and not "T".

I understand that Tesco have been unable to find a trace of "T" on Companies House but all companies are not listed there and as there's no mention on the invoice of "T" being incorporated I think it's fair to look elsewhere to search for any association between "T" and "M". I'm persuaded that there is sufficient evidence of an association between them as:

- they appear to share the same address;
- they appear to share the same phone number – the one on the invoice;
- web searches link M to T.

So I think that it is likely "T" and "M" are associated and the necessary d-c-s link therefore exists.

I've considered the photographs Mr B has provided and can see that the sofas are in a broad pattern. The sample pattern contains narrow stripes as well and I therefore think there's sufficient evidence here that what Mr B received wasn't what he asked for and in those circumstances I would agree with the redress suggested by the investigator.

my final decision

For the reasons I've given above I uphold this complaint and tell Tesco Personal Finance PLC to:

- collect the goods from Mr B at no cost to him;
- refund the full amount plus any interest that has been charged on that sum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 March 2020.

Phil McMahon
ombudsman