

## **complaint**

Mr H complains that Tesco Personal Finance plc, trading as Tesco Bank, will not refund to him the money that he paid for a mobile phone.

## **background**

Mr H used his Tesco Bank credit card in March 2014 to pay £304.10 for a mobile phone. The phone did not work properly so he contacted Tesco Bank which said that he needed to provide an independent report about the faults with the phone before it could make a chargeback claim. He did not provide a report until after the time limit for a chargeback claim had expired and he then complained to Tesco Bank. He was not satisfied with Tesco Bank's response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. She concluded that Mr H provided the independent report to Tesco Bank after the time limit for making a chargeback claim had expired. She noted that Tesco Bank had paid £75 compensation to Mr H which she felt compensated him for the money he had spent obtaining the report.

Mr H has asked for his complaint to be considered by an ombudsman.

## **my findings**

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

When Mr H contacted Tesco Bank to ask for a refund he was told that it could make a chargeback claim but that he should provide an independent report to show that the phone was faulty. There is no express contractual obligation on a card issuer, such as Tesco Bank, to make a chargeback claim but, where a chargeback right exists and where there is a reasonable prospect of the chargeback being successful, I consider it to be good practice for a card issuer to make a chargeback claim.

In the absence of independent evidence to show that the phone was faulty, I do not consider that there was a reasonable prospect of the chargeback claim being successful. Tesco Bank wrote to Mr H in September 2014 to say that the time limit for making a chargeback claim had expired but – before he received that letter – he had obtained an independent report which he sent to Tesco Bank. However, Tesco Bank did not receive the independent report until after the period in which a chargeback claim could be made had expired.

Tesco Bank has paid £75 compensation to Mr H for the distress and inconvenience caused by the poor service that he received. I consider that to be fair and reasonable.

In certain circumstances, section 75 of the Consumer Credit Act 1974 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier. In this case Mr H is the debtor because he used credit to buy the phone, the creditor is Tesco Bank because it provided the credit to Mr H and the supplier is the supplier of the phone. However, Mr H made his payment to a payment services provider and not to the supplier of the phone. As such, there is no direct relationship between Tesco Bank and the supplier of the phone so any claim by Mr H under section 75 would not be successful.

I am not persuaded that Tesco Bank has acted incorrectly in dealing with Mr H's request for a refund of the money that he paid for the mobile phone. I therefore do not consider that it would be fair or reasonable for me to require Tesco Bank to refund that money to him or to pay him any further compensation.

**my final decision**

For these reasons, my decision is that I do not uphold Mr H's complaint.

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

Jarrold Hastings  
**ombudsman**