

## **complaint**

Mr N has complained that Tesco Personal Finance PLC has turned down his claim for a refund of the costs of a new kitchen which was never delivered. He paid a £200 deposit on his credit card.

He complained to Tesco claiming a breach of contract under section 75 of the Consumer Credit Act 1974.

As Mr N is working abroad, he is represented in his complaint by his wife, Mrs N.

## **background**

Mr N placed an order with a kitchen company for a new kitchen in early 2013. He paid a deposit of £200 using his Tesco credit card. The remainder of the total cost of £22,395.71 was paid by three bank transfers from Mr N's joint account.

Less than three months later, Mr N was told by the managing director of the kitchen company that the company had ceased trading. Mr N contacted Tesco and lodged a claim under section 75 of the Consumer Credit Act 1974 for breach of contract.

Tesco refunded the £200 deposit under the chargeback mechanism but rejected Mr N's section 75 claim, as they were unable to determine a debtor-creditor-supplier link. Mr N brought his case to the ombudsman service in December 2013.

Our adjudicator demonstrated that there was a debtor-creditor-supplier link and that Tesco should refund Mr N £22,195.71 for the breach of contract. Tesco were not prepared to accept this view and asked that an ombudsman review the case.

## **my findings**

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

Section 75 provides that, under a very specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from his or her credit card provider. There can only be a valid claim under section 75 if payment was made under what is known as a 'debtor-creditor-supplier' agreement and if it can be shown that the supplier acted in breach of contract and/or misrepresented the contract.

There are two aspects to this case and I will deal with both in turn.

### *debtor-creditor-supplier agreement*

The issue in this case is the relationship between the person who was paid the £200 deposit, let's call him Mr T, and the kitchen company (M) who were providing Mr and Mrs N with their new kitchen. I can consider the complaint under section 75 if it is established that Mr T and M are 'associates' as defined by section 184 of the Consumer Credit Act 1974. Unfortunately this case is not straightforward.

Tesco does not agree that Mr T is associated with kitchen company, M. They do accept our adjudicator's findings that another person, a Mr C, is the managing director of kitchen

company, M. Records show that Mr C is a director of another company (S). S, shares a company registration number with another company (Q) which shares the name of Mr T.

There is email correspondence on the file signed by Mr T, as managing director of kitchen company, M. Similarly from Mr C, trading as, S. It doesn't seem to have occurred to Tesco that Mr C and Mr T are in fact the same person.

I have considered the evidence that both Mrs N provided in support of her husband's claim and the findings of our adjudicator. This comes from the electoral roll, company data, the insolvency register, not to mention social media profiles, to show that these individuals share names, addresses and companies. I am satisfied that, on balance, Mr T and Mr C are the same person. Therefore for section 184 purposes, I find that Mr T is associated with kitchen company, M.

It was not easy to get to the end of figuring out who was who and who was related to whom. However I do feel that Tesco suspected there was a link all along and their actions have unnecessarily prolonged this case. In fact during the investigation they stated "*whether or not a DCS relationship existed is for the customer to prove*". I do not agree. I consider it fair for Tesco to pay Mr N £200 to compensate him for the inconvenience. Mrs N, on her husband's behalf, continued to investigate the case to demonstrate a clear link between Mr T and kitchen company, M.

#### *breach of contract*

In direct contrast to above, this aspect is extremely straightforward and not in dispute. Mr N placed an order for a kitchen costing a total of £22,395.71. The kitchen company ceased trading. I am satisfied that there is a breach of contract by the supplier in not providing the kitchen that Mr N paid for.

In conclusion, I am satisfied that there was a valid debtor-creditor-supplier link under section 75 and that therefore Tesco are liable for the breach of contract. Tesco should pay Mr N £22,195.71 for the cost of the kitchen. This takes account of the £200 that Tesco has already reimbursed Mr N. I am also adding interest to this amount from the date when the kitchen should have been delivered. According to Mr N's original section 75 claim, the delivery date was 10 June 2013. I am satisfied that this is the correct date to use.

#### **my final decision**

For the reasons set out above, my final decision is to uphold Mr N's complaint against Tesco Personal Finance PLC and instruct them to take the following actions in full and final settlement:

- pay Mr N £22,195.71 for the cost of the kitchen that he did not receive;
- pay interest of 8% simple on this amount from 10 June 2013 to the settlement date; and
- pay a further £200 for the inconvenience caused.

Sandra Quinn  
**ombudsman**