

## **complaint**

Mr S complains that a pram he bought using credit provided by Tesco Personal Finance plc (trading as Tesco Bank) is of unsatisfactory quality and Tesco Bank won't provide a refund under Section 75 of the Consumer Credit Act 1974 (CCA).

## **background**

Mr S paid for the pram using his Tesco Bank credit card in the summer of 2015. After a few months of use two of the wheels became soft and loose. Mr S took the pram back to the retailer and the manufacturer replaced the wheels under the twelve months warranty. All four wheels began to fail a few months later and the retailer sent them to the manufacturer for inspection. The manufacturer couldn't find a fault - it says wheels will become softer with use over time.

Mr S doesn't think this is fair. He says they haven't used the pram that much - it was expensive and should have lasted longer. Mr S considers the fact that the manufacturer has already replaced wheels once shows something's not right. He's lost confidence in the pram. He says it feels unsafe and he'd like a full refund and an apology.

Tesco Bank told Mr R it would need clear evidence of breach of contract or misrepresentation to uphold the claim. It asked him to get a report from an independent expert to show there's a fault. Mr S struggled to find someone to do this - he says most pram repairs are done by manufacturers. And when he did eventually find someone Tesco Bank said this wasn't acceptable as it's not a VAT registered company.

Tesco Bank says this claim is about wheels not the pram itself. It considers wheels are a wear and tear item - how long they last will depend on how the pram was used. So, in the absence of further evidence, it can't accept there's an inherent defect. It offered to contribute £50 towards the cost of replacement wheels as a goodwill gesture - which it says should more than cover the cost. Tesco Bank accepts it could have provided better service and paid Mr S over £100 compensation for that.

Our investigator appreciates Mr S is in a difficult position but she's not satisfied there's enough evidence to show a breach of contract or misrepresentation. She doesn't think Tesco Bank has acted unfairly overall and she doesn't recommend it should have to do anything further.

Mr S doesn't agree and he asked for an ombudsman to review the matter. He says (in summary)

- photographs of the wheels show there's more damage than just soft tyres;
- the manufacturer replaced wheels previously because of the same problem which proves there's an inherent fault;
- the expert he found to provide a report says this is a manufacturing defect and the wheels are unsafe;
- it's unfair this expert isn't acceptable purely due to VAT registration which has nothing to do with expertise; and
- he's lost the chance to recoup some of the initial cost by re-selling this pram because it's unsafe.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I've reached much the same conclusions as our investigator for broadly the same reasons.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I've spoken to Mr S about what happened and he has described the trouble they've had with this pram in some detail. I can see Mr S feels strongly that the pram is of unsatisfactory quality and unfit for purpose. Mr S says this hasn't been an easy time for him and his family and this experience has made matters worse. I understand he feels really let down by the response he's had from the retailer, the manufacturer, Tesco Bank and this service and I'm sorry about that.

Mr S brings this complaint against Tesco Bank under section 75 because he purchased the pram using his Tesco Bank credit card. And section 75 says a customer who has a claim for breach of contract or misrepresentation by a supplier may, subject to certain conditions, bring that claim against the lender. But, it's not up to me to apply section 75 – only a court can do that. My role here is to decide if Tesco Bank has provided a fair and reasonable response to Mr S's claim, in all of the circumstances.

I accept Mr S complained to the retailer about pram wheels within 12 months and the manufacturer arranged for replacements. Mr S wasn't asked to pay for these - which sounds reasonable. But, I appreciate it must have been most frustrating for Mr S and his family when they had problems with the wheels again not long after. The wheels were sent to the manufacturer this time for inspection. I've seen a report the manufacturer provided which says any deterioration it found is the result of wear and tear.

I have no doubt this must have been disappointing for Mr S. I can see why he thought about getting his own report. I understand he's had considerable difficulty finding an appropriate expert - and considers this search was hampered further by Tesco Bank asking for a VAT registered source.

Mr S says this is unfair. Our investigator doesn't think it is unusual for a business to ask for this sort of report in this situation - because it provides a verification of sorts as the expert is seen to undertake a reasonable amount of work in the relevant sector. I don't disagree. But, I think it is reasonable to consider expert evidence based on the credentials and experience of the expert - not just VAT status. I told Mr S I'd consider an expert's report if he wanted to submit one. I gave him some time to think about that. The time limit I set has now passed and Mr S hasn't submitted a report or asked for more time to obtain one.

I understand Mr S considers the wheels on this pram were defective and should have lasted a lot longer. On balance, I don't have enough evidence to fairly find that is the case. And, even if I were to do so, I'm not persuaded it would be fair or proportionate to require Tesco Bank to provide a full refund here - given the use Mr S has had of the pram.

I can see Tesco Bank has offered already to pay £50 towards replacement wheels, as a goodwill gesture. I think that sounds fair in the circumstances. I appreciate Mr S says this is unlikely to cover the full cost. I've seen no evidence about that - and it sounds as if Mr S wouldn't accept replacement wheels anyway. He says there's no guarantee the same thing

won't happen again. He has lost faith in the pram, considers it is unsafe and has bought a replacement already.

I have sympathy for the situation Mr S finds himself in. I understand this pram was a relatively high value purchase for Mr S and his family and it has fallen far below their expectations. But, taking everything into account, I am not persuaded it would be fair or reasonable to uphold this complaint. For the reasons I've given, I think Tesco Bank has provided a fair response overall and I can't reasonably require it to do anything further.

I leave it to Mr S to contact Tesco Bank if he wants to take up the offer to contribute towards the cost of replacement wheels - which may prove of some assistance if he changes his mind about the possibility of re-sale.

### **my final decision**

My final decision is that Tesco Personal Finance plc (trading as Tesco Bank) has provided a fair and reasonable response to this complaint and I'm not going to require it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 November 2018.

Claire Jackson  
**ombudsman**