

complaint

Mr C complains that a caravan he purchased using his Tesco Personal Finance PLC ("Tesco Bank") credit card was not of satisfactory quality. Mr C brings his complaint under section 75 of the Consumer Credit Act 1974 ("section 75").

background

The background to this complaint and my initial conclusions were set out in my provisional decision dated 16 May 2014, a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I intended to uphold Mr C's complaint and what redress I thought was appropriate in the circumstances. In summary, I found that Tesco Bank was liable under section 75 for Mr C's caravan, that was not of satisfactory quality. I did not agree with Tesco Bank that they were only liable for the cost of repairs.

I proposed that Tesco Bank should refund the full purchase price and pay some of the consequential loss claimed.

I invited further information and comments from the parties, prior to me issuing my final decision. Both parties responded to my provisional decision.

Mr C has said that he accepts my provisional decision, but added that he was disappointed that I had not directed Tesco Bank to provide him with an apology.

Tesco Bank accepted my provisional decision; they have requested that Mr C provides a copy of the caravan's registration document, to enable them to arrange insurance for the caravan.

my findings

I have re-considered all the available evidence and arguments, including the recent comments from the parties, to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same overall conclusions as those set out in my provisional decision.

In my provisional decision, I explained that I did not feel that a directed apology would be of any benefit to Mr C. However, I have taken on board what Mr C has said about wanting an apology. I am persuaded that in the circumstances it would be fair for Tesco Bank to send Mr C a written apology, in respect of the way that it handled his complaint. Tesco Bank has confirmed that they would be happy to provide Mr C with an apology.

Tesco Bank has requested that Mr C provide a copy of the caravan registration document.

I consider this to be a reasonable request and suggest that Mr C provides this documentation to Tesco Bank at his earliest opportunity, to enable the caravan to be collected.

With exception to the additional apology direction; I see no other reason to depart from the conclusions in my provisional decision, as both parties have accepted them.

my final decision

My final decision is that I uphold this complaint and direct Tesco Personal Finance PLC to;

1. arrange the collection of the caravan at no cost to Mr C;
2. rework Mr C's credit card account for £5,690 paid for the caravan;
3. refund Mr C any interest and/or associated charges that have been debited to his credit card account, arising from the payment of the caravan;
4. refund Mr C £193.31 insurance costs;
5. refund Mr C £56 mileage costs;
6. pay Mr C £100 for distress and inconvenience in respect of the way it handled his complaint;
7. pay Mr C simple interest at 8% per year on 4) and 5) from the date of each payment to the date of settlement by Tesco Bank;
8. send Mr C a letter of apology in respect of the handling of his complaint.

If Tesco Bank considers it is legally required to deduct tax from the interest element of my award, it should send Mr C a certificate of tax deduction so he can reclaim the tax, if appropriate.

Karen Dennis-Barry
ombudsman

Copy - PROVISIONAL DECISION

complaint

Mr C complains that the caravan he purchased using his Tesco Personal Finance PLC ("Tesco Bank") credit card, was not of satisfactory quality. Mr C brings his complaint under section 75 of the Consumer Credit Act 1974 ("section 75").

background

Mr C purchased a caravan in October 2012 for £5,690 using his Tesco Bank credit card. Soon after purchase Mr C discovered that there were several faults with the caravan. Unable to resolve his concerns with the seller, Mr C raised a section 75 claim with Tesco Bank in November 2012, rejecting the caravan and requesting a full refund.

In January 2013 Tesco Bank raised a chargeback in an attempt to obtain a refund from the seller, which was defended by the seller. Mr C provided an independent report at the request of Tesco Bank, which confirmed the faults with the caravan and estimated the cost of repair at £1,022.59. In Jul 2013 Tesco Bank offered £1,022.59 in full and final settlement of the claim.

The adjudicator was satisfied that the caravan had been misrepresented to Mr C and concluded that:

- Tesco Bank should refund Mr C £5,690
- Tesco Bank arrange the collection of the caravan
- Tesco Bank pay Mr C £50 for distress and inconvenience
- Tesco Bank pay £193.41 for cost of insurance

The adjudicator did not agree Mr C's claim for consequential losses. Tesco Bank did not accept the adjudicator's conclusions and asked for the complaint to be reviewed by an ombudsman.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Under certain circumstances, section 75 gives a consumer an equal right to claim against the provider of credit if there has been a misrepresentation or a breach of contract by the supplier. Section 75 also allows for a consumer to be compensated for any additional costs or losses he has incurred as a result of any breach of contract or misrepresentation.

The caravan was advertised as being in 'excellent condition', with 'everything working as it should' and described as having fly-screens. Mr C sought to reject the caravan soon after purchase after discovering that there were a number of faults, in particular the charger was faulty, there were wiring problems and the fly screens had been removed.

Tesco Bank accepts that the independent report substantiates Mr C's section 75 claim, but says it is only liable for the cost of repairs. The wiring problem was potentially hazardous and the cost of repairs amounts to nearly 18% of the total purchase price of the caravan. On this basis, I find that it is fair and reasonable for Mr C to reject the caravan.

The outstanding issues then, relate to Mr C's claim for consequential loss, distress and inconvenience. In respect to Mr C's claim for cost of insuring the caravan, Mr C has provided evidence of the cost of his insurance premiums. I therefore agree with the adjudicator that Tesco Bank is liable for these costs.

Tesco Bank requested that Mr C provide an independent report to substantiate his claim.

Mr C claims £56 at 40 pence a mile, for the roundtrip of delivering the caravan and then returning to collect it from the garage. I do not find 40 pence a mile to be unreasonable, having calculated the distance to the independent garage from Mr C's address; I am minded to agree with his mileage claim for £56.

Mr C also claims for the loss of caravan holidays. Section 75 does not cover inconvenience caused by the seller. The loss of enjoyment of the caravan was caused by the seller not supplying a caravan of satisfactory quality. For this reason, I do not find that Tesco Bank is liable for this loss.

Our awards for compensation for distress and inconvenience are typically modest, as a certain amount of inconvenience and distress will be expected in bringing a complaint. Our role is not to punish the business, but to consider whether their actions have caused distress and inconvenience that would not otherwise have been suffered, if the complaint had been handled properly.

Tesco bank incorrectly informed Mr C that a chargeback had been successful, when in fact it had been defended; Mr C was given incorrect information regarding the re-debiting of his account and it also took Tesco Bank nine months to provide Mr C with a final response. I am satisfied that Mr C would have incurred other telephone, postage and sundries costs as a result of chasing his complaint.

No evidence of these costs has been provided, but it seems fair to me that Tesco Bank should pay something towards this. In the circumstances, therefore I consider that a total payment of £100 by way of compensation for the distress and inconvenience caused, which also encompasses the sundry expenses incurred, to be appropriate.

Whilst I acknowledge the failings of Tesco Bank's handling of Mr C's complaint, I am not minded to instruct Tesco Bank to apologise, as requested by Mr C in his complaint form. In my view, an ordered apology will not be of much benefit to Mr C.

my provisional decision

Subject to any further submissions from Mr C or Tesco Personal Finance PLC my provisional decision is that I intend to uphold this complaint and find that Tesco Personal Finance PLC is liable for the refund of cost of the caravan, and other associated costs referred to above.

Provisionally Tesco Personal Finance PLC should meet the following costs:

1. Tesco should arrange the collection of the caravan at no cost to Mr C
2. rework the credit card account paid for the caravan in the amount of £5,690
3. refund any interest and/or associated charges that have been debited to his credit card account, arising from the payment of the caravan
4. refund £193.31 insurance costs
5. refund £56 mileage costs
6. pay Mr C £100 for distress and inconvenience in respect of the handling of his complaint
7. pay simple interest at 8% per year on 4) and 5) from the date of each payment to the date of settlement by Tesco Bank

If Tesco Bank considers it is legally required to deduct tax from the interest element of my award it should send Mr C, a certificate of tax deduction so he can reclaim the tax, if appropriate.

Karen Dennis-Barry
ombudsman