

The complaint

Mrs L has complained about how Tesco Personal Finance PLC trading as Tesco Bank dealt with a claim for money back in relation to a bath she'd bought.

What happened

Mrs L bought a stone bath from a retailer I'll call "N" on 4 June 2020. It cost £2,548. Mrs L paid using her Tesco Bank credit card, via a payment facilitator and digital wallet operator that I'll call "P".

Mrs L says when the stone bath was taken off the delivery van by N's courier it was dropped from the lorry to the ground without lifting equipment. She said the courier said it should have been a four person drop off, rather than one. We've been supplied an email that looks like Mrs L sent to herself on 18 June 2020 and then forwarded on to N the same day setting this out. She said she was unable to report any damage as her tradesmen were delayed until a replacement cistern was received. I think she also bought the cistern from N. I've not seen N's response, but I understand Mrs L went on to install the bath.

In December 2023 Mrs L says a large crack appeared on the base of the bath and it no longer held water. She tried to complain to N but said it had gone out of business, so in March 2023 she contacted Tesco Bank to put in a claim under section 75 of the Consumer Credit Act 1974.

Tesco Bank reviewed the claim and said it was out of time to raise a chargeback. And that the necessary conditions for a valid section 75 claim weren't met because the payment went via P. Mrs L complained about the outcome and referred her complaint to the Financial Ombudsman.

Tesco Bank didn't uphold the complaint but one of our investigators thought that was unfair. He didn't think the way P was involved broke the necessary conditions for a valid claim to be considered. And he didn't think a bath should have developed a crack within two and a half years. He noted Mrs L had said the bath was dropped when it was being delivered, implying he thought this might've contributed to the problem. He thought the complaint should be upheld and Mrs L's account reworked as if the transaction for the bath hadn't taken place.

I think Mrs L was willing to accept the outcome, but Tesco Bank didn't. It remained of the view that the necessary conditions for a valid claim weren't present because there wasn't a direct link between Mrs L, Tesco Bank, and N because of P's involvement. It said Mrs L's credit card was used to fund her account with P with electronic money – and not the bath.

I issued a provisional decision that said:

What I need to consider is whether Tesco Bank – as a provider of financial services – has acted fairly and reasonably in the way it handled Mrs L's request for getting money back. It's important to note Tesco Bank isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, Tesco Bank can consider assessing a claim under section 75 or raising a chargeback.

I don't think it's in dispute the chargeback was raised out of time, so I'm not going to consider that further.

Section 75 is a statutory protection that enables Mrs L to make a like claim against Tesco Bank for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with her for the provision of goods or services. But there are certain conditions that need to be met for section 75 to apply. The value of the transaction falls within the financial limits. But there also needs to be a debtor-creditor-supplier (DCS) agreement in place. Having multiple parties involved can impact the arrangement.

For similar reasons to what our investigator set out, I don't think the presence of P in this case has broken the DCS agreement. But even if that's right, I'm not persuaded I've seen enough to demonstrate there's been a breach of contract. I'll explain why.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the agreement that the quality of goods is satisfactory.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. In this case the goods were new and should've been in perfect condition, as well as durable.

The CRA also sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

In Mrs L's case, the fault with the goods became apparent around two and a half years after the goods were delivered. I think it would therefore be for Mrs L to demonstrate that firstly there's a fault (she says she's done this by supplying a photo of the crack) and secondly, that the fault was present or developing at the point of sale/delivery.

Mrs L has shown us an email that looks like it was forwarded to N in June 2020 referring to a potential problem with the delivery. But I've not seen N's response or acknowledgement to this. I've also not seen any follow up from Mrs L about this until two and a half years later. I have no way of knowing if N or its courier accepted what Mrs L said or if that was in dispute.

I'm also conscious that based on the evidence supplied I have no way of knowing if the fault was caused after the bath was delivered or as a result with a problem with the delivery or manufacture of it. I have to bear in mind the fault could have occurred during the installation of the bath, or more recently if something was dropped on it for example. While I completely understand Mrs L's position that she thinks damage was caused during delivery, I've not seen enough supporting evidence to demonstrate that's what happened. I agree a stone bath should last longer than two and a half years but given she's had it for over six months I think it's for Mrs L to evidence there's a fault that was present at point of sale (or caused during delivery). I can see she was going to obtain a report, but she was only able to tell us the tradesperson told her the bath was cracked right through and that there's no guarantee fixing it would work permanently. But this doesn't set out the nature of the fault, or how it occurred.

Therefore, while I know she'll be disappointed, based on the evidence I've got, I'm not persuaded Tesco Bank would have been unfair in declining the claim, even if it accepted P didn't break the DCS agreement.

Mrs L said she was disappointed with the decision but didn't have anything further to submit. I can't see we received a response from Tesco Bank.

What I've decided – and why

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

As neither party has submitted anything new for me to consider, while I'm sympathetic to the situation, I see no reason to depart from the conclusions I reached in my provisional decision.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 15 March 2024.

Simon Wingfield
Ombudsman