

The complaint

Mr H complains about some maintenance work he arranged to be carried out on his house, which he paid for using his credit card with Tesco Personal Finance PLC trading as Tesco Bank.

What happened

Mr H owns a house, which he makes available for people to rent. In May 2019, Mr H spoke to a property management company, who I'll call B, about some work he needed doing on that house. B gave Mr H a quotation which covered repairs needed to supply and fit a dormer window, replace 13 roof tiles and refurbish a second window. The price on the quotation was £3,332.40.

In June 2019, Mr H signed a new contract with B, which allowed B to continue to provide Mr H with property management services. And a month later, Mr H used his credit card account with Tesco to pay £1,606.20 to B, as an initial payment for the repair work itemised on the quotation. However, B didn't do the work themselves. Instead, they arranged for a third party tradesperson to carry out the repairs to Mr H's house.

Over the next year, B and their tradesperson exchanged correspondence about the lack of progress with the repair work. Mr H became directly involved in late 2020, where he gathered quotations from other tradespeople to try and get the work he needed done. Mr H also contacted Tesco to try and get his money back from B.

Tesco attempted to help Mr H by raising a chargeback enquiry. That enquiry was unsuccessful and after some confusion, Tesco raised a claim under section 75 of the Consumer Credit Act 1974 ("section 75").

After looking at Mr H's claim several times, Tesco didn't uphold it. They said Mr H hadn't paid for some of the work carried out by B, so had benefitted from that. Mr H didn't accept that outcome and complained to Tesco.

In their final response to Mr H's complaint, Tesco said that as Mr H's house was used as a rental property, he was using it for business purposes. In light of that, Tesco said Mr H wasn't able to bring a section 75 claim to them about the payment to B. However, Tesco paid Mr H a total of £350 for the distress Mr H experienced from the confusion they had caused while looking into his claim.

Mr H didn't agree with Tesco's response to his complaint and brought his case to us. One of our investigators looked into the matter and found that Mr H isn't able to bring a section 75 claim for the payment to B. He said B wasn't responsible for the failure of the tradesperson to carry out the work. The investigator also concluded that the £350 payment Tesco made to Mr H was fair.

Mr H didn't accept the investigator's findings. He said his contract with B showed that they were responsible for the maintenance to his property. He also said the tradesperson hadn't carried out the repairs B had arranged and that he wasn't running a business.

The investigator didn't change his findings and so Mr H's complaint has now been passed to me to make a decision.

I sent Mr H and Tesco my provisional decision on this case, on 23 June 2023. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

Section 75

Mr H made the payment of £1,606.20 using his credit card with Tesco. This is a regulated consumer credit product, and our service is able to consider complaints relating to these sorts of transactions. The relevant law in this case is section 75. This makes Tesco responsible for a breach of contract or misrepresentation by B, but only under certain conditions.

The property maintenance contract between Mr H and B, that was in place at the time of the payment for the repair work, has a section explaining how maintenance costing more than £150 is arranged. Page three, section 15.3 of the contract says:

"Where required, if maintenance work or repairs are likely to cost more than the value outlined in clause 15.2 above, we will only arrange and manage such works if;

15.3.1 you consent to such works being carried out: and

15.3.2 we hold sufficient funds on your rental account in respect of the property concerned to cover the estimated costs of such work (if insufficient funds are available, you will be requested to provide us with any necessary funds)".

Section 15.5 goes on to say:

"We will at our absolute discretion identify and instruct appropriate contractors to carry out any necessary or instructed works unless you request in writing that a specific contractor be requested".

After looking at Mr H's contract with B, I think it was B's responsibility to arrange and manage the repairs to Mr H's house. So I've gone on to think about the invoice and the payment itself, to help decide if the conditions exist for Mr H to be able to make a section 75 claim with Tesco about the transaction to B.

The tradesperson's invoice which outlined the repair work Mr H needed, is addressed to B, rather than Mr H himself. So, I don't think the tradesperson had a direct link to Mr H. In other words, I think Mr H is a client of B and not a client of the tradesperson. I can also see that the payment was made to B, for the same amount as itemised on the invoice. So, I think Mr H paid for the maintenance work arranged and managed by B, in line with the terms of the contract he had with them.

Having considered Mr H's contract with B and how he made the payment, I think the necessary relationships between the parties exists and the claim is within the relevant financial limits. So, I think Tesco should have progressed a section 75 claim, for the payment to B, on behalf of Mr H.

The Consumer Rights Act 2015 (CRA)

The CRA is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. And that services should be

performed within a reasonable amount of time. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

It's important to note that I'm not considering a complaint against B. I'm considering a complaint against Tesco. So, I have to consider Tesco's obligations as a provider of financial services. In this case I have to think about the liability for a breach of contract or misrepresentation under section 75.

The invoice from the tradesperson to B is dated 31 May 2019. Mr H says B expected to complete the repairs by October 2019. However, I can see from the correspondence between B and the tradesperson, that the work was still to be carried out in October 2020. And there doesn't appear to be any cause for the delay, other than the tradesperson, failing to do the work.

Mr H has recently told us that the repairs he paid for weren't carried out on his house by B. This is supported by comments from B, where they have explained to us that the repairs didn't start and the tradesperson has since ceased trading. Mr H has also shown us where he contracted a different tradesperson to do the work needed. So, I don't think the work has been carried out at all, let alone performed within a reasonable period of time.

In all the circumstances, I'm persuaded that B didn't carry out the repairs that Mr H had paid them to do. Consequently, I think B has breached the contract they had with Mr H, as the service he paid for hasn't been carried out in a reasonable period of time. And under the CRA, this means Mr H should be offered a remedy. Given my findings about section 75, I think Tesco are responsible for offering that remedy to Mr H. So, I've gone on to consider what would be a fair outcome here.

The remedy now available to Mr H

In Mr H's circumstances, where there's been a breach of contract, the CRA says that a customer has the right to ask for a repeat performance or a price reduction. I've concluded that B breached their contract with Mr H and that the work hasn't been carried out. But, B didn't seek to provide a repeat performance and after a year, Mr H took matters into his own hands, by paying someone else to do the repairs.

I think Mr H's actions were reasonable here, in that his house needed repairs and was about to go into a second winter where it may have been vulnerable to damage. So, it's impossible now to have B carry out a repeat performance.

The other remedy is for Mr H to receive a price reduction on the cost of the work. But, I've concluded that B didn't manage to start any repairs to Mr H's house, that were listed on the quotation from the tradesperson. So, I think the fair outcome for Mr H here, is for Tesco to refund the payment of £1,606.20 back to the credit card account.

Additionally, I don't think Mr H should suffer any loss for the time the transaction appeared on his credit card account. So, I think it's fair for Tesco to refund any interest added to Mr H's credit card account associated with the payment to B, from the date the payment was made, to the date of settlement of this complaint.

Mr H has told us that the repairs he arranged himself, were more costly than the original price charged by B. While I empathise with what happened here, it may be that the extent of the work B may have gone on to look at, would have increased the overall cost of the repairs. In any event, I don't think it would be fair to require Tesco to now refund the difference between what he paid to B, and the final amount he paid to his chosen

tradesperson.

I'm also aware that during this complaint Tesco have made three payments totalling £350 to Mr H, for the distress and inconvenience caused from how they've handled his claim. Mr H has told us, that his house is used to rent to others. So, although I think he has experienced inconvenience here, I don't think the impact has been as severe as it would have been, if he lived in the house. Having considered everything, I think Tesco's award for the distress and inconvenience Mr H suffered is fair and reasonable. So, I don't think Tesco needs to increase that award.

Mr H responded to the provisional decision and accepted it. Tesco didn't respond to the provisional decision.

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 Mr H accepted my findings and Tesco didn't make any further comments, I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

For these reasons Tesco Personal Finance PLC trading as Tesco Bank should:

1. refund the payment of £1,606.20 back to Mr H's credit card account; and
2. refund any interest accrued on the payment of £1,606.20, which may have been added to Mr H's credit card account, since the payment was made.

Tesco must pay these amounts within 28 days of the date on which we tell them Mr H accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Tesco deducts tax from any interest they pay to Mr H, they should provide Mr H with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Tesco Personal Finance PLC trading as Tesco Bank to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 August 2023.

Sam Wedderburn
Ombudsman