

## **The complaint**

Mr M complains about the way Tesco Personal Finance PLC handled his claim under Section 75 of the Consumer Credit Act 1974.

## **What happened**

In January 2019, Mr M purchased an electric bicycle for £799.99. He paid with his Tesco credit card.

The bike developed a fault and the supplier didn't repair it or replace it. So Mr M made a Section 75 claim to Tesco in early July 2019.

This was resolved in October 2019, when Tesco collected the bike and paid Mr M a full refund.

Mr M says Tesco unnecessarily delayed paying out, which meant he spent the summer without a bike.

He says they tried to mislead him about his rights under Section 75 and initially attempted only to help him retrieve his money from the supplier.

And he was unhappy with the undertakings Tesco sought from him before refunding his money.

He made two complaints to Tesco. They admitted some service failings and offered Mr M £50 in compensation. But they said they hadn't tried to mislead Mr M about the claim. And they said overall the claim had taken a reasonable time given the investigations they'd had to carry out.

Mr M wasn't happy with this outcome and complained to us. Our investigator looked into it and thought there were some unnecessary delays in Tesco's handling of the claim. He thought Tesco should pay Mr M a further £75 in compensation for his trouble and upset.

Mr M disagreed and asked for a final decision from an ombudsman. He wants more than £600 in compensation.

## **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.

There's no dispute that Mr M was entitled to make a Section 75 claim for a refund of the £799.99. Everyone agrees the bike was faulty. Everyone agrees the supplier had an opportunity to put things right but didn't. Tesco have paid Mr M the £799.99.

The only questions remaining are whether Tesco dealt with the claim in a timely and appropriate manner - and, if not, how much compensation Mr M should be paid for any unnecessary delays.

It took four months from start to finish for Tesco to deal with the claim. The Consumer Credit Act 1974 doesn't impose any time limits on dealing with claims. So, I have to consider what's fair and reasonable in all the circumstances.

Tesco have admitted they didn't acknowledge Mr M's claim as quickly as they'd like. And they failed to call him back on one occasion when they'd promised to do so.

They also apologised for referring to Mr M's claim in one letter as a 'dispute' which Mr M says was misleading. Mr M also seems to suggest this meant Tesco were intending to retrieve the money from the supplier rather than afford him his rights under Section 75.

I can see that the letter was confusing, but other communications from Tesco suggest they treated this as a Section 75 claim from the outset. So I'm satisfied they did so. The question is whether they delayed matters unnecessarily.

Mr M appears to believe Tesco should have refunded his money almost as soon as they got the claim. He says he sent them video evidence of the fault with the bike.

I don't agree. As I say, there's are no timescales set out in the Consumer Credit Act. And I think it's perfectly reasonable for businesses to want some time to investigate any claim. They need to be satisfied the product is, in fact, faulty. And that the supplier had an opportunity to repair or replace it.

Tesco have a process which requires them to begin their full consideration of any claim within 28 days of receiving it. It's not for me to comment on that policy. And it seems they met their own timescales in Mr M's case, so there's no suggestion they acted unfairly by treating Mr M differently to any other customer.

Taking that 28 days into account, Tesco then took three months to deal with Mr M's claim.

The first part of that three months was spent in asking Mr M to demonstrate that the bike had a significant fault. To do that, they asked him to obtain an expert report from a VAT-registered bicycle repair business.

Mr M wasn't happy with this because of the time it took and the inconvenience - particularly bearing in mind he'd sent Tesco a video taken on a journey when the bike had persistently broken down.

I don't think it's unreasonable for Tesco to ask Mr M to establish that the bike was faulty. The onus at that point is on the customer to show the goods supplied are not to the required standard.

And on balance I don't think it was unreasonable for them to ask for confirmation of the fault from a VAT-registered expert in this case.

I don't think it would be expected that they - as non-experts - should be able to diagnose the issues with an electric bike from footage of a particular journey, however troublesome that might appear to be. And the VAT-registration did provide some reassurance about the expert's credentials and experience.

So, I'm not going to say Tesco acted unfairly in asking for the expert view. Nor am I going to hold them to account for the time it took to get the report.

The latter part of the three months it took to resolve the claim were primarily spent in Tesco trying to obtain evidence that the supplier had in fact had an opportunity to repair or replace the bike.

Mr M seems to think this was Tesco trying to chase the supplier to pay the refund, rather than pay it themselves. They are entitled, of course, to ask the supplier to pay for the faulty goods, but that shouldn't delay their dealing with Mr M's legitimate Section 75 claim.

In this case, I'm satisfied that wasn't Tesco's primary purpose. I think they were genuinely trying to establish whether the supplier had an opportunity to repair the bike.

Ultimately, the supplier confirmed this for them. They said they had arranged to pick up the bike on two occasions, but they'd failed to do so - putting Mr M to no little inconvenience when he stayed at home expecting the bike to be collected.

On that basis, Tesco paid Mr M's claim. There was some discussion about when and how they would take possession of the bike, which caused some further delay.

Having looked at the communications between Mr M and Tesco about this, I don't think Tesco acted unreasonably at all. They simply clarified the position - that they *would* be taking the bike - and then asked him to provide convenient times for collection.

I've considered carefully the delays during the latter part of the three months. As I say, it seems to me that Tesco were primarily trying to establish whether the supplier had been given a chance to repair the bike. If not, of course, they wouldn't be obliged to refund Mr M.

It's understandable that Tesco took this route, but ultimately, I don't think they needed to do so. The expert report provided by Mr M indicated that the bike had a fundamental fault that was unlikely to be repairable. So, it's arguable that whether the supplier had a chance to carry out repairs was likely to be irrelevant to Mr M's claim.

It's certainly true that if Tesco had taken the full implications of the expert report into account, they would likely have been able to satisfy themselves sooner that Mr M had a right to a refund.

There were also delays caused by discussion between Mr M and Tesco about the form they wanted him to complete and sign before they refunded his money. This asked Mr M to recognise that the refund was in full and final settlement of his claim and contained a confidentiality clause.

Tesco pointed out to Mr M that signing the form wouldn't mean he couldn't complain to us. And that the settlement covered the Section 75 claim - and not any consequential losses he might ask them to pay for.

And they did then remove the requirement for Mr M to sign the form. I think that was the right thing to do, but it did take Tesco a while to do it. They might have reached that position sooner and so settled Mr M's claim sooner.

So, in summary, I think Tesco did cause some unnecessary delays in resolving the claim during their investigation - above and beyond the issues they'd already compensated Mr M for when they considered his first complaint to them.

However, the three months it took to resolve the matter isn't three months of unnecessary delay. Tesco were entitled to carry out investigations to satisfy themselves they should refund Mr M.

I'm not going to try to quantify exactly what part of the three months was unnecessary delay and what part was legitimate investigation. What I can say is that Mr M suffered trouble and upset attributable to Tesco's actions for a relatively short period of time.

I also have to take into account the severity of that trouble and upset. I think it's reasonable for Mr M to say he didn't want to replace his bike until the Section 75 claim was resolved and the bike collected from his home.

So, his trouble and upset - attributable to Tesco - was being without an electric bike for somewhere less than three months. Mr M hasn't suggested this left him without a means of transport.

He also suffered a degree of stress about whether his claim would be settled or whether he'd effectively lost £799.99.

### **Putting things right**

I am sure this was a frustrating experience for Mr M. But taking all the circumstances into account, I don't think £125 compensation - the £50 offered by Tesco plus the further £75 suggested by our investigator - is unreasonable.

### **My final decision**

For the reasons set out above, I'm upholding Mr M's complaint in part.

Tesco Personal Finance PLC must pay Mr M a further £75 in compensation for his trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 March 2020.

Neil Marshall  
**Ombudsman**