

The complaint

Mr B has complained that Tesco Personal Finance PLC rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr B bought solar panels for his home in 2017. The purchase was part-funded by his Tesco credit card. Tesco is therefore liable for the acts and omissions of the installer under the relevant legislation. In this case, that relates to the installer misleading Mr B into believing that the panels would pay for themselves within 12 years.

Tesco initially rejected the complaint saying it was unable to establish a creditor-debtor-supplier link as required for it to be liable under Section 75 of the Consumer Credit Act. It later accepted that this was wrong and offered £100 in recognition of the trouble and upset this caused. But it did not accept there had been a misrepresentation, as it felt there was insufficient evidence to support what Mr B said he was told at the point of sale.

Mr B's complaint was considered by one of our adjudicators. They thought that the benefits of the panels were mis-represented to Mr B and that the complaint should be upheld. Tesco disagreed, so I've been asked to make a 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.

Tesco is familiar with all the rules, regulations, and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So, I don't consider it necessary to set all of that out in this decision.

Having carefully considered everything provided, for the same reasons as those explained by the adjudicator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place.

The only time of sale documents available are an invoice and the MCS installation certificate. So, there is no documentary evidence to support Mr B's assertion that he was told the solar panels would pay for themselves within 12 years. However, we have seen many other cases where customers have made similar allegations against this installer, so I am inclined to accept what Mr B has said in this regard.

In any case, the MCS certificate shows the estimated annual generation of the solar panel system to be 3,180 kWh per year. Any estimates of the financial benefits of the system the installer provided would've been based on this figure.

From the feed-in tariff (FIT) statements I can see that in the first year the system generated only 2,815 kWh, and up until 6 September 2021 it had generated on average 2,671 kWh per year. This is significantly below the performance level estimated by the installer – even

allowing for a reasonable margin of error in its calculations. So, I am satisfied that the performance of the system was misrepresented and as a consequence so were the likely financial benefits. And I think this induced Mr B to enter into the contract.

In light of this, I think that Tesco didn't treat Mr B fairly and he lost out because of what Tesco did wrong. And this means that it should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr B's complaint for Tesco to put things right by:

- Calculating the savings and income Mr B is likely to receive from the solar panels over the period of twelve years from the date of installation, based on what we know about how they are performing.
- If this is less than Mr B paid for the system, Tesco should pay Mr B the difference between that amount and the total amount he paid for the system (including any interest and fees incurred on his Tesco credit card relating to that purchase).
- Tesco should add interest to the payment at 8% simple per year for the time Mr B has been without that money.
- Mr B can keep the solar panel system and any ongoing and future benefits.

If it hasn't already done so, Tesco should also pay Mr B £100 compensation in respect of the trouble and upset caused by its initial decision.

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. Tesco Personal Finance PLC should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 April 2022.

Phillip Lai-Fang
Ombudsman