

The complaint

Miss H has complained that Tesco Personal Finance plc (“Tesco Bank”) rejected her claim against it under section 75 of the Consumer Credit Act 1974 (“the Act”) in relation to her purchase of some solar panels.

Miss H is represented by a claims management company (“the CMC”).

Background

Miss H bought solar panels for her home in November 2015 (together with some optional extras). She paid the deposit with cash and paid for the balance with her Tesco Bank credit card, and so that business is liable under the Act for any misrepresentation or breach of contract by the installer.

In May 2021 Miss H asked Tesco Bank for compensation under section 75. She said the installer had misled her into believing that the panels would be self-funding, which they weren’t, largely because the panels had not been registered for feed-in tariff (FIT) payments. She also said that she hadn’t registered for FIT payments because the installer’s salesman had told her that this would be taken care of for her.

Tesco Bank said there was no evidence that the salesman had told her that. The installer had provided her with the necessary paperwork for her to register the panels herself, so the onus had been on her. The panels had not been self-funding because she had not been receiving FIT payments. But Tesco Bank did accept that the savings on Miss H’s electricity bills had been a little lower than estimated at the point of sale, and so to compensate her for that it offered her £274.71.

Being dissatisfied with that response, Miss H brought this complaint to our service. Some time later, she added that the salesman had told her that the panels would pay for themselves within five to ten years.

One of our adjudicators looked into what had happened. Having considered all the information and evidence provided, our adjudicator upheld this complaint. She believed Miss H’s version of events, and found that the sales documentation showed that the panels would pay for themselves within about eight years. She thought that if Miss H had been told that she had to register for FIT payments then she would have done so, so the fact that she hadn’t suggested that nobody had told her. The result was that she had missed out on most of the potential income from the panels. She also noted that the savings on Miss H’s energy bills had been about £50 a year less than estimated. So she recommended that Tesco Bank pay Miss H compensation for her loss.

Tesco Bank did not agree. It asked where the self-funding timescale of five to ten years had come from, since this had not been mentioned earlier (the CMC answered that this was Miss H’s recollection of the sales meeting). Tesco Bank suggested that this had been made up, or else it would have been mentioned in the initial claim. It pointed out that Miss H had had until 2019 to register for FIT payments (being the year that the FIT scheme was closed to new applicants). Miss H had also purchased LED light bulbs with the panels, which had

made further savings, but the adjudicator had not taken these into account (but as a matter of fact I can see that she did). There was no evidence that anyone had told Miss H that the installer would register the panels, and as it is always the case that the consumer has to register them, it was very unlikely that the salesman would have told her otherwise; nor would there have been any reason for him to. The installer's website says it is the customer's responsibility. Furthermore, even if that had been said, that would not be a misrepresentation, as it would not have induced Miss H to make the purchase.

These arguments did not change the adjudicator's mind. In particular, there was an earlier deadline that Miss H had needed to meet – March 2016 – and so she did not think that Miss H would have noticed by then that she was not receiving her quarterly FIT payments.

Since no agreement had been reached, the case was referred for an ombudsman's decision. I wrote a provisional decision which read as follows (I have since edited one sentence for clarity).

My provisional findings

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

Having carefully considered everything provided, I am currently minded to uphold this complaint in part. I will explain why.

I will begin with the self-funding point, which I have decided in Miss H's favour. The installer's quote states that the total price of the panels, including the optional extras, is £6,895. It goes on to give an estimate of the income and savings that the panels and other equipment (which included the LED bulbs) would make: a total of £819.63.¹ Since this is clearly more than one tenth of the total price, the solar equipment was certainly expected to pay for its cash price in less than ten years – in about eight years and five months. So it is plausible than the salesman told her so, but whether he did or not doesn't really matter, since the paperwork says as much.

It is not in dispute that the savings on Miss H's energy bills have been a bit less than estimated. Tesco Bank accepted that this was a misrepresentation and made an offer before Miss H brought this complaint to our service. That offer was calculated as follows:

- The total shortfall over 69 months (being the time that had passed since the sale) was £301.88.
- 91% of the purchase price had been paid with the Tesco Bank credit card, and Tesco Bank was concerned that the balance might have been paid with credit provided by a third party, so it was only willing to pay 91% of the shortfall, which was £274.71.

I can understand why Tesco Bank did it like that. But under section 75 Tesco Bank is liable for 100% of the compensation that the installer owes Miss H – it doesn't have to be reduced *pro rata* to the proportion of the purchase price that was paid using credit provided by Tesco Bank. So I think that a fair offer for this issue would be £301.88 – plus further compensation for the following 32 months (being the balance of the self-funding time of eight years and five months). In calculating how much that is, I think it would be fair for Tesco Bank to take into account that energy prices and inflation have both increased recently. It should show its working.

¹ This was made up as follows: £647.56 from the panels themselves, £102.20 from the LED bulbs, and £69.87 from heating control and other items.

I am not persuaded that the installer told Miss H that it would register the panels for FIT payments for her. On the balance of probabilities I think it is more likely than not that the salesman would have mentioned that she had to do it, and that Miss H forgot. My reasons for deciding that are, firstly, that it would certainly have been a routine part of every sales pitch, and I see no reason to suppose that the salesman failed to mention it to Miss H (let alone told her the opposite), and secondly, I accept Tesco Bank's point that the registration form would have been sent to Miss H for her to complete. (In coming to that conclusion, I have disregarded the installer's website, as I have no reason to suppose that Miss H looked at it, nor do I know what it said in 2015.)

Responses to my provisional findings

Tesco Bank did not respond to my provisional decision. The CMC raised a new point about whether the panels had generated as much electricity as was estimated at the point of sale. I can see from a meter reading already provided by the CMC that the panels generated 96% of what was estimated, which I consider to be within a reasonable margin of the estimate. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I uphold this complaint in part. I order Tesco Personal Finance plc to put things right in the way I have set out above; that is to:

- Pay Miss H £301.88, and
- Calculate the total shortfall over months 70 to 101 (inclusive) from the sale (and show its working), and pay that amount to Miss H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 9 March 2023.

Richard Wood
Ombudsman