

Complaint

Mr B has complained that Tesco Personal Finance PLC trading as Tesco Bank (“Tesco”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mr B bought a solar panel system (“the system”) for his home in 2014. The purchase was funded in part with a credit card payment with Mr B’s Tesco credit card, and that business 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 be self-funding over a 7-year period, which they weren’t.

Mr B’s complaint was considered by one of our investigators. She thought that the benefits of the panels were mis-represented to Mr B, and that fair redress would be to make the panels cost no more than the benefit the system would produce over a 7-year period. The redress should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Tesco didn’t agree for the following reasons:

- Tesco felt the complaint shouldn’t be upheld on Mr B’s testimony alone. It felt that while the installer may have expressed an opinion that the system will pay for itself in 7 years, given the number of contributing factors and variances to the savings/income a system may produce, it would be impossible to factually state that Mr B will achieve a specific amount of benefit within certain timeframes. It felt this therefore didn’t amount to a misrepresentation.
- It also pointed out that Mr B had a working solar panel system, which is producing benefits while reducing his carbon footprint.
- Finally, it added Mr B had not demonstrated that he had actually paid the full cost of the system.

As an agreement couldn’t be reached, the case was passed to an ombudsman.

In my provisional decision of 2 December 2022, I set out why I was minded to upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Tesco made some additional points which I will address below.

My findings

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

In my provisional decision I explained the following:

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.

I can see that Mr B signed a contract for the sale of the solar panel system in June 2014. This sets out that the annual benefit was around £1,147. The total cost of the system was £8,750. This is all contained within the installers own contract and the facts and figures are handwritten. I think the document is reliable evidence of the nature of the discussions Mr B likely had with the installer during the sale.

There are a number of facts and figures on this document and I think Mr B would have been reliant on the sales representative to talk him through what these figures meant in financial terms. Based on these figures, it does look like that system would pay for itself in around seven and a half years. This is consistent with what Mr B says he was told. Mr B's testimony has also been clear and consistent throughout this claim.

I therefore think it's more likely the installer did tell Mr B the system would likely produce the benefits set out in the contract, and that the system would produce sufficient benefits for Mr B to recover the costs of the system in around 7 years – like he says. And I'm satisfied that Mr B relied on these representations and purchased the system on that basis.

Payments made for the system

I understand Tesco says Mr B hasn't demonstrated that he's made the full payment due under the solar panel contract. But I disagree.

From Mr B's solar panel contract document, I can see Mr B was due to pay a deposit on his credit card and the remaining amount was to be paid in cash on completion. I cannot see any evidence that any further finance was arranged for him at any point. It seems the system was subsequently installed as planned, and Mr B was given the relevant completion certificates to enable him to sign up for the Feed in Tariff scheme (FIT) and claim the benefits produced by the system. He was also subsequently given an invoice from the installer that said he'd paid the full amount due under the contract. I haven't seen any evidence that any amounts remained outstanding after the system had been installed.

I think it's unlikely that the installer would have installed the system, and gone on to give Mr B all the completion certificates, and an invoice confirming he's made all the payments due under the contract, if he hadn't actually paid the amounts due under the contract. So, I'm satisfied that Mr B did pay the amounts remaining under the contract after the deposit was paid on his Tesco credit card. So any redress should take account of the full amount Mr B paid.

So, having carefully considered everything provided, for the same reasons as those explained by the investigator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr B was not given clear information to demonstrate that the solar panels would not be self-funding and would equate to an additional cost for him.

So, 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.

Fair compensation – what Tesco needs to do to put things right for Mr B

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 recalculating the cost of

the system based on the known and assumed savings and income to Mr B from the solar panels over a 10-year period so he pays no more than that, and he keeps the solar panel system, and any future benefits after the 10-year period. This is in line with our established approach to these types of cases

Redress Period

Mr B says he was assured the system would be self-funding in around 7 years. And I can see our investigator recommended that the redress period should be 7 years – in line with Mr B's recollection of the sale. But I've decided the redress should be calculated over a 10-year period, rather than the 7-year period Mr B has requested. This is because I need to ensure the redress is fair and reasonable to both Mr B and Tesco.

The purpose of our redress methodology is to make sure Mr B doesn't suffer a financial loss, not to make the misrepresentation come true. Because Mr B can expect to benefit from the solar panels (through energy savings and Feed-In Tariff payments) for at least 20 years, I think a 10-year period is reasonable when calculating the redress.

In this specific case, I do not think a shorter period would strike the appropriate balance in terms of fairness for both parties.

In the event the calculation shows that Mr B is paying (or has paid) more than he should have, then Tesco needs to reimburse him accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr B by way of explanation.

My understanding is that Mr B paid the initial deposit on his Tesco credit card and the remaining amounts in cash. Therefore, I think Tesco should pay Mr B the difference between what he paid in total and the self-funding amount, with 8% interest.

I'm satisfied that there was sufficient information available at the time that Mr B first contacted Tesco that means the claim should have been upheld. I intend to direct Tesco to pay £100 compensation for the trouble and upset caused.

Further submissions

In response to my provisional decision, Tesco said that the documents contradicted Mr B's testimony. It also wanted clarification on what evidence I'd relied on to reach my decision. Tesco pointed out that it had seen no evidence the system wasn't self-funding.

We explained that the evidence relied on was set out on the provisional decision and asked for details of what evidence Tesco had seen that contradicted Mr B's testimony. Tesco did not provide more specific information about this, for example which document contradicted Mr B's testimony.

We also explained that the consumer's representatives had set out the consumer's loss in the letter of claim and I'd seen nothing to dispute this. The consumer's representative also provided recent energy bills and FIT statements to enable Tesco to work out the consumers loss. It also explained statements from around the time of sale were no longer available.

I reviewed this the case again and in an email of 8 March 2023, we clarified the following with both Tesco and Mr B's representative:

The consumers representatives have told us that bills from around the time of sale are no longer available. Given this sale is from 2014, we don't think that's unreasonable. As Tesco

might be aware, we normally expect businesses to use actual FIT statements and bills available to work out redress. However, where that's unavailable we expect businesses to use reasonable assumptions to help work out what (if any) amounts are owed to the consumer. Tesco can also look at any point of sale documents/estimates and figures recorded to help work out redress.

As Tesco may have been advised in other cases, where bills are unavailable, to calculate any electricity savings Tesco should use a self-consumption rate of 37% and a default electricity price of 16p per kWh. For clarity, the self-consumption rate is the amount of electricity generated by the solar panels that the consumer is able to use or self-consume whilst he is in his home. So we think using these figures for the period no bills are available are fair.

As explained above, the recent bills Mr B's representatives sent us were also forwarded to Tesco and in line with our established approach to redress, we explained Tesco could use these to help it calculate redress.

Neither party made any additional comments.

Final review

Having reviewed the file again in its entirety, for the same reasons set out in my provisional decision, I am still of the view that the evidence supports the conclusion that the system was sold on the basis that it would be self-funding in around 7 years. Based on what I've seen, I think it's unlikely the system is self-funding in the way the supplier said it would be. I would add that Mr B was given a specific estimate of the benefit *his* system would likely produce and how that would result in the system paying for itself in around 7 years – rather than the seller expressing a general opinion. So having considered everything both Tesco and Mr B's representatives have said, I see no reason to depart from the findings I've made above in my provisional decision (as set out above).

However, as explained in my provisional decision, if when Tesco carries out its redress calculation, Mr B has suffered no loss, then the calculation should be shared with Mr B by way of explanation.

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 recalculating the cost of the system based on the known and assumed savings and income to Mr B from the solar panels over a 10 period so he pays no more than that, and he keeps the solar panel system, and any future benefits after the 10-year period. This is in line with our established approach to these types of cases.

As explained above, we normally expect businesses to use actual FIT statements and bills available to work out redress. However, where that's unavailable we expect businesses to use reasonable assumptions to help work out what (if any) amounts are owed to the consumer. Tesco can also look at any point of sale documents/estimates and figures recorded to help work out redress. Where bills are unavailable, to calculate any electricity savings Tesco should use a self-consumption rate of 37% and a default electricity price of 16p per kWh. The bills Mr B has submitted can be used by Tesco to help it calculate redress.

In the event the calculation shows that Mr B is paying (or has paid) more than he should have, then Tesco needs to reimburse him accordingly. Should the calculation show that the

misrepresentation has not caused a financial loss, then the calculation should be shared with Mr B by way of explanation.

My understanding is that Mr B paid the initial deposit on his Tesco credit card and the remaining amounts in cash. Therefore, I think Tesco should pay Mr B the difference between what he paid in total and the self-funding amount, with 8% interest.

I'm satisfied that there was sufficient information available at the time that Mr B first contacted Tesco that means the claim should have been upheld. I direct Tesco to pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons explained, I uphold this complaint. Tesco Personal Finance PLC trading as Tesco Bank 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 28 April 2023.

Asma Begum
Ombudsman