

## **The complaint**

Mr H complains that Tesco Personal Finance PLC trading as Tesco Bank (“Tesco”) rejected a claim he made under Section 75 of the Consumer Credit Act 1974.

## **What happened**

In 2017, Mr H purchased solar panels with a battery and boiler optimiser (“the system”) from a supplier. He paid a 25% deposit for this on his Tesco credit card, gaining protection under section 75. He also took out a personal loan which he used to pay the remaining balance of the purchase price to the supplier and to pay off his credit card (in respect of the deposit he had paid). Section 75 protection does not apply to the personal loan, since the funds were paid to Mr H rather than directly to the supplier for the purchase of the system.

In 2022, a claims management company (“CMC”) made a claim on Mr H’s behalf to Tesco alleging that the system had been misrepresented to Mr H. The CMC said that Mr H had been told that the income and savings generated by the system would cover his monthly loan repayments, making the system self-funding within the loan term. The CMC says that was untrue, and if Mr H had realised this at the time he wouldn’t have purchased the system.

Tesco did not respond to the claim within a reasonable time, so Mr H made a complaint about this. In response, Tesco apologised for the delay and offered Mr H £125 compensation by way of an apology.

Tesco then rejected Mr H’s Section 75 claim. It said that Mr H had received the goods he purchased and there was no misrepresentation. It said the purchase wasn’t covered by Section 75 because the credit card payment had been made via an online e-money provider, so there was not the required debtor, creditor, supplier relationship.

Unhappy with this, Mr H made a complaint about Tesco’s decision and asked the Financial Ombudsman Service to look into what had happened. Our investigator said that Section 75 did apply to the purchase. She had contacted the online e-money provider and had confirmed that the credit card payment was made using its payment gateway service – so the relevant debtor, creditor, supplier relationship did exist. Tesco has not disputed this further.

Our investigator recommended the complaint be upheld. She felt there had been a misrepresentation and that Tesco was liable for this.

Tesco disagreed. It said that from the available evidence Mr H may have been told the system was self-funding within its lifetime, but this was not a misrepresentation because it was on course to do that, albeit Mr H had chosen to sell the property (including the system).

Because the complaint has not been resolved, I have been asked to make a decision. I issued a provisional decision explaining that I was upholding the complaint for slightly different reasons to our investigator and was planning to award slightly different redress.

Mr H responded to say he agreed with my provisional decision. Tesco didn’t respond by the

deadline I gave. So, with nothing additional for me to consider, this final decision is the same as my provisional one.

### **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.

Section 75 makes a creditor liable for a misrepresentation or breach of contract by a supplier of goods or services. It requires a particular debtor, creditor supplier relationship to exist, which I'm satisfied there was in this case in relation to the credit card payment.

I've decided to uphold this complaint and I'll explain why, including how things should be put right.

The available evidence includes the sales documents, the personal loan agreement, and Mr H's recollection of what happened. Taking all of this into account, I am persuaded that the alleged misrepresentation most likely took place.

The sales documents do not show what benefits (in terms of income and savings) the system would provide. And the personal loan agreement only shows details of the loan. So, the only evidence of the alleged misrepresentation is what Mr H has told us. In order to conclude there was a misrepresentation, I have to find Mr H's recollection of events to be sufficiently plausible and persuasive. And in this case I do.

Mr H says he realised the benefits did not cover the loan repayments and he had a problem with the battery several months after the sale. In late 2017, he called the supplier about these issues, initially speaking to someone and feeling fobbed off. After about a month of attempting to chase this with the supplier and feeling ignored, he found out that the company was no longer trading.

Mr H says he did not realise he could make a claim to Tesco at that time – and indeed did not realise he could until he saw adverts about solar panel mis-selling claims at which point he sought advice which resulted in the claim being submitted to Tesco.

I think that is plausible and is supported by the evidence. The sales documents make it clear that the supplier required a 25% deposit prior to installation. I can see that Mr H took out a personal loan shortly after this and used it to pay the remainder of the purchase price and to pay off the deposit amount that he'd paid on his credit card. This suggests that he did not have other means of paying the deposit, which is why he used his credit card – rather than, for example, paying this from his savings or income or that he was aware at that time of the added protection from using his credit card.

In addition to this, given there was a problem with the battery, the failure of the benefits to cover the loan repayments could've been due to a fault in the system – rather than that there was a misrepresentation. So, I think it is unlikely that Mr H would've had a clear idea that there was something wrong with what he was told during the sale – rather than there just being a fault with the battery – until sometime after the problem with the battery was solved by the manufacturer. By that time, given he contacted the manufacturer because the supplier had gone out of business, Mr H didn't think he had any further recourse with regards the alleged misrepresentation.

So, I'm satisfied that Mr H is unlikely to have realised he could pursue the matter with Tesco until his CMC told him he could do so.

Overall, I think it is likely that the system was misrepresented to Mr H in the way he has alleged. As such, I do not think Tesco's response to the claim was fair and reasonable. So, I am planning to uphold this complaint. I set out below what Tesco should do to put things right.

### **Putting things right**

Tesco should put things right by ensuring that Mr H does not pay more for the system than the benefit he is likely to receive from it over the first ten years after installation.

To do this Tesco should:

1. Calculate how much Mr H has paid for the system (or will pay for it if his loan is not yet paid off), including:
  - The amount paid on his Tesco credit card including interest and charges relating to that amount.
  - The amount he has paid on the personal loan including interest and charges.
  - The amount still outstanding on the loan at the point of settlement of this complaint (since Mr H could use the settlement to pay off the remaining balance rather than incur additional interest).
2. Calculate the expected benefit from the system over ten-years including:
  - The actual benefit received to date (for periods where evidence of this is available).
  - The estimated benefit to date (for periods where there is no evidence of the actual benefit, using reasonable assumptions).
  - The likely future benefit from now until the end of the ten-year period (using reasonable assumptions).
3. Pay Mr H the difference between the amount calculated in 1 and 2 above, assuming that the expected benefit in 2 is less than the amount calculated in 1.
4. If Mr H has already paid off the loan, interest should be added to the settlement at 8% simple per year from the date of loan settlement until the date Tesco pays this redress.

I think Tesco should've confirmed whether there was a relevant debtor, creditor, supplier relationship before it rejected the claim (rather than assuming there was not). So, Tesco should pay an additional £100 compensation to Mr H in recognition of the distress and inconvenience this caused.

**My final decision**

For the reasons I've explained, I uphold this complaint. Tesco Personal Finance PLC trading as Tesco Bank should put things right as I've 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 9 February 2024.

Phillip Lai-Fang  
**Ombudsman**