

The complaint

Mr U is unhappy because Tesco Personal Finance PLC trading as Tesco Bank rejected his claim under Section 75.

What happened

Mr U purchased a patio door from a merchant and part paid using his Tesco Bank credit card. When the door was delivered it was the wrong colour. The merchant offered to re-stain the door and Mr U agreed, but after the re-staining the door was still the wrong colour.

Mr U refused delivery and asked the merchant if he could return the door and receive a refund but the merchant refused.

Mr U raised a Section 75 complaint with Tesco Bank. Tesco reviewed the evidence provided by Mr U but said there was no evidence that the door had been stained incorrectly. Tesco said that the merchant had provided evidence to show that Mr U had been made aware at the point of sale that the staining could look different on timber than on the sample provided instore.

Mr U wasn't happy with the outcome and brought his complaint to this service.

Our investigator upheld the complaint. He said that whilst the merchant hadn't admitted liability about the colour of the stain, it appeared that the merchant accepted that the colour wasn't right and had agreed that remedial action was required. The investigator said that because Mr U had been given a sample of the wood in the colour he'd chosen at the point of sale, this was considered a "sale by sample" under The Consumer Rights Act 2015, and it was a term of the contract that the door would match the sample. The investigator said he was satisfied based on the pictures supplied by Mr U that the colour of the door didn't match the sample, and that there had therefore been a breach of contract. The investigator said that Tesco Bank should refund Mr U the cost of the door (£7,110).

Tesco didn't agree so I've been asked to review the complaint.

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.

Under Section 75 of The Consumer Credit Act 1974, Mr U has a like claim against Tesco Bank as he does against the merchant for breach of contract and/or misrepresentation.

A breach of contract is where the merchant fails to do what the contract says it must, either expressly or by implication. For example, there is a breach of contract if the goods supplied aren't as described.

The way in which this service approached Section 75 is to look at what happened, look at all of the available evidence and assess whether there are grounds for a successful claim under

Section 75.

Mr U says the stain colour didn't match what he ordered. He's provided photos showing the sample of the wood that he was provided with at the point of sale, as well as pictures showing the sample held up against his existing patio door showing that it was a good match. Mr U has also provided pictures showing the door he received after it had been re-stained by the merchant. This shows a significant colour difference between the door supplied and the sample.

Based on what I've seen I think it's fair to say that the colour of the door supplied didn't match the sample.

The merchant relies on the fact that Mr U was made aware at the point of sale that the staining could look different on timber than on the sample provided instore. However, this is contradicted by the merchant's literature that *"We strongly recommend inspecting samples first hand as a brochure can only provide an indicative guide. Colour swatches and samples are available from your local showroom – take a swatch away with you and offer it up to your property to ensure a good match"*.

Further, Section 13 of The Consumer Rights Act 2015 states that where a consumer enters into a contract for goods on the basis of a sample, the goods delivered must match the sample.

Based on what I've seen, the door supplied to Mr U was significantly different in colour to the sample he'd chosen. I'm persuaded that there's enough evidence to show that there's been a breach of contract.

Putting things right

I've explained why I'm of the view that there's been a breach of contract. It follows that I think Tesco unfairly rejected the Section 75 claim. To put things right Tesco should refund Mr U the cost of the payments he's made towards the door in the sum of £7,110.

My final decision

My final decision is that I uphold the complaint. Tesco Personal Finance PLC trading as Tesco Bank must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 2 April 2024.

Emma Davy
Ombudsman