

The complaint

Mr F complains about a decision by Tesco Personal Finance PLC (who I'll call Tesco) not to uphold a claim he made to them under the chargeback scheme and under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

I issued a provisional decision on this complaint earlier this month. An extract from that provisional decision is set out below.

What I've provisionally 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.

I don't think Tesco have been reasonable here and I'm expecting to uphold it. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The chargeback claim

When something goes wrong and the payment was made with a credit card it may be possible to progress a claim under the chargeback scheme. In Mr F's case this scheme is administered not by Tesco but by Mastercard and they set the rules. One of those rules is that the consumer has 120 days within which to make a claim. Mr F bought his electric shaver from the merchant (who I'll call "M") in January 2022 but he didn't submit his claim to Tesco until June 2023 which was more than 120 days. In those circumstances, Tesco were out of time to submit a chargeback claim and I don't, therefore, think they were unreasonable not to.

The section 75 claim

This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a legal claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

The Consumer Rights Act 2015 (CRA) is the relevant legislation. It says that goods should have been of satisfactory quality when supplied and the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. The relevant legislation says that when we consider whether goods were of satisfactory quality we should consider whether they have been durable.

In respect of the product Mr F bought, the manufacturer's website says:

"...designed to last 7 years, this electric shaver is also 100% waterproof and can be used with foam, gel, or even under the shower".

Mr F sent the shaver back to M after he'd been using it for about 16 months as he said it was regularly cutting out. M have claimed that he returned an "older model in very used/damaged" condition.

Mr F has frequently asked M for photographic evidence to support that assertion, but they haven't provided it to him and they appear (as is their policy) to have now discarded the item. They have, therefore, prevented Mr F from demonstrating the product he returned was the one he bought, and that it had developed a premature fault.

Tesco say that it is for Mr F to demonstrate the goods were faulty but he's unable to do that because of M's actions. I'm persuaded the goods he bought were likely to have failed because he's provided evidence to this Service that shortly after he returned the goods to M he bought another identical shaver from another merchant. I can't understand why that would be necessary if he still had the shaver he had been complaining about. I can also see that when Mr F replaced the shaver he paid extra for a five year warranty. That would, in my opinion, support his assertion he'd had problems with the previous shaver as it seems he was keen to ensure that any similar problems with the new one would be covered by a guarantee.

On balance I am, therefore, persuaded that it was likely Mr F had a fault with the shaver he bought in January 2022 using his Tesco credit card. Having considered the manufacturer's website statement, it seems that shaver hasn't lasted anywhere near as long as could be expected and I'm persuaded it wasn't sufficiently durable.

On that basis I think Tesco were unreasonable not to uphold Mr F's section 75 claim. The CRA allows the business an opportunity to repair a fault but as the goods appear to have been disposed of that can no longer be done. In those circumstances Mr F would be entitled to reject the goods and get a refund. But the CRA says:

"If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered..."

Mr F paid £279.99 for goods that were supposed to last about seven years but only lasted for 16 months. I, therefore, think the fairest way for Tesco to resolve this complaint for Mr F would be for them to pay him a proportionate refund of £234.89 which is 81% of the purchase price and accounts for the usage Mr F has had from the shaver.

My provisional decision

I'm expecting to uphold this complaint and to tell Tesco Personal Finance PLC to provide Mr F with a refund of £234.89.

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.

Mr F and Tesco accepted my provisional decision. That provisional decision now becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I uphold this complaint and tell Tesco Personal Finance PLC to provide Mr F with a refund of £234.89.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 February 2024.

Phillip McMahon
Ombudsman