

The complaint

Mr D has complained that Tesco Personal Finance Limited (“Tesco”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

Mr D was initially represented by a claims management company, but that company is no longer representing him. I may refer to it as his representative throughout this decision as it submitted much of his complaint and evidence before ceasing to act for him.

What happened

In February 2016, Mr D agreed for a third-party supplier that I’ll call “S” to install spray foam insulation into his loft. The cost of this was just over £3,000 but Mr D says he eventually paid £3,500 and put this on his Tesco credit card. As Mr D paid for the installation with his Tesco credit card, Tesco is liable for a breach of contract or misrepresentation of S under the law. But there are time limits and other conditions that apply.

In spring 2023, Mr D says he saw media reports about the dangers of spray foam and decided to seek help from a claims company. He said the claims company carried out a survey and arranged for the spray foam to be removed. He also had to replace the roof on one area that had the insulation as the spray foam couldn’t be safely removed – leading to him suffering considerable loss. He wants Tesco to reimburse him for the losses he’s suffered.

In November 2023, Mr D (through his representative), raised a claim under Section 75 of the Consumer Credit Act 1974 (“s.75”) against Tesco for breach of contract as it felt the spray foam was not fit for purpose and of poor quality and also for misrepresentation. They said S had omitted to tell them that the spray foam sold to them contained dangerous chemicals and could cause a build-up of harmful vapours. They also felt the spray foam had been installed in the wrong place. The representative pointed out that Trading Standards had obtained injunctions of some directors of a linked company preventing them from deceiving customers in any way and Trading Standards felt some of the spray foam installations were wholly unnecessary. It said that the director of S had had a similar order made against it in 2017 – although it was unclear whether he was a director of the company at the time Mr D bought his insulation.

Tesco considered the claim as a potential breach of contract and/or misrepresentation under s.75. But it said that his s.75 claim was time barred under the Limitation Act 1980 (the LA), so it wouldn’t consider the claim any further. It also said, even if the claim hadn’t been time barred, it would need an independent report from an expert proving his claim that S had breached the contract or had misrepresented the installation to him – which he could no longer provide as he’d had the spray foam removed.

Mr D, (through his representative), felt the claim wasn’t time barred due to section 14a (s.14a) of the LA, which extended the time by a further three years as his claim was one of negligence, and Mr D did not know about the issues until March 2023. He also felt that section 32 (s.32) was relevant because Trading Standards found the works were wholly

unnecessary, and where fraud is involved, the time period doesn't start until the claimant discovered the fraud or could have reasonably discovered it.

Unhappy with Tesco's response, they referred the complaint to this service. Mr D's complaint was considered by one of our investigators. He felt the s.75 claim was in all likelihood time barred under the LA, so it wasn't unreasonable that Tesco didn't consider Mr D's s.75 claim any further. So he didn't think Mr D's complaint should be upheld.

Mr D disagreed. He responded directly and reiterated the concerns his representative had raised previously regarding his belief that he had brought his claim in time due to the provision of s.14a, and s.32 of the LA. He also reiterated a number of misrepresentations he felt had been made by S including:

- That the salesperson was not a qualified surveyor and didn't carry out a technical survey.
- That S wasn't an approved seller or installer of this type of spray foam.
- That it didn't inform him that he'd find it difficult to sell the property or get an equity release loan.
- That harmful flammable vapour would be released and that they should vacate the house during the installation.
- That the installation was done so poorly that it went against the British Board of Agreement certificates.

As the complaint couldn't be resolved by our investigator, I was asked to make a decision. On 30 April 2025, I wrote to both Mr D and Tesco to explain why I wasn't minded to upholding the complaint and asked both parties for any comments before I completed my review of the complaint. Tesco responded to explain that it agreed with my view of the complaint, but Mr D did not reply with any comments.

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.

In my provisional decision I explained the following:

Having carefully considered everything provided, for the same reasons as those explained by the investigator, currently I do not intend to uphold this complaint.

Firstly, it may be helpful to explain that I need to consider whether Tesco – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr D's claim. But it's important to note Tesco isn't the supplier. S.75 is a statutory protection that enables Mr D to make a 'like claim' against Tesco for breach of contract or misrepresentation by a supplier because Mr D paid for the goods and services using a Tesco credit card.

There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met and Tesco has also agreed that s.75 applies.

Mr D said that S misrepresented the spray foam (by omitting to tell him important factors about it) and also breached the contract due to it not being of suitable quality or fit for purpose. So, he says Tesco is jointly liable under s.75. But if Tesco could show the claim was brought outside of the time limits set out in the LA, it would be entitled to rely on the LA as a defence to answering the claim.

I should make it clear however that I'm not deciding if any right that Mr D may have to bring these claims has expired under the LA - that's a matter for the courts. In this decision I'm considering if Tesco has acted fairly and reasonably in turning down Mr D's claim.

For a claim for misrepresentation, a claimant has a period of six years to bring a claim from the date on which the cause of action accrued. The date on which a cause of action accrued is the point in time that everything needed to make a legal claim occurred (i.e. the date he relied on the misrepresentation and suffered the loss). So, in Mr D's case, that's when he could have brought a claim for misrepresentation against S or the like claim against Tesco. I think that was the date he entered into the agreement to buy spray foam insulation in February 2016. It was at that time that he entered into an agreement based, he says, on the misrepresentations of S. And it was at this time that he suffered a loss, as he used his credit card with Tesco to pay for the installation.

For a claim for breach of contract, a claimant has six years to bring a claim from when the breach of contract took place. February 2016 is also when the spray foam was installed – which Mr D says was carried out poorly, was of unsatisfactory quality and not fit for purpose.

So, for Mr D's s.75 claim for breach of contract and/or misrepresentation, Mr D had six years from February 2016 – to bring his claim. But he didn't try to contact Tesco until 2023, which was outside of the time limits set out in the LA. So, I think Tesco acted fairly in turning down this claim as it felt his claim was time barred under the LA.

I've gone on to consider Mr D's arguments that because of provisions in other areas of the LA (s.14a and s.32), that the time for him to bring his claim extends beyond the initial six years, and in fact starts when Mr D became aware that he had cause to bring such claims (which he says happened in March 2023.)

But I don't agree – s.14a extends the time for consumers to bring a claim in negligence for a further three years – but a claim for negligence requires a duty of care which isn't usually present in contracts where consumers have paid for the provision of goods and services – so I don't think Tesco was unreasonable for concluding that s.14a doesn't apply here.

I've also considered Mr D's claim that the information provided to him was fraudulent and the reference to s.32. S.32(1)(b) says that, if any fact relevant to the debtor's right of action has been deliberately concealed from them, the period of limitation doesn't begin until the debtor has discovered the concealment or it could with reasonable diligence have been discovered by them.

I have to bear in mind that when Mr D initially raised his s.75 claim, he didn't claim for fraud or deliberate concealment - his claim was for misrepresentation and/or breach of contract. So, I don't think it was unreasonable for Tesco to have responded to his case based on the claims he actually made.

Additionally, even if he had made a claim for fraud or deliberate concealment, in order for s.32 to apply, any fraudulent activity or deliberate concealment has to be about matters that's directly relevant to one of Mr D's claims. There are no independent reports from an expert corroborating Mr D's alleged misrepresentation (as highlighted by Tesco) and Mr D has already had the insulation removed so cannot provide one now. We've only got information that injunctions were brought against directors of a different company, to prevent consumer deception as Trading Standards believed that some of the sales they made were wholly unnecessary. But we've seen no evidence that Mr D's installation was wholly unnecessary, and this also didn't form part of his initial complaint. I've seen nothing to show that any deception involved in the injunctions Mr D now wishes to rely on were about matters related to the claims Mr D is seeking to make.

So, I don't consider it was unfair that Tesco concluded that s.32 isn't applicable in these circumstances.

I'd like to point out that I haven't made any findings as to whether Mr D has suffered a breach of contract or misrepresentation at the hands of S. I've only considered whether Tesco has responded to his s.75 claim fairly – and based on what I've seen, and the likely implications of the LA, I think it did.

I understand due to the reports Mr D has seen in the media and comments made by his former representative, Mr D feels very strongly about his case. I appreciate he's likely to be disappointed by my findings, but I will consider any further points Mr D wishes to make. I should, also, point out Mr D doesn't have to accept my decision. He's also free to pursue the complaint by more formal means such as through the courts and ultimately it is for the courts to consider whether any claim is time barred under the LA.

As neither party has made any additional submissions, I see no reason to depart from my findings as set out in my provisional decisions. So, having reviewed this complaint again in its entirety, I am still of the view that I don't think Tesco's response to Mr D's claim was unfair and I do not uphold this complaint. I'm very sorry that I haven't been able to help Mr D any further on this matter, but I hope he understands why I've reached my conclusions.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 June 2025.

Asma Begum
Ombudsman