

complaint

Mr B complains that Tesco Personal Finance plc, trading as Tesco Bank, won't refund to him the money that he paid for a film to be supplied and fitted on his conservatory windows.

background

Mr B used his Tesco Bank credit card in March 2018 to pay part of the cost of £1,500 for a film to be supplied and fitted on his conservatory windows to reduce the temperature inside the conservatory during the summer. He complained to the supplier in April 2018 that the temperature reduction hadn't been achieved and that the conservatory was hotter than it had been before the film was fitted. He then claimed a refund of £1,500 from Tesco Bank under section 75 of the Consumer Credit Act 1974. It said that it was unable to evidence that there'd been any breach of contract or misrepresentation by the supplier. Mr B wasn't satisfied with its response so complained to this service.

The investigator recommended that this complaint should be upheld. She could see that the temperature of Mr B's conservatory between June and September 2019 was about 40c and above which she said would suggest that the statement made by the sales representative was false. She was satisfied that that statement would have induced Mr B into buying the film as she didn't think a reasonable person would buy a film costing £1,500 if they didn't believe it would reduce heat. She recommended that Tesco Bank should refund £1,500 to Mr B.

Tesco Bank has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- Mr B wasn't told by the supplier that the film would reduce the heat in the conservatory from 40c to about 25c – his testimony confirms that it was him that brought up that specific temperature reduction and the supplier's representative said that it was possible – there were no promises by the supplier's representative;
- due to the number of variables involved, no such guarantees could be made;
- the investigator concluded that the film is seemingly fit for purpose and that there's a difference between heat rejection and heat reduction – but she then stated that it was reasonable for Mr B to assume that they were the same and, as the film does not reduce heat, that's is a breach of contract;
- neither it nor the supplier is liable for Mr B making wrong assumptions on the film he was purchasing;
- it doesn't believe that it's been proven that the film doesn't work – Mr B has supplied temperature readings from after the fitting but there are no comparable readings from before the fitting and the heat reduction performance would be impossible to quantify as there are too many variables involved such as time of day, outside temperature, how much direct sunlight, cloud cover, ventilation and others;
- the summer of 2018 was hotter than the previous year so it's impossible to directly compare temperatures;
- there has been no misrepresentation of the facts inducing Mr B to buy the film and no breach of contract has been established; and
- Mr B is clearly disappointed with the performance of the film but that's based on his own expectations rather than what has been represented to him by the supplier – so it has no liability to refund £1,500 to him.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to Tesco Bank on 8 April 2020. In my provisional decision I said as follows:

“In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there’s been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr B’s complaint about Tesco Bank, I must be satisfied that there’s been a breach of contract or misrepresentation by the supplier of the film and that Tesco Bank’s response to his claim under section 75 wasn’t fair or reasonable. I’m not determining the outcome of Mr B’s claim under section 75 as only a court would be able to do that.

The marketing materials for the film clearly talk about its heat reduction effect and that it will allow rooms to be used when they would previously have been too hot. It’s clear that Mr B paid for the film to be supplied and fitted so that it would reduce the temperature inside his conservatory in summer. I consider that it was reasonable for Mr B to expect that the temperature inside his conservatory would be lower after the film was fitted than it would have been if the film hadn’t been fitted.

Mr B has provided evidence to show the temperature that he’s recorded both inside and outside of the conservatory and he says that the conservatory is hotter than it was before the film was fitted. I’m not persuaded that the evidence that he’s provided is enough to show that the film hasn’t reduced the temperature inside his conservatory from what the temperature would have been if the film hadn’t been fitted. There are many factors that will affect the temperature inside the conservatory.

The film was supplied and fitted as set out in the contract and Mr B confirmed that he was happy with the installation. I’m not persuaded that there’s enough evidence to show that the film wasn’t supplied correctly or that it wasn’t fit for purpose.

Mr B is clearly dissatisfied with the film. I sympathise with him for that and can understand his frustration that he hasn’t received the benefits that he was expecting from the film. But I can only uphold his complaint about Tesco Bank if I consider that there’s been a breach of contract or misrepresentation by the supplier of the film and that Tesco Bank’s response to his complaint hasn’t been fair or reasonable.

Having considered all of the information that Mr B has provided, I’m not persuaded that there’s enough evidence to show that there’s been a breach of contract or misrepresentation by the supplier. So I find that it wouldn’t be fair or reasonable for me to require Tesco Bank to refund to him the £1,500 that he paid for the film”.

So subject to any further representations by Mr B or Tesco Bank, my provisional decision was that I wasn’t minded to uphold this complaint.

Mr B has responded to my provisional decision in detail and says, in summary, that:

- he and his wife were told by the supplier’s representative that the film would definitely reduce the temperature from about around 40c to about 25c – but it has increased the heat by over 20% - and he’s not made assumptions about this;
- the temperature reduction hasn’t been achieved and he’s referred to adverse customer reviews about the supplier;

- it's not right that he should spend £1,500 on something that he was convinced by the supplier to buy only to find it does the opposite to what was claimed; and
- he'll have to pay for the film to be removed by a professional company because he doesn't want a third summer of exceptionally high temperatures in his conservatory – and he hasn't had it removed before now in case further proof of the temperatures was needed.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not persuaded that I should change my provisional decision.

I continue to sympathise with Mr B for his frustration that he hasn't received the benefits that he was expecting from the film – but the adverse reviews about the supplier to which Mr B has referred aren't enough to show that the film was misrepresented to him or that the supplier has breached its contract with him.

I'm still not persuaded that there's enough evidence to show that there's been a breach of contract or misrepresentation by the supplier in these circumstances. So I find that it wouldn't be fair or reasonable for me to require Tesco Bank to refund to Mr B the £1,500 that he paid for the film.

my decision

For the reasons set out above, my decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 June 2020.

Jarrold Hastings
ombudsman