

complaint

Mr F complains that Tesco Personal Finance plc, trading as Tesco Bank, will not refund to him the money that he paid for a television using his Tesco Bank credit card. He says that the television was misrepresented to him. The supplier has stopped trading. His claim is made against Tesco Bank under section 75 of the Consumer Credit Act 1974.

background

Mr F went to the supplier to purchase an HD television and a satellite set top box. He was persuaded to buy a different television which he says the salesman told him had a built in satellite tuner. He was unable to make the television work as he expected so complained to the supplier that it was faulty. It refused to exchange the television or to offer a refund because it was entering administration. He contacted the manufacturer and was told that the television did not have the features that he required. He therefore asked Tesco Bank for a refund under section 75. It refused to provide him with a refund so he complained to this service.

The adjudicator recommended that this complaint should be upheld. He concluded that the television was misrepresented to Mr F. He recommended that Tesco Bank should take possession of the television and that it should refund the £494.99 cost, with interest, to Mr F.

Tesco Bank says that Mr F has provided no evidence to show that he was advised that the television was freeview HD and that he is unwilling to provide an independent report to confirm that the television is not freeview HD.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

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 has been a breach of contract or misrepresentation by the supplier. In order to uphold Mr F's complaint under section 75, I must be satisfied that there has been a misrepresentation by the supplier.

Mr F has provided specific information about the television and set top box that he intended to buy. He says that he was then persuaded to buy a television which he was told included a built in satellite tuner. As he was unable to get the television to work as he expected it to, he returned it to the supplier because he understood it to be faulty. The supplier refused to exchange the television or to provide a refund so Mr F contacted the manufacturer. He has provided evidence to show that he contacted the manufacturer and the manufacturer told him that the television did not include a built in satellite tuner. He has provided a copy of the product specification to show that the television does not include a built in satellite tuner. He then asked Tesco Bank to refund the money that he paid for the television under section 75. He has provided evidence to show that he has now bought a separate satellite tuner.

Tesco Bank says that Mr F has not provided evidence to show that he was advised that the television included a satellite tuner but I do not consider it to be reasonable for Mr F to be required to provide direct evidence of a verbal misrepresentation. When I consider the overall evidence that Mr F has provided, I consider it to be more likely than not that he was told that the television included a built in satellite tuner. That was a misrepresentation as the

television does not include that tuner but I consider that Mr F was induced to buy the television because of the misrepresentation made to him by the supplier.

Tesco Bank also says that Mr F is unwilling to provide an independent report to confirm that the television does not have an inbuilt satellite tuner. I do not consider that an independent report is required in these circumstances because the product specification shows that this television does not include a satellite tuner, which has been confirmed by the manufacturer.

I therefore consider that it would be fair and reasonable for Tesco Bank to collect the television and to refund to Mr F the cost of the television, with interest.

my final decision

For these reasons, my decision is that I uphold Mr F's complaint. In full and final settlement of it, I order Tesco Personal Finance plc, trading as Tesco Bank, to:

1. Collect the television from Mr F at no cost to him.
2. Refund the £494.99 cost of the television to Mr F.
3. Pay interest on that amount at an annual rate of 8% simple from the date of payment to the date of settlement.

If Tesco Bank deducts tax from the interest element of my award, it should send Mr F a tax deduction certificate when making payment. He can then use that certificate to reclaim the tax if he is entitled to do so.

Jarrold Hastings
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