

The complaint

Mr C is unhappy with the response from Tesco Personal Finance Plc (Tesco), following a complaint he made.

What happened

In September 2016 Mr C purchased solar panels. He says he was told at the time that the panels would provide an income from the Feed in Tariff (FIT) payments and reduce his energy bills. He also said he was told he would receive a warranty from the installer. He paid for his system via a personal loan with Tesco.

In December 2022, Mr C contacted Tesco, to make a Section 75 (s75) claim as he felt he had been mis-led about the benefits of the panels and, as the installer was no longer trading, his system did not have the benefit of any warranty.

Mr C said he did not get a response and came to our service in June 2023. Tesco reviewed the matter and issued a final response saying it had no liability for what Mr C had been told when he bought the panels.

Mr C was unhappy with this and asked this service to review his complaint. Our investigator explained that he didn't think he could ask Tesco to do anything further. He didn't think Mr C had a valid s75 claim and any issues with his loan, would be out of time for a complaint.

Mr C asked for the case to be reviewed by an ombudsman as he did not agree with the outcome, and Tesco disagreed that any element of Mr C's complaint had been made in time.

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 considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

I understand that Mr C feels that he was mis-led about the benefits of his solar panels. But what I need to decide first is whether he has any recourse to Tesco for this.

Our Jurisdiction

Tesco has said that as the loan was taken out in 2016, Mr C has made his complaint too late to be considered by this service. It believes that Mr C had 6 years from taking out the loan, or three years from when he should reasonably have been aware that something was wrong, to make his complaint.

It's clear from his correspondence that Mr C is seeking to make a s75 claim against Tesco, and his complaint to this service is about Tesco's response to that claim.

Exercising a creditor's rights and duties under a credit agreement is a regulated activity (Article 60(B)(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001). And maintaining a fair relationship with Mr C is clearly a duty incumbent on creditors. So, when Mr C complains that Tesco hasn't accepted his s75 claim, the complaint he brings to us is that Tesco has acted unfairly by not fulfilling its obligations in relation to a regulated credit agreement. And that is the complaint which is subject to our time limits.

Tesco issued its final response to Mr C in June and Mr C brought his complaint to us in the same month. So, I'm satisfied his complaint about that event was brought in time.

Section 75

The general effect of s75 makes the provider of any credit jointly and severally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit, provided certain conditions are met.

One of the conditions is that there is a direct relationship between the debtor, the creditor and the supplier. This is sometimes referred to as a debtor-creditor-supplier (D-C-S) relationship, and the formal wording is set out in s12 of the Consumer Credit Act 1974. A D-C-S relationship refers to the arrangements that need to exist between the relevant parties in order to be able to make a s75 claim.

So, for Mr C to claim under s75 of the CCA, he would need to be able to show that he paid by credit, either arranged by the supplier of his panels or via his credit card. In this instance Mr C paid for his panels using a personal loan. I understand from what Mr C has said that the installer may have assisted Mr C in completing his application for the loan, but that does not fulfil the requirement to establish a D-C-S relationship. For that requirement to be met, I would have to be satisfied that there was an existing relationship between Tesco and the installer, which is not the case here. Because of this I don't think Tesco has any liability under s75 in this instance, and I can't say it was unfair or unreasonable for Tesco to not consider his claim.

Other Options

For completeness I've also considered if there were any other avenues Tesco could have used to help Mr C get his money back. There are other processes that can help a consumer reclaim their money if they feel their goods have been mis-represented. However, Mr C's personal loan is not covered by any of these arrangements. And in any event, it's likely Mr C would be out of time for any such action even if he had used different payment methods, and out of time to bring a complaint to this Service. So, whilst I sympathise with Mr C I cannot fairly ask Tesco to do anything further in this instance.

My final decision

For the reasons given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 July 2024.

Sarah Holmes

Ombudsman