

The complaint

Ms M is unhappy because Tesco Personal Finance PLC trading as Tesco Bank rejected her claim under section 75 of the Consumer Credit Act 1974.

What happened

In May 2021 Ms M purchased a hot tub from a supplier and paid using her Tesco credit card.

Ms M says that the brochure provided to her by the supplier stated that the cost of running the hot tub would be £1.00 - £1.20 per day, but that the actual cost is around £7.00 - £8.00 per day.

Ms M contacted Tesco to make a claim for misrepresentation. Tesco reviewed the claim under the chargeback scheme first but said that the card issuer didn't have a process in place for misrepresentation claims. Tesco then reviewed the claim under section 75 but said it wasn't able to hold the supplier liable because the costs provided to Ms M were approximate.

Ms M remained unhappy and brought her complaint to this service.

Our investigator didn't uphold the complaint. He said the supplier hadn't made an untrue statement of fact because by using the words approximately and on average, the supplier had reflected the fact that costs could vary due to a number of factors.

Ms M didn't agree. She said the brochure provided to her by the supplier and the information provided to her verbally pre-sale led her to believe that the cost of running the hot tub was between £1.00 - £1.20 per day and that this information influenced her decision to purchase the hot tub.

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 certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or a provider of credit if there's been a breach of contract or a misrepresentation.

In order to uphold Ms M's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Tesco's response to the claim under section 75 wasn't fair or reasonable.

Ms M hasn't said that there's been a breach of contract, so I've focussed on whether there's been a misrepresentation.

A misrepresentation is an untrue statement of fact which induces a customer to enter into a contract.

In this case, Ms M says that the costs of running the hot tub were misrepresented to her by

the supplier. She says she was provided with a brochure which stated that “spa pools will increase your electricity bill by approximately £1.00 - £1.20 per day on average, with a maintained temperature of 39 degrees”. Ms M says that the supplier made verbal representations about the cost of running the hot tub which were the same as what was said in the brochure.

There’s no dispute that the words appeared in the brochure. And I have no reason to disbelieve Ms M when she says that the supplier provided her with the same information verbally.

I’ve thought about whether the statement about the costs of running the hot tub amounted to an untrue statement of fact. On balance, I’m not persuaded that it does. This is because the supplier used the words “approximately” and “on average”. These words – in my opinion – are absolutely key here. It wouldn’t have been possible for the supplier to provide specific costs to individual customers because there are so many factors which are likely to affect the running costs, such as (for example) the cost of electricity from the customers electricity supplier, the customers usage of the hot tub, the outside air temperature and the general maintenance of the hot tub. In this case, the supplier has provided an approximate running cost based on the average cost. But this doesn’t amount to a statement of fact that this is what it would cost Ms M to run the hot tub.

For these reasons I’m not persuaded that there’s been a misrepresentation. I don’t think Tesco acted unfairly when it rejected the claim under section 75.

My final decision

My final decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms M to accept or reject my decision before 10 October 2023.

Emma Davy
Ombudsman