

The complaint

Mr C complains that Tesco Personal Finance PLC trading as Tesco Bank declined a Section 75 claim. He would like a refund for the product he bought and compensation.

What happened

The details of this complaint are well known to both parties so I won't repeat them again here instead I will focus on giving the reasons for my decision.

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.

Having done so I have reached the following conclusions:-

- I appreciate Mr C's frustration, he said in October 2021 he bought a product with a shelf of 6-8 months, but it wasn't fit for purpose when he came to use it. Tesco Bank looked at Mr C's claim under Section 75 which is what I would have expected it to do.
- For a Section 75 claim to succeed Mr C needed to evidence either a breach of contract or misrepresentation. Mr C received the goods in November 2021 but didn't use them until April 2022. He has provided product information confirming the product has a shelf life of 6-8 months if stored in a cool well-ventilated environment. Mr C used the product within 6 months of getting it, so it should have been useable if correctly stored.
- I have noted there was an issue with the date of manufacture but unfortunately Mr C didn't open the goods until six months after he got them so it's impossible to know what state the goods were in on receipt.
- I also appreciate it's difficult for Mr C to evidence he correctly stored the goods, But I think Tesco Bank made a fair point in its final response letter when it said that if Mr C hadn't followed the merchant's guidance on storage this could have impacted on the quality of the goods.
- Finally, I acknowledge Mr C supplied photos of the product, but they don't evidence how the product was stored. I have noted Mr C suggested that the manufacturer could inspect the product. However, with a Section 75 claim the onus is on Mr C to show there an issue with the product – for example by arranging an independent inspection – not the merchant.
- Unfortunately, considering all the information that I have seen I don't think Mr C has evidenced misrepresentation or a breach of contract. On that basis I think Tesco Bank acted reasonably in declining his Section 75 claim. And so, I can't reasonably ask Tesco Bank to refund the cost of the product or to compensate Mr C as he would like.

My final decision

My final decision is that 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 3 August 2023.

Bridget Makins
Ombudsman