

The complaint

Mr W complains about the quality of a car he bought, in part, using a credit card provided by Tesco Personal Finance PLC, trading as Tesco Bank ("Tesco").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my 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.

I know it will disappoint Tesco, but I agree with the investigator's view of this complaint. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made in whole or in part, with a credit card, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

The Consumer Rights Act (2015) is the relevant legislation here. It says, amongst other things, that the car should have been of satisfactory quality when supplied and that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr W. The car here was about

four years old but had completed over 104,000 miles. So, I think a reasonable person would expect quite a bit of wear and tear.

But I don't think a reasonable person would expect to find that the car had been involved in a front-end collision and had sustained the extent of damage listed in the report Mr W obtained from the independent garage.

I think that report is more reliable than the report provided from the dealership's MOT provider. That can't reasonably be said to be independent, doesn't refer to the vehicle in question, is very brief, and isn't dated.

The relevant legislation also says that goods should not be considered unsatisfactory when the consumer examines the goods before the contract is made and when that examination ought to reveal the faults.

I'm not persuaded the faults identified on the independent report would have been evident to Mr W. The report lists faults that need to be repaired but no photographs of the faults are attached to the report. So, I think it would be unreasonable to suggest the faults were clearly evident, but I think there is evidence in the independent report, that there were faults.

As the faults were identified so soon after the car was purchased the relevant legislation says we should assume the faults were present when the car was purchased unless Tesco can show otherwise.

Tesco haven't provided enough information to dispute the assumption that faults were present at the point of purchase and haven't provided evidence that the faults ought to have been evident during Mr W's pre-sale inspections.

So, I think this car was of unsatisfactory quality when supplied.

Putting things right

In those circumstances we would usually tell the business to repair the faults. But here Mr W has sold the car.

So, I'd agree with the investigator that the fairest way to resolve the matter would be for Tesco to refund the difference between the sales price (plus valeting and warranty) that Mr W paid (8,382.25) and the part exchange value of £6,000.

But it's only fair that Mr W pays for the use he's had from the car. The investigator calculated the drop in value of the car using various guides and established that in the 20 months of ownership Mr W's car would have lost £537.50 in value.

Tesco should therefore refund the difference between the sales price and the part exchange value, less £537.50 for fair usage. I calculate that as £1,844.75.

They'll also need to refund any interest they may have charged on the initial outlay of £250, adding interest as Mr W has been deprived of that money.

My final decision

For the reasons I've given above I uphold this complaint and tell Tesco Personal Finance PLC to:

- Refund the £1,844.75 I estimate Mr W lost as a result of the car being of

unsatisfactory quality after fair usage is taken into account.

- Refund any interest Mr W may have accrued on the £250 deposit he paid. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr W's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 May 2022.

Phillip McMahon
Ombudsman