

The complaint

Ms W is unhappy with Tesco Personal Finance PLC's response to her request for a refund under section 75 of the Consumer Credit Act 1974 ('S75'). She requested the refund for a car that she says had various problems with it.

What happened

Ms W acquired a used car in May 2019. She paid £3,995 for the car and paid a deposit of £200 on her Tesco credit card. The car was around 14 years old and had covered around 67,915 miles.

The car had an MOT test around two months before Ms W acquired it and it failed on several areas. Around a month later, another test was carried out where it failed for two smaller issues. It then passed an MOT later the same day.

Ms W says she specifically asked the dealer some questions about the car before she agreed to take it. She says she asked about the condition of the sills, as she says she was aware this could be an issue for the make and model. And she says she specifically asked about whether the parking sensors worked – as it was tricky to park where she would leave the car. Ms W says she was told there were no issues with either of these things. Ms W also says she told the dealer the steering wheel was vibrating on a test drive.

Later in May 2019 Ms W took the car to a local garage, who identified various issues. These included corrosion to both sills, corrosion to rear suspension, worn front and rear anti roll bar D bushes, and a *"BAD ENGINE OIL LEAK"*.

Ms W was unhappy with this and got in touch with the dealer who said they would rectify everything. Around this time Ms W also reported the parking sensors weren't working properly, said there was a knocking noise from beneath the car and pointed out some smaller issues with the trim, vanity mirrors etc. A couple of weeks later in June, she took the car to a tyre centre who said it had a dangerous tyre as it had two previous repairs and a split in the side wall. Ms W paid for new tyres and says this fixed the vibration through the steering.

Later in June 2019 the dealer took the car back and repairs were completed. Ms W has provided a list of the repairs from the dealer that it carried out. These repairs included welding to the sills, suspension parts being replaced, and a part replaced to fix the oil leak. The parking sensors are also listed as being repaired. A new MOT was done on the car and it passed with no issues. The mileage was recorded as 68,423. Ms W got the car back at the end of July 2019.

At the beginning of August 2019 Ms W says the knocking noise was still present. She took the car to a local mechanic again. Ms W says the mechanic said not all of the faults had been corrected. Ms W says they told her suspension issues were still present, as was an oil leak. Ms W also said the mechanic pointed out the engine management light (EML) wasn't coming on when the ignition was turned.

The mechanic looked into this further a few days later. They said the dash showed signs of

tampering and they suspected the EML had been covered. They also said there were a lot of stored fault codes. It was again agreed with the dealer to carry out repairs.

There was a delay in the dealer looking at the car again, and Ms W ended up ordering some parts herself to speed this up. In mid-October 2019 Ms W got the car back, and the dealer again gave her a list of the repairs carried out. This included fixing the EML, replacing suspension parts, and replacing an oxygen sensor. In relation to the oil leak, the dealer said there was no “*actual leaking found*” when it was inspected, but “*traces of oil leak which we believe is from lose (sic) bolts*”. The dealer also said it did a diagnostic check with no faults present.

At the end of October 2019 Ms W says she drove the car for the first time since getting it back. She says the EML light was on and the parking sensors weren't working. Ms W again took the car to her local mechanic. They looked at the car and found two fault codes, confirmed the parking sensors weren't working and noted some minor issues. They also noted a major oil leak which was dripping onto the exhaust and said this was a fire hazard. Ms W told the dealer she wanted to reject the car. In early November 2019 the dealer got in touch with Ms W and told her it wouldn't allow her to do this. It said the recent issues were not present at the point of supply and had developed since Ms W had the car.

Ms W got in touch with Tesco about a S75 claim. It issued its response to this at the end of December 2019. It said the car passed MOT's both before it was sold and then following repairs. It also said the car had been driven around 2,000 miles. So, it said it wasn't able to progress Ms W's claim under S75.

Ms W was unhappy with this and complained to Tesco. In its final response it explained it wasn't upholding the complaint. It said it had reviewed Ms W's account but didn't think there was a breach of contract or misrepresentation. It said it didn't think the faults reported by Ms W were present at the point of supply. It said the car passed two MOT's, that there was nothing to say what caused the oil leak and there was no evidence to back up that the EML had been covered up.

Ms W remained unhappy and our service began to look into things. While we were investigating, Ms W organised for an independent inspection of the car to be carried out. This said, in summary, that the car was in a 'defective state' at the point of supply. It said it thought this because of the condition of the sills, the 'D bush' and the oil leak. It also said it thought it was likely the EML had been covered up to mask a fault. At this point the car had covered around 69,234 miles.

Our investigator issued an opinion upholding the complaint. He explained, in summary, that he was persuaded by the independent report that the car was not of satisfactory quality when it was supplied. He said this meant there was a breach of contract and so Tesco should've handled Ms W's S75 claim differently.

Our investigator recommended that various expenses Ms W has paid out for the car should be reimbursed, as well as the cost of the car itself – a total of £4,755.03. He said Tesco should collect the car from Ms W. And he said Tesco should pay Ms W £100 to reflect distress and inconvenience caused, as he thought Tesco's response to Ms W's S75 claim was short and didn't acknowledge the evidence she provided.

Tesco were unhappy with this. It said, in summary, our service shouldn't consider the complaint as Ms W had started court proceedings. It said it hadn't seen the independent report when it made its decision. It said the MOT's confirmed the car was road worthy. And it said its response to Ms W was short as it tried to communicate in as simple a way as possible.

Ms W was also unhappy with the investigator's view. She said the £100 was not punitive nor representative of what happened. And she said if she continued to drive the car with the oil leak it could've had very serious consequences for her and any passengers.

I sent Ms W and Tesco a provisional decision on 11 January 2022. My findings from this decision were as follows:

I should firstly point out that there is a lot of information on this case. Ms W has provided various pieces of evidence in relation to the car, detailed testimony about what happened and a very detailed timeline of events. I won't reference everything in my decision – nor have I included everything that happened in the background above.

Where I haven't mentioned or commented on something, this isn't because I consider it unimportant – this just reflects the informal nature of our service. I'll focus on what I think are the key facts here about the crux of Ms W's complaint – but I want to reassure her, and Tesco, that I've carefully considered everything in relation to Ms W's case.

Ms W complains about a S75 claim. I understand Tesco has raised concerns that the quality of the car supplied is the subject of a court hearing, so it doesn't think our service should investigate. Ms W has confirmed no court has yet made any finding about any subject matter in relation to this complaint. And she's confirmed proceedings are not currently going ahead or progressing. So, I'm happy it's reasonable for me to investigate Ms W's complaint about Tesco.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. S75 is relevant to this complaint. This explains, under certain circumstances, that a borrower under a credit agreement has an equal right to claim against the credit provider if there's been a breach of contract or misrepresentation. I firstly need to consider if Ms W had a valid claim under S75.

For a valid S75 claim to exist, the price of goods or services must be more than £100 but no more than £30,000. Ms W paid £3,995 for the car. So, I'm satisfied this transaction falls within the relevant financial limits.

I've also considered whether a valid debtor – creditor – supplier ('DCS') chain exists here. I'm satisfied Ms W bought the car herself and used her own Tesco credit card to pay the deposit. Ms W paid the deposit to an e-commerce account. But, Ms W paid directly from her credit card to this account, which I'm satisfied was the dealer's, so I'm satisfied this doesn't break the DCS chain.

It follows that I'm satisfied Ms W had a valid claim under S75.

The Consumer Rights Act 2015 ('CRA') is also relevant to this complaint. This implies a term into the contract for the supply of the car that it should be of 'satisfactory quality'. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. Relevant factors in a case like this involving a car would seem to me to be, amongst others, the car's age, price, mileage, model and description.

So, I need to consider that the car Ms W acquired was around 14 years old and had covered over 67,000 miles. This means I think a reasonable person would have lower expectations for the car's quality than a newer car with a lower mileage.

In this case, I've also considered that Ms W's car was a large, luxury model from a premium manufacturer – but she paid less than £4,000 for it. This represents a very significant

discount on what the car would've cost new. So, I think a reasonable person wouldn't necessarily expect the car to be in great condition. And they might expect minor or even moderate issues to be present when it was supplied. But, that being said, I do think they would expect the car to be road worthy, safe, and to have no significant issues present. If I think the car wasn't of satisfactory quality, I would consider this to be a breach of contract. So, I'll consider if this was the case.

As I previously explained, Ms W has raised a lot of individual issues with the car. I'll focus on what I think are the key problems.

The independent report has a useful summary of its findings:

"based on our examination, the vehicle was in a defective state at sale. This is supported by the oil leak, the condition of the offside rear sill (which has since been incorrectly welded), and the condition of the 'D' bush. The MOT of 15/03/2019 shows the oil leak was highlighted as an advisory and the corroded sill was listed as a major defect. We also note from information provided that the engine warning light had previously been covered over, and this is normally done only to mask an underlying fault."

I'll consider if I agree these conclusions are reasonable.

In relation to the sills, the independent report comments:

"There is evidence of incorrectly spot-welded patches/plates to the offside rear inner sill area, which we consider require seam-welding, as these are close to the suspension mounting point prescribed area"

I've considered that the condition of the sills was mentioned on the invoice from the local garage in May 2019 which commented:

"SURFACE CORROSION ALONG FULL LENGTH OF BOTH SILLS"

I've also considered that sills are mentioned on the list of repairs sent to Ms W from the dealer. And I've thought about Ms W's testimony about this.

*I've also seen the MOT from around two months before Ms W got the car. This says:
"Offside Rear Outer Suspension component mounting prescribed area excessively corroded significantly reducing structural strength sill"*

I do accept that two MOT tests were passed after this point. But, on balance, I'm satisfied the sills had a fault present or developing at the point Ms W got the car. I'm satisfied this issue wasn't successfully repaired. And, I'm satisfied this is a potential safety issue, so I'm also satisfied this means the car wasn't of satisfactory quality when Ms W got it.

In relation to the oil leak, the independent report says:

"Oil is leaking onto the exhaust and is considered to be a fire risk."

The invoice from the local garage from November 2019 says:

"Engine has a major oil leak which is dripping, and also dripping on the exhaust: fire hazard!!"

The invoice from the local garage from May 2019 says:

“Bad engine oil leak”

Work to an oil leak is mentioned on both lists of repairs the dealer gave Ms W. On the MOT from around two months before Ms W got the car, it says:

“Oil leak, but not excessive”

Again, I accept two further MOTs were passed since this point. I also think, on balance, there was not an oil leak which represented a fire hazard when Ms W got the car. But, I do think that this was an underlying issue which was developing when Ms W got it. I’m satisfied this wasn’t fully repaired. And I’m also satisfied this means the car was of unsatisfactory quality as it developed into a major safety issue.

I’ve thought carefully about the EML. I need to consider that although the independent report concluded this was done to pass an MOT, the EML itself had apparently already been fixed when the author of the report saw the car. So, I’ve thought about other evidence available. Ms W has given some extensive testimony about this and about what the dealer said in relation to it. The invoice from the local garage from August 2019 says:

“Dash insert show signs of tampering suspect eml light has been covered over”

The list of repairs from the dealer mentions they are investigating the EML.

The MOT test from March 2019 says:

“Engine MIL inoperative or indicates a malfunction”

Considering everything, I’m satisfied it’s likely the EML was tampered with and wasn’t functioning when it went to the garage in August 2019. I now need to consider whether I think the EML had already been tampered with when Ms W got the car.

Again, I appreciate the car passed two MOTs after the issue was pointed out in the MOT from March 2019. I know Ms W feels very strongly about the validity of the subsequent MOTs and what she thinks might have happened here. But, Tesco aren’t responsible for these MOT tests. And I don’t think I need to make a specific finding about what took place during these tests.

Thinking about everything, including Ms W’s testimony, I’m satisfied on balance its most likely the EML wasn’t tampered with when Ms W had the car. It follows I’m satisfied it was already covered when she got it. Having a covered EML could mask various issues with the car’s performance and safety and could be a dangerous problem. So, I’m satisfied this means the car wasn’t of satisfactory quality when Ms W got it.

I have considered whether the EML was repaired. But, Ms W says the first time she drove the car following this repair the EML came on and stayed on. Her testimony has been detailed and consistent throughout the complaint and I’m persuaded on balance this is the case. I’m satisfied its likely whatever the underlying cause for the EML coming on when Ms W had the car was most likely the reason it was originally covered. So, I’m persuaded on balance that this underlying issue wasn’t repaired.

In relation to the ‘D bushes’, the independent report says:

“We inspected the front anti-roll-bar ‘D’ bushes. The offside front ‘D’ bush appeared to have been replaced. However, the nearside front anti-roll-bar ‘D’ bush displayed movement when manipulated by a bar. A knocking noise was also evident.”

The invoice from May 2019 says:

“FRONT & REAR ANTI-ROLL BAR D BUSHES WORN”

The MOT test from March 2019 does mention some suspension parts but doesn't mention a 'D' bush or anti roll bar bush.

I've also considered that Ms W mentioned she noticed a knocking noise very early on when she got the car.

But, thinking about all of this, I'm not as easily convinced here that this was a fault with the car that meant it was of unsatisfactory quality. I say this as I can't see any evidence that this issue was dangerous or causing any significant issues. And, I need to consider the age, price and mileage of the car Ms W acquired. That being said, I don't think I need to make a specific finding about this issue. That's because I've already found the car to be of unsatisfactory quality for the other issues above, and this won't affect my decision nor any redress.

I've thought about all of the other issues Ms W has explained the car had, such as problems with the parking sensors, trims, vanity mirrors etc. But, these smaller issues wouldn't affect the conclusion I've reached nor how I think it's fair to put things right. So, I don't think I need to comment further here.

In summary, I'm satisfied the car Ms W acquired had faults present or developing at the point of supply that meant it was not of satisfactory quality. I'm satisfied that this amounts to a breach of contract, and so Ms W's claim under S75 should be upheld.

What I now need to consider is what I think is fair and reasonable to put things right. Given repairs have already been attempted unsuccessfully, I'm satisfied Ms W has a right to reject the car under the CRA. So, I think it's fair and reasonable she should be allowed to do this. I think it's fair and reasonable that Ms W should be reimbursed for the cost of the car. I have thought about whether it would be reasonable for Tesco to retain some funds for Ms W's usage of it. In total, the car covered around 1,300 miles when Ms W had it. She has given a very detailed breakdown of this, and explains she only covered around 850 miles that weren't in relation to getting the car repaired or fixed.

I've considered that for the time Ms W did drive the car, it also wouldn't have been performing as she'd have expected, so she only ever had impaired usage of it. Thinking about all of this, along with the length of time she had the car, any use of it was relatively negligible. And I'm satisfied the use was balanced out by her having to pay out for alternative travel. Rather than make any additional award for any travel costs, I think it's fair and reasonable that she should be refunded the whole amount for the car.

I've also considered other things Ms W has paid out for. She has had to pay out for parts, inspections and work to the car that I think she should be reimbursed for. I say this as she won't have any future benefit of these.

For ease, I've included a breakdown of these costs below. It should be noted this list differs in places from what our investigator recommended. I have added some expenses, while for others the amounts slightly differ to bring these in line with the invoices Ms W has provided. I have also removed some items – such as the charge for the independent report – where Ms W hasn't provided evidence of the costs such as a bill or receipt. I will however happily reconsider any additional expenses if Ms W provides evidence before I make my final decision.

DATE	DESCRIPTION	
11/05/2019	Car	£3,995.00
18/05/2019	Key pad	£3.74
20/05/2019	Touch up paint	£5.99
20/05/2019	Leather touch up pen	£5.95
31/05/2019	Inspection	£45.00
03/06/2019	Mount	£20.98
16/06/2019	Tyres	£220.00
19/06/2019	Sat nav fixed installation kit	£41.72
27/06/2019	Sat nav installation	£60
07/08/2019	Diagnostic	£40.00
27/09/2019	Bushes	£16.75
09/10/2019	Dart charge	£2.00
16/10/2019	Dart charge	£2.00
22/10/2019	Front mudflaps	£32.95
22/10/2019	Rear mudflaps	£32.49
22/10/2019	Number plate cap covers	£1.16
08/11/2019	Diagnostic	£40.00
22/11/2019	Sat nav and Bluetooth deinstallation	£80.00
	Total	£4,645.73

Ms W has asked to be reimbursed for other costs. These include compensation for her time in bringing her complaint and for what she says was lost work due to her gathering evidence to support her case. I don't think it's fair and reasonable for Tesco to be responsible for her time in bringing her complaint to court, nor to ourselves. So, I don't think any award should be made here.

Ms W has also asked to be reimbursed for expenses in relation to sending evidence to court and for court fees. Our service is a free alternative to the courts. It was entirely Ms W's decision to begin court proceedings before deciding to progress things with our service, so I don't think it would be fair for Tesco to reimburse anything here.

Ms W has mentioned she took a loan for the remainder of the car's purchase cost that she has been paying interest on. I am going to recommend Tesco pay 8% simple interest on the amounts above to compensate for the time Ms W was out of pocket. I have considered whether this amount is fair here. I think it's likely this is what a court would award. So, I'm happy this is a fair way of compensating for this.

Ms W was unhappy with our investigator's opinion as she said £100 was not enough to reflect the distress and inconvenience caused and said this was clearly not punitive. I should point out that we are not a regulator and it is not our place to fine or punish businesses when things have gone wrong. So, anything I might award here would not be punitive – no matter what happened. That said, I have thought about whether any award for distress and inconvenience is fair and reasonable.

It's important to say here that in this case, I'm only looking very specifically at whether anything Tesco has done when handling Ms W's S75 claim has caused her distress and inconvenience. In other words, I'm not considering making an award for any stress or upset caused by anything the dealer did, the car itself or any inconvenience caused in relation to what went wrong with the car – for instance Ms W having to take the car back and forth for

repairs. Any distress and inconvenience caused by any of these issues fall outside of what Tesco are responsible for under a S75 claim. I think it's worth noting that I don't think it's likely a court would award for any non-financial losses against Tesco here. So, I think this is a fair way of approaching things.

Our investigator felt an award here was fair as he thought Tesco's response to Ms W's complaint wasn't detailed enough. I appreciate Tesco's response didn't reflect the level of detail Ms W went into when complaining. But, I don't agree with our investigator that this shows it didn't consider evidence she provided. Tesco is free to do its own investigation how it sees fit and to come to its own outcome about S75 claims and subsequent complaints. I don't think it would be reasonable to make an award because I disagree with its outcome or because of the level of detail in its response.

While I can absolutely understand that the overall situation must have been very stressful and frustrating for Ms W, I don't think Tesco has done anything wrong in its handling of Ms W's S75 claim to specifically contribute to this. I should again point out that I am not considering the impact of it declining the S75 claim. So, I disagree with our investigator here, and I don't think Tesco need to make any award for distress and inconvenience.

I've considered that Ms W said had she continued to drive the car this could've had very serious consequences for her and any passengers. I accept, given the oil leak was described as a fire hazard, that this could well have been the case. But, I can only consider what actually happened – not what could've happened. So, no further action needs to be taken here.

Finally, I have considered that Tesco said we shouldn't consider the independent report as it didn't have this at the time it made the decision about the S75 claim. I appreciate this was the case, but I think it's fair and reasonable to consider all the available evidence to decide what I think should now happen – even if Tesco didn't have it at the time. I've also considered that Tesco has now had the report for several months but hasn't told us it has changed its opinion.

I gave both parties four weeks to come back with any further information or evidence. Tesco responded and said it didn't have anything further to add and so accepted the decision. Ms W responded and made various points for me to consider which I'll come on to below. She also provided a receipt for the independent report and provided insurance schedules to show her costs.

I got in touch with Ms W and Tesco and I explained I initially thought it was reasonable to reimburse the cost of insuring the car from the point Ms W couldn't use it. And I thought the cost of the independent report should also be reimbursed. Tesco accepted this and Ms W said she didn't have anything further to add to her earlier comments.

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.

Ms W made various points in response to my provisional decision for me to consider. I hope she won't find it disrespectful that I won't echo the length of her response here. But, I want to reassure her that I've carefully considered everything she's said and I appreciate her taking the time to come back to me in detail.

Ms W mentioned getting an additional award for the times she couldn't drive the car. But, I don't think it would be fair to add any additional amount, given I think she should get the full

cost of the car back.

Ms W explained, for various reasons, why she believed Tesco didn't do a reasonable investigation into her S75 claim. I do appreciate the point Ms W makes here and I can understand some frustration with Tesco. And I also understand it might have caused some concern for Ms W when Tesco gave her a short response.

But, I should still point out that Tesco is free to do its own investigations how it sees fit. So, I don't think it would be reasonable of me to comment on what I think to the quality of the work it did here. I don't agree with the outcome it reached on its investigation for the reasons I explained above. But, I don't think it would fair and reasonable to make an award to Ms W because I don't agree with it.

I've also carefully considered what Ms W said about her being caused distress and inconvenience because of how Tesco handled her claim. But, I should reiterate that I don't think it would be fair to make an award for any distress caused by Tesco declining the S75 claim. As I've explained above, it's entitled to do this, even if I don't ultimately agree with it. Having carefully thought about everything again, I still don't think Tesco need to make an award here.

I do think Tesco should reimburse Ms W for the independent report she paid out for as she provided an invoice for this. And I think it's reasonable it should also pay for the cost of insuring the car after she was told not to drive it due to the oil leak. I say this as Ms W has now provided insurance schedules showing the costs. I've also noted she mitigated some losses by switching to third party, fire and theft policies on renewal.

I've thought about all of the other information and comments on this case again, along with everything else Ms W provided in response to my provisional decision. Having done so, I still think this complaint should be upheld. This is for the same reasons set out above and in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I instruct Tesco Personal Finance PLC to put things right by doing the following:

- Collect the car at no cost to Ms W at a time and date suitable for her
- Reimburse Ms W for all of the items and expenses set out in the table above – a total of £4,645.73*
- Reimburse Ms W £240 for the independent report from 10 December 2020*
- Reimburse Ms W the pro rata cost of insurance from 8 November 2019 to 13 May 2020 at a yearly rate of £629.15*
- Reimburse Ms W £484.10 for the cost of insurance from 14 May 2020 to 14 May 2021*
- Reimburse Ms W the pro rata cost of insurance from 15 May 2021 to the date of settlement at a yearly rate of £375.95*

*These individual amounts should have 8% simple annual interest added from the time of payment to the time of reimbursement. If Tesco considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Ms W how much it's taken off. It should also give Ms W a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 15 March 2022.

John Bower
Ombudsman