

The complaint

Miss B complains about the quality of a car she bought using a credit card supplied by Tesco Personal Finance PLC ("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 opinion. 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 part or whole, with a credit card, it might be possible to recover the money paid through 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 relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Tesco are responsible for that breach of contract. The relevant law also says 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 Miss B. The car here was about

two years old but had only completed about 5,800 miles so I think a reasonable person wouldn't expect much wear and tear.

When we consider whether a car has been of satisfactory quality the relevant legislation says we should consider whether it has proven durable. I don't think that can be said to be the case here.

The timing belt has failed, and the garage reports suggest there is significant engine damage. The garage Miss B took her car to have explained that the timing belt has failed prematurely and that they'd expect it to have lasted at least 60,000 miles and not the 22,236 miles it did.

I understand that Miss B had been in possession of the car for about two years by the time it failed, and Tesco have suggested she needed to demonstrate that the car had not been of satisfactory quality from the beginning. I think Miss B has done that as she's provided reports from two garages who have evidenced the failed timing belt and she's also provided evidence from a garage who have explained the timing belt failed prematurely. In those circumstances I think the car hasn't proven durable and Tesco should therefore take some further action.

Putting things right

The relevant legislation would allow Tesco to repair the car, but I'm not persuaded that's the most reasonable solution here. The evidence suggests that engine damage has occurred and whilst the extent of the damage is uncertain the expert view seems to suggest a new engine may be required. I think that it's unlikely to be commercially viable to replace the engine in the car.

The relevant legislation also requires the business to complete repairs in a reasonable timeframe and Miss B has been waiting for the car to be repaired since October 2020, so I don't think it's fair for her to wait any longer for a resolution.

The investigator considered valuations for the car at the point it failed, and his calculations revealed that the car was worth about £5,750 at that time and had therefore lost about £1,180 in value since Miss B bought it. I would agree with his suggestion that £1,180 is a reasonable amount for Miss B to have paid for the use of the car over the time she had it and that it would therefore be fair for Tesco to refund the value of the car at the point of failure; that being £5,750. Should Tesco wish to take ownership of the car at that point they could do so, and, in that case, Miss B would sell the car to Tesco for that amount.

Miss B has also clearly experienced some distress and inconvenience. She's explained she's had to drive an older, less suitable vehicle, since hers has been off the road and that she's been anxious about the complaint. She's also had to refer her complaint to this service when I think it could have been resolved earlier by Tesco. In the circumstances I think Tesco should pay Miss B £250 to reflect the distress and inconvenience caused.

Miss B has provided two invoices she paid to have the car transported to and from the garage. I think they were both costs that Miss B incurred as a consequence of the car not being of satisfactory quality and in those circumstances Tesco should refund the costs of £102 and £70. They should add interest to that refund as Miss B has been deprived of the money.

My final decision

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

PLC to:

- Buy the car back from Miss B for £5,570 and collect it at no cost to her. Add 8% simple interest from the date she settled the balance until the date the complaint is settled.
- Refund the £172 Miss B paid to transport the car to and from the garage. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Miss B £250 to compensate her for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 13 April 2022.

Phillip McMahon
Ombudsman