

The complaint

Mr M is unhappy how Tesco Personal Finance PLC trading as Tesco Bank (Tesco) handled his request for help when he tried to make a claim under Section 75 of the Consumer Credit Act 1974.

What happened

In August 2017, Mr M bought a used car from a dealership, who I'll refer to as P. He paid a deposit of £300 on his Tesco credit card and paid the outstanding balance in full on a debit card. The car was a year old and had covered 10,102 miles at the time it was bought. The total cash price of the car was £20,898.

In March 2018 the car broke down. Mr M called his roadside assistance company, and the car was recovered to a nearby garage. It was discovered that the clutch had failed. The car had covered approximately 13,000 miles in the seven months Mr M had owned it. Mr M paid £2,332.55 for a new clutch to be fitted using his Tesco credit card.

It wasn't until January 2021 that Mr M got in touch with P to explain the problem he'd experienced with the car. He had sold the car by this point. He asked P to cover the cost of the replacement clutch as he felt the issue would have been present or developing at the point the car was sold to him. He said he had noticed a peculiar smell from the car a month or so before it broke down, which he now attributed to the failing clutch. As part of his correspondence with P, Mr M also explained that he was now aware the car had previously been owned by a rental company, and he felt this had had an impact on the performance of the clutch and had led to it failing prematurely. P wouldn't cover the cost of the replacement clutch. They said it was a wear and tear component, that could be affected by driving style and Mr M hadn't been in contact with them about it since he bought the car. In relation to the previous owner of the car having been a rental company, P explained that Mr M was shown the V5 document prior to going ahead with the purchase of the car, and the V5 explained who the previous owner was. P told Mr M that, at that point, he had the opportunity to withdraw from the purchase.

Unhappy with P's response. Mr M approached Tesco in early 2022 asking them to raise a Section 75 (s75) claim, specifically in relation to the cost of the replacement clutch. Tesco told Mr M they wouldn't cover the cost of the replacement clutch. They said he had travelled over 13,000 miles in the car since owning it, and they considered the clutch to be a wear and tear component. They said that they couldn't see a breach of contract in this case and declined Mr M's s75 claim.

Mr M brought his complaint to our service. Our investigator didn't uphold it. He said he didn't think there was enough evidence to conclude the car wasn't of satisfactory quality when Mr M bought it. He accepted Mr M had provided an invoice from the garage from when the clutch was replaced but said this didn't confirm the problem with the clutch had been there from the point of Mr M's ownership. He said the smell hadn't been evidenced as coming from the clutch, and therefore didn't help to confirm if the clutch problem had been present or developing at the time Mr M bought the car. In relation to the previous ownership of the car, our investigator said he didn't think there was enough evidence to suggest a

misrepresentation had taken place by P at the point of sale.

Mr M didn't accept. He said he felt a car of this age and mileage shouldn't have needed a replacement clutch. He said he also felt the previous ownership was a pertinent factor, as the car could have been driven by many people in the year prior to him owning it, and they could have had scant regard for the maintenance and welfare of the car, including the clutch. He said the smell had been confirmed as a clutch problem to him by the roadside assistance company and the garage that replaced the clutch. He felt that evidenced the fault had been present within the first six months of his ownership.

As Mr M didn't agree, it was passed to me to decide. I issued my provisional decision on 13 September 2023. It said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr M paid the deposit for his car on his Tesco credit card. S75 says that in certain circumstances, Tesco are jointly liable for any breach of contract or misrepresentation by the supplier. I'm satisfied those circumstances apply here.

Legislation – in this case the Consumer Rights Act 2015 (CRA) – implied a term into the purchase agreement with P that the car must be of satisfactory quality. Under the principles of s75, Tesco can be held jointly liable for the quality of the car Mr M bought. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mr M's case, the car was used and had covered approximately 10,000 miles when he bought it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage and price.

I'll start by looking at whether a misleading omission has occurred in relation to the previous ownership of the car, and whether Mr M should have been aware that the previous owner had been a rental company. Based on what I've been provided with, I'm more satisfied than not that Mr M had seen the car's V5 document prior to completing the purchase of it, and the V5 confirmed that the previous owner had been a rental company. It may be that Mr M didn't check the V5 or missed that information, as he has confirmed he only became aware when he received the amended V5 document back to confirm his ownership, but that doesn't lead me to conclude the car's previous ownership wasn't disclosed. The document did confirm one previous owner. So, I won't be asking Tesco to do anything regarding this.

It seems to me that, rather than being unhappy that the previous owner of the car was a rental company, Mr M is more concerned about how the car could have been used, and by how many people, in the year prior to him purchasing it – and he believes this has led to the clutch failing prematurely. I accept Mr M's point that any users of the car may have taken less care of it and been less concerned about how it was driven, but that is only speculation in this case. There isn't any conclusive evidence to show me that the previous ownership and use of the car led to the problems Mr M later experienced with the clutch. However, I'm

more persuaded than not that the clutch wouldn't have been abused sufficiently to lead to its premature failing when I consider the age of the car and the mileage it had completed while in the rental company's possession. So, that leads me to conclude that the previous ownership of the car isn't a reason why the clutch failed prematurely.

The car was only two years old and had travelled just over 23,000 miles when the clutch failed. I can understand Mr M's frustration with this, as the car was still relatively new. And I've previously mentioned that the CRA includes durability as an indication of satisfactory quality. Mr M has said that he only really used the car to drive on the motorway and I think the evidence supports that. He had covered just over 13,000 miles in seven months from his ownership of the car before the clutch failed, which I'm more satisfied than not suggests longer journeys were being taken more regularly. Some research online states an average lifespan of 60,000 miles for a clutch, although various factors dictate when such a part might fail and at what mileage. Whilst I understand Tesco's argument that the clutch is a wear and tear component and that is why they believe it failed, I'm more persuaded than not in this case, when I consider everything that has been provided, that the clutch failed due to its durability rather than due to wear and tear, and I'm not satisfied this is the standard that a reasonable person would expect. So, it follows that I'm minded to say the car wasn't of satisfactory quality when it was bought by Mr M, and he should now be reimbursed for the repair costs he incurred.

Tesco may feel their position in this case has been prejudiced by the length of time it took Mr M to bring this to their attention and the fact that the car is no longer in Mr M's possession. I understand that. However, I'm not persuaded that this makes too much difference in this case. Mr M has said he still has the clutch, even though he's no longer the owner of the car, but I'm not persuaded that an inspection of the clutch would enable a conclusion to be drawn as to what caused the failure and when. What I do have is the evidence from both sides, and that leads me to conclude I'm not persuaded the car was of satisfactory quality at the time Mr M bought it, for the reasons previously stated.

To resolve this complaint, I'm asking Tesco to reimburse Mr M for the repairs he paid to replace the clutch. To do this, they should rework his credit card account as though the amount had been refunded from the point they originally declined his claim in 2022. They should refund any interest, fees, or charges that he incurred as a result of the transaction remaining on his account. If refunding the transaction means there would've been a credit balance, Tesco need to pay 8% simple interest per year on that credit balance, from the date it would've arisen to the date of settlement.'

Mr M responded and accepted the findings in my provisional decision. Tesco haven't responded in the timeframe.

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.

As neither side have provided me with any additional evidence to consider here, I see no reason to depart from the findings in my provisional decision. Tesco must settle the complaint as explained below.

My final decision

For the reasons above, I uphold this complaint. Tesco Personal Finance PLC trading as Tesco Bank must:

- Rework Mr M's credit card account as though the amount had been refunded from the point they declined his claim, and refund any interest, fees, or charges that he incurred as a result of the transaction remaining on his account.
- If refunding the transaction means there would've been a credit balance, Tesco need to pay 8% simple interest per year on that credit balance, from the date it would've arisen to the date of settlement.*

*If Tesco Personal Finance PLC trading as Tesco Bank consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr M how much they've taken off. They should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 October 2023.

Kevin Parmenter
Ombudsman