

The complaint

Mr B complains Barclays Bank UK PLC (trading as Tesco Bank) failed to refund his deposit for a vehicle he declined to purchase.

What happened

On around 3 August 2024, Mr B sought to trade-in his 17-year-old caravan for a newer one from a caravan supplier (which I'll call "S"). The process required him to fill in a "part-exchange" form describing the condition of the caravan.

Mr B, to the best of his knowledge, confirmed the caravan was in "good" condition and ticked the boxes confirming it was free from damp, delaminated floor, cracked panels, damaged windows and outstanding finance. Mr B says the answers on his form were based on the salesperson's verbal definition of damp as "black patches" and panel cracks as "significant cracks". As neither of these were present, he signed a form confirming he agreed to a £2,000 part-exchange price, and paid a £1,000 deposit with his Tesco Bank credit card.

On around 26 August 2024, Mr B said S' salesperson inspected the vehicle and confirmed it was in working order, but wanted a more detailed inspection after identifying a couple higher damp meter readings and minor cracks. Upon inspection, S said its technicians found the caravan had panel cracks and damp, and so halved the part-exchange value to £1,000. Mr B said he wasn't willing to pay an additional £1,000 for the new caravan, so he cancelled the contract. He asked S to refund his deposit, but S said it was non-refundable under its terms.

Mr B asked Tesco Bank to help him get his money back. Tesco Bank concluded there were no grounds for raising a successful chargeback. Additionally, it said it had no liability under section 75 Consumer Credit Act 1974 ("section 75") as it didn't think there was sufficient evidence for a breach of contract or misrepresentation by S.

Our investigator upheld Mr B's complaint because S provided no documentary evidence of the faults that S relied on to justify halving the trade-in price.

In response, Tesco Bank said it asked S for evidence, but because the sale fell through S didn't keep a copy of its inspection report. Tesco Bank also said the relevant term gave S sole discretion to determine the trade-in value – in other words, S didn't have to evidence the faults as the contract didn't require it. In the alternative, it said the onus was on Mr B to evidence there were no cracks or damp. As Mr B hadn't done that, it considered there was no breach of contract and that S were entitled to keep the £1,000 non-refundable deposit.

As our investigator maintained his position, the complaint has come to me for a 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.

While I might not comment on everything (only what I consider key) this is not meant as a

discourtesy to either party – it reflects my role resolving disputes with minimum formality. I'd like to assure both parties I've considered everything they've sent, including the submissions sent to me after the investigator's assessment.

It's important to note that Tesco Bank aren't the caravan supplier here. So to decide if it acted fairly, I need to consider its role as a financial services provider only. As Mr B used his credit card to pay S, I need to consider how Tesco Bank could have reasonably assisted him through the protections offered by the chargeback process and section 75.

Chargeback

When someone buys something with their credit card, and something goes wrong, the card issuer can sometimes help them obtain a refund by raising a chargeback on their behalf. There's no obligation for a card issuer to raise a chargeback for a customer – but I'd expect it to do so if a chargeback has reasonable prospects of succeeding.

The rules governing the chargeback process are set by the relevant card scheme – in this case, that would be Mastercard. These rules set out strict conditions that must be satisfied for a chargeback claim to be successful. I'd expect a card issuer like Tesco Bank to apply the scheme rules correctly and conduct the chargeback process fairly.

Mastercard will only consider certain types of disputes under its chargeback scheme – specifically, those that align with one of Mastercard's reason codes. If a dispute doesn't align, then it's unlikely to succeed under the chargeback scheme.

Mr B doesn't dispute that S was willing to supply a caravan, or that the terms say the deposit is non-refundable upon cancellation. Instead, he claims S failed to show it was justified in amending his caravan's trade-in value under a specific term that gave S discretion to do so. The issue here is that there's no Mastercard reason code that aligns with this kind of claim.

Given the circumstances, I don't think Mr B's claim had reasonable prospects of success under any of Mastercard's reason codes. So I don't find that Tesco Bank's decision to discontinue the chargeback process was unfair.

Section 75 Consumer Credit Act 1974

Under section 75, Mr B can hold Tesco Bank jointly liable with S for a breach of contract or misrepresentation by S if certain criteria are met. I'm satisfied those criteria are met and that Mr B has grounds to make a valid section 75 claim.

The key dispute here is whether S was entitled to rely on a particular term of the contract to halve the trade-in value of Mr B's caravan. In short, the relevant term allows S to alter the trade-in value on the condition Mr B is found to have misdescribed his caravan.

That's important, because the particular reason S relied on this term was because it alleged Mr B misdescribed his caravan – which, if true, effectively amounts to an allegation from S that Mr B breached the contract. I say that with reference to section 23 of the fine print, headed "Part Exchange", which states:

"Where the company agrees to allow part of the purchase price to be satisfied by the Customer delivering used goods, the used goods shall be delivered to and accepted by the Company, subject to the following conditions:

- (a) that the used goods shall be delivered to the Company in the same condition as when examined and/or approved by the Company and/or as described by the Customer...”

It's clear Mr B has a contractual obligation to ensure that his caravan was as he described it (in the part-exchange form) upon delivery – failing that, he would be in breach of this contract term. And if breached, a secondary term comes into play setting out an agreed remedy for the breach – specifically that S, at its discretion, can decrease the trade-in value. This secondary term can be found on the “used sales vehicle process” form that Mr B signed and comes under the heading “Part Exchange”. It states:

“The valuation on your sales order was based on the year and condition, as you described it. We will inspect your caravan to ensure it matches your description. If issues are identified, this may affect the value of your part exchange.”

Similarly, the “part-exchange” form also explains S may alter the price if the caravan doesn't match its description.

The upshot of the above is that S' right to alter the trade-in value isn't an absolute right. Its dependent on S first showing that Mr B breached his contractual obligation to ensure he supplied a caravan that meets Mr B's description. Like our investigator, I reject Tesco Bank's assertion that the onus is on Mr B to show his caravan is free of damp and cracked panels.

As the onus is on S to show the caravan didn't meet Mr B's description, and it hasn't supplied the technical report in support, I don't find S has sufficiently evidenced that Mr B misdescribed his caravan in a way that justifies S' halving of the trade-in value.

Even if I were wrong, Mr B has supplied sufficient evidence that his caravan is free of damp and cracks to shift the onus on S to show otherwise. I say that for the following reasons:

- As S doesn't define what constitutes material “damp” or “panel cracks” – those terms ought to be given their natural meaning within the wider context of being serious enough to justify a reduction in a 17-year-old caravan's trade-in value. Or put differently, interpreted in the same way a reasonable person would.
- I think a reasonable person would probably define “damp” and “panel cracks” in the same way Mr B said the salesperson defined it. In other words, damp that is visible and cracks that are significant.
- From the photos of the caravan Mr B supplied, I don't see anything that indicates there's any visible damp or significant panel cracks.
- Following the above, if the caravan had damp and panel cracks amounting to a misdescription of the vehicle that reduces its trade-in value, it's on S to show this. As S hasn't, I find that S' reduction of the trade-in value amounts to a breach of contract.

In the alternative, Tesco Bank argues the relevant term gives S sole discretion to alter the trade-in value as it sees fit, and is not obligated to provide evidence justifying its alteration. For the reasons I've already given, I disagree with this interpretation of the contract. But even if I were to accept the proper construction of the contract is as Tesco Bank says, I would find the discretionary term to be “unfair” under the Consumer Rights Act 2015 (CRA).

Under section 62 of the CRA, unfair terms in consumer contracts aren't binding. A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

Section 63 of the CRA states that terms that may be regarded as unfair are set out in Part 1 of Schedule 2 of the CRA. Under Schedule 2, there are some examples of potentially unfair terms that are relevant to the discretionary term(s) Tesco Bank refers to, as follows:

"14. A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound....

16. A term which has the object or effect of giving the trader the right to determine whether the goods...supplied are in conformity with the contract, or giving the trader the exclusive right to interpret any term of the contract."

The above examples of potentially unfair terms are similar to Tesco Bank's interpretation of the relevant terms. I say that because Tesco Bank effectively asserts S has a contractual right to unilaterally decide Mr B's caravan doesn't conform to his description, alter its value as it sees fit, and effectively increase the price Mr B must pay to conclude the contract.

Within the spirit of what constitutes an unfair contract term under the CRA, I think it's likely a court would find such a term unfair and therefore not legally binding. And if so, S would be in breach of contract by altering the contract price without being legally entitled to do so.

In summary, I don't find S was contractually entitled to change the trade-in value of Mr B's caravan. Its insistence on doing so amounts to a repudiatory breach of the contract, for which Tesco Bank are liable for remedying under section 75. The fair and reasonable solution here is for Tesco Bank to refund the £1,000 deposit Mr B paid with interest.

For the same reasons our investigator found, I similarly don't find that Tesco Bank has treated Mr B fairly. S' failure to provide the technical report showing damp and panel cracks ought to be immediately concerning to Tesco Bank near the outset. Instead, Mr B has had to endure an unnecessarily protracted claim. For the impact on Mr B, I consider the £200 our investigator awarded to be a fair reflection of the distress and inconvenience caused.

My final decision

I uphold this complaint and direct Barclays Bank UK PLC (trading as Tesco Bank) to:

- Recalculate Mr B's credit card account, by refunding him £1,000, backdated to the date he paid the deposit (3 August 2024).
- If this payment would have resulted in a credit balance being owed to Mr B, this should be paid to him along with interest calculated at the rate of 8% simple per year, from that point up until the money is refunded.
- Pay Mr B £200 for the distress and inconvenience caused.

If Bank of Scotland plc deducts tax from the interest element of my award, it should provide Ms H with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 July 2025.

Alex Watts
Ombudsman