DRN-5604347

The complaint

Mr L complains that Tesco Personal Finance Limited ('TPF'), has treated him unfairly in relation to a transaction on his credit card which went towards the purchase of a used car.

What happened

On 18 February 2024, Mr L's wife, Mrs L, purchased a used car (the 'car') from a dealership I'll refer to as 'T'. Mr L used his TPF credit card to make a payment of £1,140 towards the cost of the car – the total cost, including admin charges, was £3,840. The remaining balance was paid for by way of a part exchange of Mrs L's existing car. Amongst other things, in addition to showing Mrs L as the purchaser of the car, the sales invoice also noted that the car had been sold with 'issues'. Further, the sales invoice showed the car was first registered in 2014, had mileage of 148,425 and had passed its last MOT.

In April 2024, whilst Mrs L was using the car, it experienced various mechanical problems which required repairs via a local garage and subsequently, the use of a car recovery service. Mr L says T initially told Mrs L during phone calls, it would refund the cost of repairs totalling £1,017.67 but later changed its position, saying the mechanical failures were due to 'wear and tear'.

When T stopped returning Mrs L's calls, Mr L decided to ask TPF for help in respect of the payment he had made towards the cost of the car. He said TPF should be held liable under section 75 of the Consumer Credit Act 1974 ('section 75'). But TPF didn't think Mr L's claim met the criteria for a successful section 75 claim. It subsequently considered Mr L's request under the Mastercard chargeback scheme. However, TPF said as he was claiming for consequential losses, these wouldn't be covered under the scheme. Mr L complained but TPF maintained its position. So, he asked our service to consider this matter.

One of our investigator's thought this complaint should be upheld and recommended TPF compensate Mr L for all the repair costs which, by the date of the view, had increased to just over £1,750. He also recommended TPF pay Mr L £300 for the distress and inconvenience caused. TPF disagreed with this recommendation and asked for the matter to be escalated. So, this complaint was passed to me for a decision. I issued a provisional decision because I didn't agree with the outcome recommended by our investigator. In summary, I concluded that TPF hadn't acted unfairly in the way it handled Mr L's claim and chargeback request. So, I said I wasn't intending to uphold the complaint.

TPF accepted my decision without further comment – Mr L did not. In summary, he reiterated the points he made previously and maintained the car was purchased as a family car which he benefits from. So, he considers there was a valid debtor-creditor-supplier ('DCS') agreement in place. He pointed to other final decisions showing that a valid DCS agreement would be in place under similar circumstances. Mr L said he'd have a valid claim under the Consumer Rights Act 2015 (the 'CRA') for breach of contract. He said my provisional decision was inaccurate and lacked attention to detail – in particular, he points to the part of my decision where I said T said the car's faults were due to wear and tear which he said was incorrect. Mr L said he didn't see any reason why a chargeback could not have

been raised – for example, he said he had tried to return the car and pointed to an email dated 20 May 2024 to T as evidence of this.

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.

Having done that, I'm not upholding Mr L's complaint. Before I set out my reasoning, I can see Mr L is disappointed that I reached a different view to that of our investigator, which is understandable. But just by way of explanation, our rules (the Dispute Resolution: Complaints rules – known as DISP) set out (in DISP 3.5.4) that both parties have an opportunity to make representations before we provide a provisional assessment of the complaint and, if either party is unhappy with that assessment, proceed to a final decision. In this case, both parties made representations, which the investigator considered before providing a provisional assessment that the complaint should be upheld. Having looked at everything afresh including all the evidence provided by both parties, I disagreed with that view which is why I sent my own provisional decision. In deciding what I considered to be fair and reasonable in all the circumstances, I had regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I considered to have been good industry practice at the time. I'll now set out the reasons for my final decision, which remain the same as those set out in my provisional decision:

Section 75 allows a cardholder, in certain circumstances, to hold a credit card provider responsible for breach of contract or misrepresentation in respect of goods or services purchased using the credit afforded. However, there are certain technical criteria that have to be met for a section 75 claim to be valid, one of which is for there to be a 'debtor- creditor-supplier' ('DCS') agreement between the parties to the transaction.

Because Mr L used his credit card for part payment of the car, for the purposes of section 75, he was the 'debtor', TPF was the creditor and T was the supplier. So, amongst other things, in order for there to be a valid DCS agreement I would need to be satisfied that the 'arrangements' for the purchase of the car were between Mr L and T. To this end, I've reviewed the evidence Mr L submitted to TPF in support of his claim, including:

- *the sales invoice which shows Mrs L as the purchaser of the car and that she used her existing car as part exchange,*
- *the repair invoices were in the name of Mrs L,*
- *in May 2024, a car recovery service identified a problem with the turbo and produced a diagnostic report which Mr L submitted to TPF as part of his claim – the diagnostic report was signed by Mrs L who, as I understand it, was driving the car when it broke down, and*
- *various emails and text messages show it was Mrs L, not Mr L, who'd communicated with T about the repair costs.*

In my view, I think the above evidence submitted as part of Mr L's section 75 claim, provides persuasive evidence that it was Mrs L rather than Mr L, the debtor in this case, who entered into the contractual arrangements with T for the sale of the car. I appreciate what Mr L says about the car being a family car and that he benefits from its use. But for the purposes of a section 75 claim, and meeting the DCS agreement requirements, I think the important point is who the 'arrangements' were between. And in this case, I think the evidence strongly supports that the contractual arrangements were between Mrs L and T.

Mr L says that TPF only focused on the sales invoice and didn't review all the evidence he submitted as part of his claim. I sympathise with Mr L about this. But TPF considered the sales invoice was sufficient to make a decision about whether to accept liability or not. And I can't see any of the other evidence submitted by Mr L rebuts the conclusion reached by TPF.

All in all, I don't think TPF has acted unfairly or unreasonably in reaching the conclusion that there wasn't the requisite DCS agreement in place for Mr L to bring a section 75 claim against it in respect of the payment he made to T. As I noted above, I know this outcome will come as a disappointment to Mr L. However, in this case TPF is only potentially responsible for goods provided by T via section 75, so it's important that I consider the specific section 75 criteria when determining if it should fairly do anything here.

The Mastercard chargeback scheme is another way TPF could've potentially assisted Mr L with recovering his money, which would be limited to the amount paid. A chargeback is not guaranteed to work but it can be good practice to raise one where there is a reasonable prospect of success. In this sort of situation, there is a chargeback reason code/rule relating to 'defective goods' which TPF might have pursued. However, I can see TPF declined to raise a chargeback as it didn't think Mr L had a valid claim.

I should start by saying that under a chargeback for defective goods, as TPF has said, this wouldn't cover consequential losses such as the cost of repairs. Amongst other things, under the 'defective goods' reason code, the claim covers situations where the goods are 'broken' and the consumer is looking to return the goods and receive a refund. And one of the requirements of this rule is that the consumer would have had to show they either attempted to return the goods or informed the merchant that the goods were available to pick up, neither of which happened here. In my view, Mr L's claim is more about the reimbursement for repairs which, having regard to the relevant Mastercard reason code, wouldn't amount to a valid chargeback.

In any event, in respect of both the section 75 claim and the request to initiate a chargeback, I think there are clear issues with showing the car was defective at the point of sale. I can see Mr/Mrs L were supplied with a used car which was almost ten years old, and with high mileage (in excess of 148,000 miles) where the risk of potentially costly repairs would be higher than a newer less road-worn car. There are several variables that can cause a car to go wrong other than an inherent fault (such as expected wear and tear).

Additionally, following the purchase, and before Mr L asked TPF for help, the car had been driven for three months and accumulated a further 1,574 miles. Under all these circumstances, without independent evidence showing the relevant mechanical faults were down to an inherent fault present at the time of sale, and were not, for example, as T had said during a call to Mrs L, due to 'wear and tear', I think the prospect of a successful chargeback was low and I'm not persuaded a breach of contract has been made out. I appreciate Mr L provided TPF with a diagnostic report from a car recovery service, but this report doesn't verify whether this was due to a fault present at the time of sale.

I've taken on board Mr L's further submissions many of which reflect what he previously said. In addition to what I've set out above, I would add the following to the reasons for this decision:

- I can't comment on what other decisions have concluded on the issue of DCS suffice to say each decision is decided on their individual merits and can be very fact specific. I'm satisfied, on balance, that based on the facts of this particular case, that TPF hasn't acted unfairly or unreasonably in concluding the relevant criteria for bringing a section 75 claim is not in place.

- I appreciate Mr L benefits from the use of the car, but the issue is who the 'arrangements' were between. I'm still satisfied the relevant arrangements were between Mrs L and T so I don't think there's a valid DCS agreement in this particular case.

- I also note what Mr L says about the CRA but because I don't think there is a valid DCS agreement here, I don't think I need to consider this further.

- In terms of what Mr L says about the chargeback, he points to the email from Mrs L to T dated 20 May 2024 as evidence that the latter party was told to collect the car. But this email appears to ask T to refund the cost of repairs undertaken. But even if I accept that Mr L did arrange for the car to be collected by T as he indicated he did when he wrote to TPF to raise his claim on 22 May 2024, I don't think TPF acted unfairly in not initiating a chargeback. I say this because as Mr L said in his claim to TPF following the purchase, and before he asked TPF for help, the car had been driven for three months and accumulated a further 1,574 miles. And in light of the age and mileage of the car, without independent evidence showing the relevant mechanical faults were the result of an inherent fault present at the time of sale, I think the prospect of a successful chargeback was low.

- Mr L points to what he says were inaccuracies in my provisional decision. In particular, he says T didn't say anything about the issues being related to 'wear and tear'. But I had taken this statement from Mr L's submissions to TPF. As noted above, Mr L wrote to TPF on 22 May 2024 setting out his claim and amongst other things, he said (bold my emphasis): *"On 20th May 2024, the car broke down and my wife had to call the* [car recovery service]*. The* [car recovery service] *did a diagnostic on the car and stated it was the turbo, the car was taken to* [a garage] *for inspection. Prior to the inspection taking place, we called the retailer to discuss the breakdown. They were advised that the* [car recovery service] *had stated it was the Turbo, the retailer asked for a diagnostic report to be sent to him, and they would again 'sort it out' and make a claim. When asked who they would be claiming from they would not give details. We also discussed the outstanding handbrake repair cost, and he stated its general* ***ware (sic) and tear****, we disagreed as we had not had the car very long. We advised we would send the report and cost of repair over and give him a call back to discuss it."* So, I hope this clarifies where I obtained this information from.

For all these reasons, and having reviewed everything again, my final decision is that I'm not upholding this complaint. As I've previously said, my decision doesn't prevent Mr L from pursuing matters against T by alternative means, such as court (seeking appropriate advice in the process).

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 17 July 2025.

Yolande Mcleod
Ombudsman