

complaint

Mr S complains Tesco Personal Finance Plc (Tesco) unfairly refused his claim under section 75 of the Consumer Credit Act 1974. He thinks it should cover the cost of a new clutch for a car.

Background

In March 2016 Mr S's Tesco credit card was used to pay for a new clutch for a car. In June 2017 the clutch needed replacing again. The garage that fitted it said the cause was misuse. So it wouldn't replace the clutch under its warranty.

Mr S made a claim under section 75. But Tesco didn't think he'd shown there had been a misrepresentation or breach of contract. And it said that a second new clutch had been fitted. So it was no longer possible for an independent assessment to show if the fault had been caused by the work in March 2016. Mr S said the work was done because Tesco gave him the wrong information. It didn't tell him not to do it or that the car would need to have an independent assessment.

Tesco also said that the invoices for the work were in his partner's name. So Mr S would need to show that he jointly benefited from the car. It wasn't satisfied that he had contracted with the garage for the clutch in 2016. This would be required for a section 75 claim to be successful.

Our investigator didn't think Tesco needed to do anything differently. She said there wasn't a direct relationship between Mr S, as the debtor, and the garage, as the supplier. So he didn't meet the requirements for a section 75 claim. And she didn't think it had given him incorrect information. Mr S didn't accept these findings, so the complaint has come to me for a final decision.

my findings

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

My role isn't to decide whether or not section 75 applies here. Instead, I need to decide what, if anything, Tesco should do to resolve this complaint. In doing that, I need to decide what is fair and reasonable, having regard to (amongst other things) any relevant law. Relevant law, here, includes section 75. Having done this, I think Tesco has acted fairly. So it doesn't have to do anything to resolve Mr S's complaint.

If certain criteria are met, section 75 allows a consumer to claim against a credit provider for breach of contract or misrepresentation by a supplier of goods and services which were paid for using credit. One of the circumstances needed for a valid section 75 claim is a direct relationship between the debtor, creditor and supplier. Mr S is the debtor as his Tesco credit card was used to pay for the clutch in 2016. And the garage that supplied and fitted the clutch is the supplier. But I don't think there was a direct relationship between the two. I don't think Mr S was the contracting party for the clutch. I think his partner was.

The car was registered in his partner's name. It seems he isn't named on its insurance policy. The garage invoices from both 2016 and 2017 are in her name. The customer phone number on the invoices doesn't seem to be Mr S's. Emails sent to the garage before the

2016 clutch was fitted are from his partner. Those sent in 2017 complaining about the failed clutch are from her. In them she refers to her taking the car to the garage and her speaking to its customer services. In one she says *'I was persuaded to spend £1300 for the full clutch to get warranty...'*

Mr S says that his partner didn't have any contact with the garage. But the emails and invoices don't support this. He says he made all the phone calls. Again, the emails don't support this. I accept he made the phone calls to Tesco about the section 75 claim. But it isn't his relationship with Tesco that is the issue.

So from what I've seen Mr S's partner was probably the contracting party in 2016. So he didn't, as the debtor, have a direct relationship with the supplier. His partner's an additional card holder. But additional card holders aren't debtors. So that doesn't create a direct debtor-supplier relationship. And considering the requirements for section 75, I don't think it would be reasonable to make Tesco pay for anything the supplier might have done wrong with the clutch.

Mr S says that if Tesco knew about the debtor-supplier issue it should have told him earlier that it couldn't help. But I don't think it was aware of this at first. It didn't have reason to until it received extra information, including the invoices and receipts, from Mr S.

He also complained Tesco gave him incorrect information about what to do for his section 75 claim. He says he wasn't told an independent inspection would be required. And it didn't tell him not to have the clutch replaced. And as he did, it wasn't possible to have one. So he thinks Tesco has damaged the chances of a successful claim.

But even if there had been an independent assessment the section 75 claim still wouldn't have been successful. This is because, as explained above, there isn't a debtor-supplier relationship. So even if I thought Tesco should've provided clearer information I wouldn't agree it had undermined his section 75 claim.

my final decision

For the reasons given above, I'm not making Tesco Personal Finance Plc do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 January 2018.

Daniel Martin
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