

complaint

Mrs J complains that Tesco Personal Finance PLC (trading as Tesco Bank) did not do enough to help her when she told it about a problem with a purchase she made on her credit card.

background

Mrs J received an invoice dated 15 July 2016 for a reconditioned car engine from a company I'll anonymise here as "A" (and which used a trading name). The related payment on her credit card for £1,854 dated 24 June 2016 showed as being made to a different company "M". The arrangement was that A would provide the engine to another company "An" who would fit the engine. A would then collect the old engine from An after five to seven working days. Mrs J says that An confirmed it received an engine but could not provide the engine number. She said that it told her it was unable to fit the engine so that the vehicle was roadworthy. The vehicle was examined by another garage "G" that said it still had the old engine fitted. Mrs J thinks that all A did was take the old engine and then return it to An.

Tesco said it could not consider a claim under section 75 of the Consumer Credit Act. This was because there had to be an intact debtor-creditor-supplier relationship. Because Mrs J (debtor) had paid M and not the supplier A with her credit card from Tesco (the creditor) this relationship had been broken. It said that it had been too late to consider a chargeback by the time it assessed her complaint. But it did not think this would have succeeded as an engine was supplied. It paid Mrs J £100 for the distress caused.

The adjudicator agreed and did not recommend that it do any more.

Mrs J did not agree. She said that in her view her contract was with one party and that's the same one she paid – she did not intend to contract with anyone else. She said, if anything, M was the undisclosed principal of A. She also thought it's relevant that A was dissolved before the contract. So it wasn't legally possible to enter a contract with it.

my provisional view

I issued a provisional decision on this case on 9 June 2017 as my reasoning differed from that of the adjudicator. I summarise the key points below.

I said it was worth clarifying that I'm not deciding Tesco's liability under section 75 of the Consumer Credit Act. We certainly take into account the relevant law and that includes section 75. But we decide cases by considering what is fair and reasonable, as statute requires us to do. I know Mrs J feels she has a valid section 75 claim. But that's not what I'm looking at.

What I said I was looking at is whether Tesco has dealt with the complaint Mrs J made fairly and whether there's more it needs to do to resolve this. To help me make this decision I'd reviewed what was known about the terms and conditions relating to the transaction

I needed to consider the role M played in this transaction noting what Mrs J had said about A being dissolved. Mrs J said it previously shared a common director with M. Tesco has said that it's been unable to make a link based on the receipt and invoice for this payment. I said I thought that it's possible that M was only acting as an agent for another party and taking the payment. But if I accepted what Mrs J said about A, it seemed more likely to me that, at the

least, it was an associate of the supplier – if not the supplier itself here. So I did provisionally find there to be a link.

There is very limited evidence to support what Mrs J says about what happened. An received the engine and accepted it on behalf of Mrs J. It's not possible for me to find as most likely on the evidence that this was the old engine back. And A or M were not responsible for An's actions. I'd no supporting evidence to say that the engine supplied did not comply with what was agreed. So I didn't provisionally think based on what I'd seen so far that there was a reasonable basis for me to find Tesco should have taken any further action.

For similar reasons I didn't think that a chargeback would likely have succeeded. Again it would be necessary to find that the specified engine had not been supplied. But Tesco says that by the time it looked at the possibility of a chargeback it was too late. It has paid Mrs J £100 for this. I said my provisional view was that this was reasonable and I invited Mrs J and Tesco to submit any more evidence or make any further comments.

my findings

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

Tesco said it did not have anything further to add to this case.

Mrs J did not agree. She raised a number of points and supplied further evidence. She wanted to understand why I'd said I wasn't looking at the Section 75 complaint. She provided documentation as follows:

- Confirmation that A was now dissolved but that it was in fact trading at the time of the contract.
- A copy of an invoice from An dated 25 August 2016 which gave the engine number and code under 'advisory comments'.
- A copy of the vehicle registration certificate showing that was the original engine number.
- A report from G saying that the vehicle was not roadworthy and providing a picture of the engine showing the same number.
- A letter from Tesco dated 8 September 2016 saying it would raise a chargeback.

Mrs J says that as An was not able to fit the engine and make the vehicle roadworthy it had to be placed with another garage. I note that in an email to this service dated 10 March 2017 she said that An had said it had received an engine but that it was unable to confirm the engine number. She thinks it had received the old engine and refitted it. I've looked closely at the invoice from An. This says that it was paid 'under protest' and it confirms the engine number of the vehicle. Mrs J concludes that it had removed the old engine and given it to A before A gave it the same engine back. But there are other possible explanations including that it was unable to fit the engine provided by A or declined to do so. In the absence of any clear statement from An about what happened including what engine was supplied by A and what condition it was in at that time I'm unable to conclude, on balance, that A did not supply an engine as it agreed to. I also need to take into account that Mrs J was clearly not happy with the actions An took as she paid the invoice under protest. So it's not possible for me fairly to decide that it was A and not An at fault here.

I remain unpersuaded that a Section 75 or chargeback complaint based on the goods supplied could have succeeded. And also now that Mrs J has shown that A did exist when she entered the contract I think this makes the role of M less certain. I'd previously accepted Mrs J's statement (given in an email of 24 April 2017) that A did not exist at the time of the contract.

The way we look at complaints is based on what is fair and reasonable and I don't have anything to add to the way I explained that above. I am afraid that for the reasons I've given my conclusion is still that I don't find that Tesco acted unreasonably in not refunding this money or that it should do any more.

Mrs J has referred to having taken legal advice on this matter. If she does not accept my decision she is free to pursue this through other means, subject to any relevant time limits.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 21 August 2017.

Michael Crewe
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