

complaint

Mr B complains that Tesco Personal Finance PLC rejected his claim under S 75 Consumer Credit Act 1974 in respect of a car.

background

On 18 January 2015 Mr B purchased a car from the supplier using his credit card for the price of £3,400. The car was 7 years old and had only covered 48,000 miles – low mileage for a vehicle of this age.

On the day of purchase Mr B was happy with the appearance of the car and drove it away. After only owning the vehicle for three weeks and covering 60 miles, without warning the vehicle cut off. Over the coming weeks in order to get the car repairs covered numerous emails were sent to the supplier with regards to the warranty. The warranty didn't cover the faults and eventually the supplier agreed to cover a portion of the repair costs that Mr B had to pay, but he didn't accept this partial offer. A few weeks later the car broke down again.

Mr B contacted the business to make a claim under S 75 after the first breakdown. Eventually the business agreed to pay £1,510 in full and final settlement as well as £75 compensation for the inconvenience caused by the business' delays. As the vehicle had further faults since the initial repairs Mr B wished to reject the vehicle as he had lost faith in it. Mr B's complaint was rejected by Tesco and so he brought it to this service.

The adjudicator who investigated the complaint recommended that it be upheld. He noted a number of reports were carried out on the vehicle at the request of Mr B relating to the initial fault and the later one. The business contacted an independent inspector who reviewed the various reports, but didn't examine the car. His assessment contradicts the views of the other two inspectors. The adjudicator questioned why the business didn't have an inspection carried out sooner.

Where the information provided by both parties is contradictory the adjudicator had to make his assessment on the balance of probabilities – that is, what is most likely to have happened in the circumstances.

He noted there was no dispute that the car's initial faults were there at the point of sale and this issue was rectified. However, he was satisfied, based on the information provided, that the subsequent faults were also due to a fault at the time of sale and not due to the initial repair work. In total Mr B has only covered 527 miles in the car – this would not be considered excessive.

The adjudicator accepted the car was 7 years old but considered, under the Sale of Goods Act 1979, the vehicle should be of satisfactory quality and fit for purpose. The adjudicator didn't believe it was at the point of sale and, on balance, thought both faults resulted from an inherent fault present when the car had been sold. Furthermore, he noted Mr B has had minimal use of the car and so the adjudicator believed he should be able to reject it.

The business didn't agree and said that after the first fault Mr B chose to have it repaired and not to reject the car. It also considered it was sufficient that it offered to cover the

cost of repairs. Mr B reiterated that the initial repair had been carried out by a third party on the advice from the merchant and the warranty company. He also wasn't aware he could reject the car when he first contacted Tesco, but he did so some six weeks later when it broke down again. He also said that he had the continuing cost of keeping the car insured and taxed.

my findings

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

In this case, I agree with the adjudicator and for the same reasons. I am satisfied that the car was not of merchantable quality when it was bought and Mr B is entitled to reject it. He has referred to additional costs incurred while the car has been kept, but I don't consider the bank should be required to meet these.

my final decision

My final decision is that I uphold this complaint and I direct Tesco Personal Finance PLC to:

- a) Collect the vehicle at its own cost, at a time convenient to Mr B;
- b) Refund £3,400 by reworking Mr B's credit card account as if the £3,400 had not been paid to the supplier and refund any associated interest or charges which this amount may have caused. If this results in a credit balance, Tesco should refund any credit balance and pay 8% simple interest from the date of that credit balance to the date of settlement;
- c) Pay £968.51 to Mr B to reimburse him for the repair cost and pay 8% simple interest from the date of payment until the date of settlement;
- d) Pay £40 to Mr B to reimburse him for recovery costs and pay 8% simple interest from the date of payment until the date of settlement; and,
- e) Pay £100 compensation for the trouble and upset caused due to the delay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 February 2016.

Ivor Graham
ombudsman