

The complaint

Mr W complains that Tesco Bank Personal Finance PLC trading as Tesco Bank rejected his Chargeback and Section 75 claims for a deposit refund which he would like refunded.

What happened

The details of this complaint are well-known to both parties so I won't repeat them again here, instead I will focus on giving the reasons for my 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.

Having done so I have reached the following conclusions:-

- There is no dispute that Mr W cancelled his order for a new car after the 14-day cancellation period, as a result the merchant retained the £250 deposit paid. As I understand it Tesco Bank considered but didn't pursue a Chargeback claim. Whilst we consider it good practice to raise a claim if there is reasonable chance of success Tesco Bank didn't have to do this. Had it done so the merchant might have successfully defended the claim. Tesco Bank also considered, but rejected, a Section 75 claim for which there needs to be proof of misrepresentation or breach of contract.
- Mr W hasn't made a case for misrepresentation for a claim under Section 75 and I haven't seen any evidence that would support such a claim. In terms of a breach of contract, he says the contract he signed states if the contract is ended 'it will refund any sums paid for the vehicle'. However, that is qualified by 'but we may deduct from that refund reasonable compensation for net costs we will incur because of the cancellation and to reflect the diminished value of the vehicle'. As the contract does allow for retention of funds I can't say a breach of contract applies here.
- I appreciate Mr W's point that it's Tesco Bank that referred to suggested overhead costs not the merchant. However, I think Tesco Bank made a reasonable point. It's one which I think the merchant may well have made had Tesco Bank put a chargeback claim to it.
- I also appreciate Mr W feels there is no loss as the merchant chose to go ahead with the order and to re sell the car on delivery. He feels any administration costs incurred in setting up the order would have been incurred by whoever then bought the car so it's not fair to charge him for this. However, I think there would have been some administration costs involved in setting up the order and deciding what to do once Mr W cancelled it after the 14-day cooling off period. The merchant may have tried to offset this by continuing with the order but there was no guarantee he could have sold the car on delivery at a higher cost. And the merchant would have incurred further administrative costs in selling the car to a new buyer. So, I do think some costs would have been incurred by the merchant. And, as the contract allows for a retention of funds for compensation I can't reasonably say Tesco Bank were wrong.

not to pursue a chargeback claim or to uphold a Section 75 claim.

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 W to accept or reject my decision before 14 November 2023.

Bridget Makins
Ombudsman