

## **The complaint**

Mr A complains about the outcome of a claim he made to Tesco Personal Finance PLC trading as Tesco Bank in respect of poor repairs to his wife's car.

## **What happened**

In September 2022, Mr A paid £510 and £36.82 to a garage for repairs to his wife's car, using his Tesco credit card. Mr A says the garage installed a new clutch, gearbox and steering rod.

Mr A contacted Tesco later that month asking for a full refund as the car had become undriveable, for which he held the garage liable. Tesco told Mr A that they couldn't raise a chargeback to reclaim the money as there were no grounds for them to do so.

Tesco referred Mr A's claim to be reviewed under Section 75 of the Consumer Credit Act 1974 ("Section 75"). They subsequently told him that they couldn't now do this because Mr A had scrapped the car and there were '*no reports etc*' for them to consider.

Mr A wasn't happy with this and so referred his complaint to our service. Our investigator didn't uphold the complaint. He said, in summary, that there was no reasonable prospect of success for a chargeback to be raised and that, in respect of the Section 75 claim, there wasn't enough evidence to show that the garage's repairs had caused the problems with the car that led to it being undriveable. He also noted that Mr A had scrapped the car before an independent inspection of it had been arranged. And our investigator said there were no grounds for Mr A to make a valid Section 75 claim as the necessary criteria for this hadn't been met.

Mr A didn't agree. He said the contract for repair was between him and the garage and they had failed to carry out the agreed repairs. Mr A also said that Tesco owed him a duty of care to tell him not to scrap the car and to arrange an independent inspection of it if that were necessary. And he said the garage meant to send him an invoice with warranty details included but failed to do so.

As the complaint couldn't be resolved, it has been passed to me for a 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.

There are typically two avenues here that Tesco as the provider of credit could have considered.

### *Chargeback*

In certain circumstances, when a cardholder has a dispute with a merchant, as Mr A does here, Tesco (as the card issuer) can attempt a chargeback. The process involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the companies which run the card networks, which in this case is Mastercard.

I would normally expect a credit card issuer to attempt a chargeback if there was a reasonable prospect of this achieving a successful outcome. Tesco didn't attempt a chargeback in this instance and said to Mr A this was because there were no chargeback rights for a breach of contract for service issues. In their submissions to us though, Tesco said that Mr A had failed to give the merchant (the garage in this instance) a tender return explaining the faulty goods were available for collection. And that this would have either not been possible or greatly inconvenienced Mr A.

Tesco has given two separate reasons here so I'm not particularly convinced they are sure why they didn't raise the chargeback. I note though that the garage had refuted that they had failed to repair the car in messages that were exchanged between themselves and Mr A's daughter. So, even if Tesco had raised a chargeback, the garage likely would have defended this. And, bearing in mind Mr A has said that the garage didn't send an invoice confirming the works that were to be, and were, carried out and that the car was scrapped before an inspection could be carried out, I think it likely that Tesco wouldn't have taken the matter further.

So, with all this in mind, and even though I have my doubts about how Tesco handled the chargeback, I don't think it was likely that a chargeback would have succeeded as, in my view, there wasn't a reasonable prospect of success.

### *Section 75*

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is Section 75 which says that, in certain circumstances, if Mr A paid for goods and services, in part or whole, on his Tesco credit card, and there was a breach of contract or misrepresentation by the supplier, Tesco can be held responsible.

For a valid claim under Section 75 there must be a debtor-creditor-supplier relationship in place. This normally means the person who owns the credit card account needs to have a claim for breach of contract or misrepresentation against a company they have paid using their credit card.

Our investigator said that the above criteria hadn't been met. Mr A disputes that and says that he was the party who contracted with the garage. If that was the case, then Mr A could have met the necessary criteria as he paid the garage with his credit card.

There is a potential problem with Mr A meeting that criteria overall though. For Mr A to make a claim, the cash price of the service had to be more than £100. I note he paid the garage two separate payments, one of which was below £100. So, it's possible that there were two separate contracts with the garage and that the one that cost £36.82 is outside of the financial limits for Section 75. It's possible though that both payments were treated as being part of the same, and only, contract.

As I don't have a copy of the invoice for the works, it's not possible for me to be sure of the nature of the contract, its cost and how Section 75 sits with this or who the contracting parties were for the repair to the car.

However, even if the necessary criteria for a Section 75 claim were met, there isn't enough evidence in my view to say that the garage breached its contract and so make Tesco responsible. I have no compelling evidence that the garage failed to repair the car in line with the agreed contract and that the subsequent problems found with the car were because of that.

I accept that it's unlikely that Mr A would have scrapped the car if it was still driveable, so I think it more likely than not that there were issues with the car. But I have nothing to support that this happened because the garage failed to repair the car as agreed or botched those repairs as Mr A claims. The car can no longer be inspected, and I note that Mr A feels that Tesco should have made it clear that scrapping it before an inspection was carried out would compromise his claim. I don't find though that Tesco were obliged to do this. It was for Mr A to provide enough evidence to support his claim for a breach of contract and an inspection could have helped with this. So overall, I find that Tesco didn't handle Mr A's Section 75 claim unfairly.

I do sympathise with Mr A for what happened and understand that he has been seriously ill recently. I hope that Mr A recovers from this.

### **My final decision**

For the reasons I've given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 September 2023.

Daniel Picken  
**Ombudsman**