

## **The complaint**

Mr L complains about decisions of Tesco Personal Finance PLC, trading as Tesco Bank ("Tesco") to reject claims he made to them under Mastercard's chargeback scheme and section 75 of the Consumer Credit Act 1974 ("section 75").

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my 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.

I know it will disappoint Mr L, and I have sympathy for the situation he's found himself in, but I'm afraid I don't think Tesco's have been unreasonable here. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a credit card, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

If Mr L was given a false statement of fact and if that false statement was a significant reason why he entered into the contract with the supplier to repair, service and MOT his car, I may think the agreement was misrepresented to him. In those circumstances I'd think Tesco had been unreasonable to reject his claim. Mr L says that the supplier advertised under a well known name but that they didn't represent that company. I can't see that Tesco were provided with evidence that was the case, as the emails from the supplier bear their name. And, even if the supplier had advertised under a better known brand, I can't see that

Mr L provided evidence of that to Tesco or that there was evidence the supplier weren't entitled to do that. On that basis I don't think Tesco were unreasonable to reject a section 75 claim that the agreement had been misrepresented; I think a court would be likely to come to the same conclusion.

I understand a significant thrust of Mr L's claim is that he was scammed. He explained to Tesco that he thought he'd been overcharged and that the work wasn't necessary. The price of the services provided were set out in the invoice, and I don't think Tesco were provided with sufficient evidence to demonstrate the services invoiced were not provided, or were provided for a higher fee than had been agreed. In those circumstances I don't think they were unreasonable to decide that a breach of contract hadn't been demonstrated and to reject that aspect of Mr L's claim.

It may also have been possible for Tesco to have disputed the transactions through the chargeback scheme that is administered by Mastercard. But for them to be able to do that it would have been necessary for them to demonstrate a similar breach, and as there wasn't sufficient evidence of that I don't think they were wrong not to pursue such a claim.

Ultimately, I'm afraid I don't think Tesco have done anything wrong here. I appreciate the significant efforts Mr L has put into this issue but on the evidence presented I don't think Tesco's decisions were unreasonable.

### **My final decision**

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 August 2023.

Phillip McMahon  
**Ombudsman**