



The complaint

Mr E complains about the quality of a car he bought using finance provided by Tesco Personal Finance PLC, trading as Tesco Bank.

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 Tesco Bank, but I agree with our investigator's opinion.

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 some of 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.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied.

A diagnostic report dated 3 March 2023 suggests to me that the car was not of satisfactory quality. It explains that there were several faults with the car, as follows:

- An excessive oil leak from the engine caused by a defective fixing of damaged parts

- and the wrong engine seal being used.
- Oil damage to most of the electrical and mechanical components.
- The onboard computer was freezing.
- There was a faulty wind deflector motor.

Tesco Bank have argued there is insufficient evidence to suggest that these faults were present when the car was supplied to Mr E. I think, given the very short period of time Mr E had the car before reporting the problems, that it is most likely the faults were present on the car from the beginning. I note that on 23 November 2022, only 23 days after Mr E took receipt of the car, he was complaining to the dealership about the same issues that were highlighted in the subsequent diagnostic report. I think that strengthens the argument that the faults were present at the point of sale.

The relevant law gives the consumer 30 days to reject a car if it's of unsatisfactory quality. Within that period the business do not have a right to repair the car unless the consumer consents. Mr E asked to reject the car within 30 days as defined by Section 22 subsections (3) and (4) of the relevant legislation. But Tesco say he'd already agreed to have the faults repaired.

Section 22 (6) of the relevant legislation says:

“(6)If the consumer requests or agrees to the repair or replacement of goods, the period mentioned in subsection (3) or (4) stops running for the length of the waiting period.”

While Mr E agreed to have repairs completed to the wind deflector motor I can't see that he agreed to have the other faults repaired and I therefore think he should have been allowed to reject the car.

It's for that reason that I don't think Tesco Bank were fair when they rejected his section 75 claim.

Putting things right

Tesco Bank will need to collect the car at no cost to Mr E and they should refund the money Mr E paid for the car as detailed on the 1 November 2022 invoice, with interest, as Mr E has been deprived of that money.

Tesco Bank should also refund the £99 deposit Mr E paid using his Tesco credit card.

Mr E paid £534 to have the faults diagnosed and to have the car transported to the garage. That cost was incurred as a consequence of the car being of unsatisfactory quality and Tesco Bank should therefore refund it with interest as Mr E has been deprived of the money.

Mr E has also incurred some legal expenses when challenging Tesco Bank's decision. I don't think it would be reasonable to ask Tesco to refund those expenses as I don't think Mr E had to incur them. That's because he was able to refer his complaint to this Service free of charge.

Mr E has also had to insure the car and to tax it, but I'm not persuaded those charges, or any portion of them should be refunded in these particular circumstances, as the expenses were always necessary and the car has been used, albeit less than Mr E would have liked.

I think Mr E has experienced some distress and inconvenience as a result of Tesco Bank's actions. He's had to wait a long time to have his complaint upheld when I think it could have been resolved quicker. In those circumstances, I'm asking Tesco Bank to pay him £200

compensation.

I note Mr E has also complained that the car was misrepresented to him as having only one owner when he says it had two. I've not found it necessary to consider that aspect of his complaint as I don't think the redress would, in these circumstances, have been any different.

My final decision

For the reasons I've given above, I uphold this complaint and tell Tesco Personal Finance PLC to:

- Collect the car at no cost to Mr E.
- Refund the money Mr E paid for the car, detailed on the 1 November 2022 invoice, and add 8% simple interest* per year to the refund from the date of payment to the date of settlement.
- Refund the £534 Mr E paid for the diagnostic report and add 8% simple interest* per year to the refund from the date of payment to the date of settlement.
- Refund Mr E's £99 deposit. Tesco Bank should reconstruct Mr E's credit card account to reflect that the refund was given on 1 November 2022. If, after doing that it shows Mr E would have been in credit at any point, Tesco should pay 8% annual simple interest* on this amount from the date he would have been in credit until the date of the refund.
- Pay Mr E £200 compensation for the distress and inconvenience caused.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

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

Phillip McMahon
Ombudsman