

## **The complaint**

Mr P complains that Tesco Personal Finance PLC trading as Tesco Bank declined his claim under Section 75 of The Consumer Credit Act 1974.

## **What happened**

In December 2022 Mr P purchased a motorcycle from a merchant and paid using his Tesco credit card. The purchase price was £1800.

In February 2023 Mr P contacted the merchant to report faults with the motorcycle. The speedometer was intermittent and would cut out from time to time meaning that no mileage was being recorded and the speed of the bike was not displayed. The merchant agreed to repair the faults. Mr P returned the bike to the merchant on 20 February 2023. The merchant told Mr P it had diagnosed a faulty sensor, which it repaired. Mr P got the bike back on 23 March 2023.

On 27 March 2023 Mr P contacted the merchant to report that the fault was still present. The merchant agreed to have the bike back again for repairs. Mr P returned the bike to the merchant in early April 2023. The merchant diagnosed a fault with the speedometer and replaced it with a second hand unit. Mr P got the bike back on 10 May 2023, but the mileage on the replacement speedometer showed significantly more mileage than before.

In June 2023 Mr P contacted the merchant to report that the motorbike was still faulty. He asked to reject it. The merchant refused to allow a rejection and refused to carry out further repairs.

In July 2023 Mr P contacted Tesco and raised a claim under Section 75. He said the bike was faulty. Tesco investigated and on 12 September 2023 it advised Mr P that it was upholding his claim and offered him a refund of £1800 in return for the bike.

Mr P told Tesco that he'd sold the bike on 13 August 2023 for £750 as he needed a reliable mode of transport. He said the increased mileage on the replacement speedometer meant that the re-sale value of the bike was around £1000 less than he'd paid for it. He said the merchant had failed to provide the old speedometer or any documents showing that the speedometer had been replaced. He suggested that Tesco deduct £750 from the settlement and refund him £1050.

Tesco refused. It said it couldn't refund the money until it had collected the goods.

Mr P wasn't happy with the decision and complained to Tesco. In its final response, Tesco said that whilst it appreciated Mr P's reasons for selling the goods, at no point had it advised him to sell the goods and by having a successful section 75 claim he was rejecting the goods and had to return them either to the merchant or to Tesco. Tesco said that because Mr P had sold the goods this was seen as accepting the goods in the condition they were in, and it couldn't proceed with the settlement.

Mr P remained unhappy and brought his complaint to this service. He said he'd sold the

motorbike for more than it had been valued at (he said he'd been told by a motorbike retailer that it was worth around £500) so Tesco hadn't lost out.

Our investigator upheld the complaint. He said although the creditor is usually entitled to the goods which are the subject of the breach of contract, the fair and reasonable approach was to refund Mr P the sum of £1050.

Tesco didn't agree. It said the fact that a retailer had valued the bike at around £500 wasn't evidence that it couldn't have achieved a higher resale at auction. Tesco said it believed that the parts to repair the bike could have been obtained from a third party seller, which would increase the value of the bike. It said that although the parts may not have been available to the repairers initially viewing the bike, due to merchants only using recommended parts suppliers and not using services such as eBay. Tesco said that to the right buyer the bike may have been worth more, and that this was likely to be achieved at auction due to scope of reach.

### **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.

In certain circumstances, Section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr P's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Tesco's response to the claim under Section 75 wasn't fair or reasonable.

Tesco has agreed that the goods aren't of satisfactory quality and that there's been a breach of contract. So, I won't comment further on the quality of the goods. Instead, I'll focus on whether Tesco has acted fairly and reasonably in declining the settlement on the grounds that Mr P has disposed of the bike.

Generally, either the merchant or the provider of credit is entitled to the goods which are the subject of the breach of contract. However, this service is allowed to look at whether Tesco has acted fairly and reasonably, so I've thought about whether declining the settlement in the circumstances of this complaint was fair.

The purpose of Section 75 is to put the consumer back in the position he would have been in had the breach of contract not occurred. This would mean putting Mr P back in the position he was in before he purchased the bike. In other words, this would involve Mr P receiving his money back.

Tesco has said that it isn't able to pay the settlement to Mr P without having access to the bike. It has said that it believes it could have achieved a higher resale value than the £750 that Mr P received for it.

I've taken into account what Tesco has said about obtaining parts to repair the bike and/or selling the bike at auction. Whilst I accept that it's possible that Tesco may have achieved more than £750, there's no evidence to support this. Tesco hasn't provided any evidence of what it says was the market value of the bike (either in its faulty or repaired condition). Nor has it provided any evidence to show what the costs of repair would have been, and/or the costs and expenses of selling the bike at auction.

Tesco has said that Mr P acted hastily when he sold the bike only 18 days after submitting his section 75 claim. It says that Mr P should have contacted Tesco to ask if this was a

viable option before proceeding with the sale. I appreciate the point that Tesco makes here, however, I haven't seen anything in the correspondence between Tesco and Mr P in which Tesco advise Mr P not to dispose of the bike. This is an important requirement which I think Tesco ought to make clear to consumers at the outset of any claim, particularly if there is risk that a successful claim won't be settled where a consumer has disposed of the goods.

Mr P has provided persuasive testimony that he achieved the best price possible for the bike in the circumstances. The circumstances were that the bike was faulty, and the speedometer did not accurately reflect the mileage that the bike had covered.

Taking everything into account, I don't think Tesco has treated Mr P fairly by declining to pay the settlement. I'm not persuaded that refunding Mr P the sum of £1050 will put Tesco in a worse position than if they had collected the bike, paid for repairs and deducted the costs and expenses of auction from any sale proceeds.

### **Putting things right**

To put things right Tesco should refund Mr P the sum of £1050 along with any interest he was charged on this amount whilst it was debited from his credit card. Tesco should also pay 8% interest on any payments Mr P made towards this balance from the date of each payment to the date of settlement.

### **My final decision**

My final decision is that I uphold the complaint. Tesco Personal Finance PLC trading as Tesco Bank should refund Mr P the sum of £1050 along with any interest he was charged on this amount whilst it was debited from his credit card. It should also pay 8% interest on any payments Mr P made towards this balance from the date of each payment to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 April 2024.

Emma Davy  
**Ombudsman**