

The complaint

Mr A complains about how Tesco Personal Finance PLC trading as Tesco Bank ('TB') handled a claim he made to it.

What happened

The parties are familiar with the background details of this complaint – so I will simply summarise it here. It reflects my informal remit.

Mr A bought a car using his TB credit card in December 2022 but he is unhappy with its quality. In summary, he says it was sold to him requiring significant engine repairs and he has had issues with it from the day he purchased it. He also said the advert was misleading and the car did not have 4 new tyres or a brand new MOT as promised.

Mr A was unable to resolve matters with the dealership so he approached TB to raise a dispute.

TB considered matters under Section 75 of the Consumer Credit Act 1974 ('Section 75') but did not uphold the claim. In summary, it said that it needed to establish if the repairs were covered by the warranty before it could progress matters.

Mr A complained about the claim outcome and that complaint came to this service. Our investigator upheld the complaint and said that TB needed to pay for repairs, and reimburse Mr A for new tyres and an MOT.

The parties did not agree with the investigator's attempt to resolve matters. So the case has come to me for a final decision. In summary, TB does not think there is persuasive evidence that the car was not of satisfactory quality when sold to Mr A and thinks the issues are likely due to reasonable wear and tear.

I issued a provisional decision on this case which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered the submissions by the parties but I won't be commenting on them all. This is not meant as a discourtesy but reflects my role resolving disputes informally.

I'm sorry to hear about the issues Mr A has described with the car he purchased. It is important to note here that TB is not the supplier of goods. So I am only looking at its role as a provider of financial services, and what it would reasonably be expected to do in that capacity. With this in mind I consider the chargeback scheme, and Section 75 to be particularly relevant to how TB could have assisted Mr A here.

Chargeback

In respect of chargeback it appears TB didn't raise one for Mr A. I think it is worth noting here that:

- *Chargeback is not guaranteed to succeed – and was likely to be defended by the supplier based on the email exchange it had with Mr A; and*
- *chargeback doesn't permit a claim for consequential losses such as the cost for repairs or expert reports.*

With this in mind (and noting that Mr A still had possession of the goods) I think it is unlikely that chargeback would have provided Mr A with a greater remedy than that reasonably available to him under Section 75 here – so I am not going into it in further detail here.

Section 75A

TB appear to have relied on Section 75A to say that Mr A needed to explore the warranty repairs before it could do anything for him. But I don't think this is right. I don't think Section 75A applies to this transaction for reasons including the fact the cash value of the goods is less than £30,000 (part 6 of Section 75A).

So I won't be considering Section 75A here. Furthermore, because I think TB was incorrect in relying on Mr A's exploration of the warranty before it would act I consider it fair to look at what Mr A would likely have done had TB acted correctly. In that respect, although I note Mr A has sourced an expert report after the case was referred to this service – I think it was likely something that he would have done had TB not wrongly discontinued the investigation. Therefore, I think it fair, when assessing what TB should have fairly done in response to the claim – to consider this latter evidence which Mr A has obtained more recently.

Section 75

Section 75 in certain circumstances allows Mr A to hold TB liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.

There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or the way payment was made. After considering these factors I think the requirements are in place for Mr A to have a valid Section 75 claim against TB. So I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation which would reasonably have been available to TB at the time it considered the claim. And if so, what TB should fairly do now to put things right.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA' from here) says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

The dealer supplied Mr A with a second-hand car that was around 9 years old at point of purchase and had done around 83,000 miles. Mr A also paid a lot less than he would have for a new or newer version of the car. So I think it's fair to say that a reasonable person would expect the car had already suffered significant wear and tear and was more at risk of developing potentially costly repairs.

However, with that said – it would not be reasonably expected, even for a second-hand car like this to already need significant repairs at the point of sale without that being disclosed by the dealer. Furthermore, when looking at satisfactory quality I also have to take into account the way the car was described, and I note that the advert said the car was in excellent condition with a brand new MOT. So I think it fair to say that this descriptor would somewhat raise the expectations to the reasonable person about the quality of this car at point of sale.

After considering this case I am not persuaded the car was of satisfactory quality at the point of sale. I think it likely had significant pre-existing engine issues that would not be reasonably expected in the circumstances. In coming to this finding I have factored in the following:

- *Mr A has given a consistent and credible account of significant issues he was having with the car from day one, including a coolant leak, engine management light being illuminated and other warning symbols – this account is also backed up by contemporaneous emails to the dealer about the issues he was experiencing straight away.*
- *Mr A has managed to find an estimate for work needed on the car from a garage which looked at it shortly before it was sold to him by the dealer – this lists significant issues with the engine and associated parts with a cost attributed in excess of £3,000 (almost half the price paid for the car) – there is no persuasive evidence that these repairs were completed prior to Mr A purchasing the car.*
- *Mr A has since explained that although the car is drivable it is sporadically losing power from the engine and he is not happy with it.*
- *Mr A has produced his own specialist report from a well-known inspection company – which notes (amongst other things) issues which appear consistent with wider engine problems such as:*
 - *an 'abnormal rattle / noise' from the engine on start-up and comment that 'further investigation is required as repairs may prove costly';*
 - *low coolant levels – requiring top up and further checks for coolant loss.*

I accept that some of the matters in the more recent report and those raised by Mr A might be attributable to reasonable wear and tear in a car of this age and mileage (and I wouldn't expect TB to be liable for having these remedied). However, I think the engine concerns in particular (when taken with the timeline of evidence here) are consistent with an inherent engine fault that was likely present at the time of sale (rather than something that developed at a later stage). I also note that cumulatively the concerns identified in this report (including some potentially significant issues with the air conditioning and airbag system) are not consistent with a car that was described by the dealer as being in excellent condition at the point of sale.

I know TB has referred to the opinion of a garage that the car was suffering from general wear and tear– but this comment was not particularly detailed and did not sufficiently explain why it was acceptable for a car sold as in excellent condition to have what appear to be pre-existing significant engine issues which were apparently already going to cost in excess of £3,000 to fix. Furthermore, the report Mr A has provided from an expert is more detailed and compelling in showing that the car is still suffering from numerous issues and some potentially serious ones linked to the engine.

I also note TB has pointed to the car passing its MOT and being fit for use. But a car being roadworthy based on basic checks (or being drivable) is not the same as it being of satisfactory quality in all the circumstances.

Of course this matter isn't straightforward because we are dealing with an older car – and it is expected that older cars do go wrong. However, the specific circumstances here show a car that appears to have already had significant issues before Mr A bought it. And issues that no reasonable person would expect, particularly noting the way the car was described. I think the car was likely not of satisfactory quality at the point of sale – so I think that the supplier breached its contract with Mr A for this reason.

I also note there is evidence that indicates the car was misdescribed by the dealer as having a brand new MOT and new tyres when it didn't. I say this because from the MOT history it appears that the MOT was due just a few months after the point of sale. And that MOT which Mr A then got identified issues with the tyres having excessive wear/being close to the legal limit – showing that it was unlikely a new set of tyres had been put on the car by the dealer. So I think that these issues are likely to be breaches of the requirement in the CRA that goods are as described. They are also potentially misrepresentations although I think it more likely than not they wouldn't have stopped Mr A buying the car based on the evidence I have seen (including Mr A's request for a discount to the dealership after discovering issues with it).

So I think that TB should have upheld Mr A's Section 75 claim here. The question here is a suitable remedy. And in order to decide this I have referred to the CRA which is the applicable law when there is a breach of the implied terms around quality and description. It sets out various remedies when goods don't conform such as repair or replacement. However, the CRA says these remedies will not always be appropriate.

Replacement is not suitable here in my view as it won't be possible to get a second-hand car with the same features and age and mileage. Repair is also not a suitable remedy here because:

- the cost to repair the car (at least based on the estimate from before the car was sold to Mr A) appears to be disproportionate to the value of the goods;*
- it isn't entirely clear the extent of repairs required at this point (and considering Mr A has been driving the car and has mentioned new issues developing it is now likely going to be difficult to say what is fair wear and tear and what is damage resulting from the original issues) or whether these are likely to remedy the issues Mr A has been experiencing in any event;*
- Mr A has already suffered significant inconvenience waiting for timely investigation and repairs to take place – and is likely to suffer more.*

All things considered I think repairs are not a suitable or fair remedy here to either party – and therefore I consider rejection and refund to be a fair and more practical remedy. Mr A will return the car to TB and it will issue him with a full refund subject to a deduction for fair

use. However, Mr A will be entitled to reasonable consequential losses arising from the dealers breach of contract.

From what Mr A has said and provided it appears he has paid out the following on the car to date (he has also evidenced these costs sufficiently with receipts):

- MOT test and full service on 9/1/2023 for £345
- MOT test and full service on 11/12/23 for £563
- Tyres on 7/12/23 for £547.96

I think Mr A is likely to have had running costs associated with any car of that age and mileage for the period he has been using it (including having to MOT it) – so I don't think it fair he can recover all these costs as consequential losses. However, I do think that Mr A has likely had to service the car earlier than expected due to the inherent issues with the car which are not his fault. And I also think he is unlikely to benefit from the new tyres fully if the car is handed back (and I note he was promised new tyres in the advert so is unlikely to have had to pay for these as soon as he has done had that promise been fulfilled). I also note the advert for the car promised a brand new MOT, and because that had not taken place it appears Mr A ended up having an extra one done sooner than expected. So he has likely had about £900 in extra expenditure which I think is fairly due back here.

I also note that Mr A says he has paid out for an expert report – which is £332. This report should be fairly refunded to Mr A because it came about due to the problems he was having with the car – and it has supported his case to show a breach of contract by the dealer. Mr A will need to provide a receipt or other proof of payment for this such as a bank statement.

This isn't a science – but all things considered it appears Mr A is fairly due back about £1,200 in outlay for things he is unlikely to have paid for in the first place were it not for the breach of contract or won't benefit from fully due to returning the car.

However, I also note Mr A has used the car for around 10,000 miles in the time he has had it. This is a significant amount, and the CRA says that any refund to a consumer exercising the final right to reject can have their refund reduced by a deduction for use. So I don't think it fair that Mr A get a full refund back, and I note that he is continuing to use the car to date so the mileage figure on return is likely to be more.

Working out fair use is not a science – and here, there are no monthly rentals to indicate the value of the time Mr A has had the car to date. In the circumstances I think it fair to apply an approximate value to the mileage Mr A has covered similar to what excess mileage would be charged for under a finance agreement. Excess mileage charges can vary with sources online quoting various figures anything from 3p to 30p a mile. So with this in mind I think a mid-point is about fair, which would equate Mr A's usage roughly with the £1,200 figure I have identified above as being due back to him as a consequential loss.

So, considering the amounts in question here I think the fairest option is that no fair use deduction is made by TB from Mr A's refund– but Mr A is also not to be reimbursed by TB for his consequential losses to date (and on the proviso Mr A provides proof of the claimed outlay for the £332 report or this will be deducted from his refund as it can't then be set against his use).

TB gave Mr A an outcome to his claim around April 2023 so I think the start of April 2023 is when any re-working of his card should occur from. Most of the money Mr A spent was not

on his credit card so the remainder can be paid directly to him but with the start of April 2023 used to calculate out of pocket interest.

My role is to resolve things informally, if Mr A is unhappy with the proposed remedy here he is free to reject my decision and take the matter to court instead.

My provisional decision

I uphold this complaint and direct Tesco Personal Finance PLC trading as Tesco Bank to:

- Take back the car from Mr A at no further cost to him;*
- after taking back the car re-work Mr A's card as if it had refunded him the £500 deposit on 1 April 2023 and if this results in a credit balance it should pay him this with out of pocket simple yearly interest calculated at 8% from the date of said credit balance to the date of settlement;*
- re-fund Mr A the balance of £7,490 directly paying simple yearly interest calculated at 8% from the 1 April 2023 to the date of settlement; and*
- deduct £332 from the total refund due to Mr A only if he is unable to provide proof of payment for said expert report.*

If TB deducts any tax from the interest part of my award it should provide Mr A with a certificate of tax deduction so he can claim a refund from HMRC (if applicable).

TB did not respond to my provisional findings.

Mr A responded to reject my decision. In summary, he says:

- giving the car back now is going to cause him inconvenience as he will have to source a replacement car; and*
- he thinks a fair proposal is that TB reimburse him for the cost of the inspection, new tyres, costs evidenced by MOT/service and pay him a lump sum of £1,500 in full and final settlement in lieu of future repair costs.*

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

I appreciate what Mr A has said about the inconvenience of sourcing a replacement car here and I note the alternative proposal he has put forward. I have thought carefully about it. However, I think what he is suggesting is more suited to a potential negotiated alternative with TB. While pragmatic, the proposal potentially reimburses him for things which are considered to be expected wear and tear – while also providing a lump sum without any certainty as to what this is actually going to be used toward. Mr A mentions service costs along with 'upkeep' and 'maintenance' but broadly that is not something TB is liable for. Ultimately it will be liable for matters which make the car of unsatisfactory quality according to the Consumer Rights Act 2015 ('CRA'). And this is what I have in mind when deciding what is fair and reasonable.

While I appreciate that Mr A might make the argument that globally he is actually willing to accept less than he is entitled to – I also think there are challenges with me endorsing that as fair in light of the observations made in my provisional decision. I have already explained why I consider the car was not of satisfactory quality when supplied. And the potentially disproportionate cost of repairing the car going forward, the inconvenience of further repairs, along with the ongoing uncertainty about what repairs are required to resolve the engine issues fully.

So all in all I consider it fair and reasonable to base my redress on what I consider the most suitable remedy here with the relevant law of the CRA in mind. This is that Mr A should ultimately be allowed to reject the car and be compensated as set out in my decision. Of course Mr A doesn't have to accept my decision and might wish to negotiate an alternative with TB or take more formal action (such as court) if he wishes.

I note that in his response Mr A has provided sufficient proof of the outlay of £332 on the expert report so I am altering my redress to reflect this.

Putting things right

I direct TB to put things right as set out below.

My final decision

I uphold this complaint and direct Tesco Personal Finance PLC trading as Tesco Bank to:

- Take back the car from Mr A at no further cost to him;
- after taking back the car re-work Mr A's card as if it had refunded him the £500 deposit on 1 April 2023 and if this results in a credit balance it should pay him this with out of pocket simple yearly interest calculated at 8% from the date of said credit balance to the date of settlement; and
- re-fund Mr A the balance of £7,490 directly paying simple yearly interest calculated at 8% from the 1 April 2023 to the date of settlement.

If TB deducts any tax from the interest part of my award it should provide Mr A with a certificate of tax deduction so he can claim a refund from HMRC (if applicable).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 July 2024.

Mark Lancod
Ombudsman