

## The complaint

Mr K complains that NewDay Limited won't refund to him the money that he paid for a used car.

## What happened

The details of this complaint are well known to both parties and have been set out by the investigator so I won't repeat them again here. Instead I'll focus on giving the 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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

- Mr K bought a used car in January 2018 – he paid £100 for it using his NewDay credit card and £6,900 by other means;
- he had the car inspected within a few weeks and a number of significant issues were identified and repaired but the head gasket failed in April 2018 and had to be replaced;
- he made a claim to NewDay about the car in January 2018 under section 75 of the Consumer Credit Act 1974 – there was a delay in it responding to his claim and he provided it with further information about his issues with the car;
- it said in January 2019 that he'd lost his right to reject the car but it accepted that it was liable under section 75 for the repair costs and in July 2019 it agreed to pay a total of £5,265.81 to reimburse him for the cost of repairs - it also credited his account with £175 to apologise for the inconvenience that he'd been caused;
- but there were further issues with the car and Mr K arranged for it to be inspected by an independent expert in October 2019 – the inspection report said:

*“The boot lid issues and leaks are clearly a problem of poor fitting which has caused significant damage to the boot lid frame and will never be correct unless the lid is replaced and drilled correctly. The cost of this would be circa £3500 with parts, fitting and paint operations and rectifications to damage inside the vehicle and new carpets. It would be unreasonable I feel to expect a customer to have to keep drying his windows in order to use the vehicle due to a patent fault which should have been rectified at the outset. In this respect, it most certainly was not of satisfactory quality”;*
- Mr K complained to this service about the car and our investigator concluded that it was fair for him to be able to reject it - she recommended that NewDay should collect the car from Mr K, refund the price that he'd paid for it (less a charge of £115 each month for fair usage) and that it should pay interest on the amounts that it had already paid to Mr K;

- NewDay hasn't responded to those recommendations but Mr K says that he shouldn't have to pay £115 each month from January 2018 for the use of the car and that he made a statutory off-road notification about the car in April 2020 when its mileage was 76,031;
- he says that there are brake issues with the car so it's not safe to drive and that he has no real use of the car – he also says that he should be reimbursed for his insurance and tax costs for the car, the £180 that he paid for the car to be inspected and he complains about the way that NewDay has dealt with his complaint;
- in certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mr K's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the dealer that supplied the car and that NewDay's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr K's claim under section 75 as only a court would be able to do that;
- there doesn't seem to be any dispute that the car wasn't of satisfactory quality when it was sold to Mr K and NewDay has reimbursed him for the cost of repairs – but the inspection report shows that there are still significant faults with the car and I don't consider that it's economically viable to pay a further £3,500 for repairs to this car;
- I consider that it would be fair and reasonable in these circumstances for NewDay to accept Mr K's rejection of the car and that it should arrange for the car to be collected from him and to take ownership of the car (Mr K's co-operation will be required for that to happen);
- Mr K paid a total of £7,000 for the car and he's been able to use it to drive more than 16,000 miles since he bought it – he's declared the car off-road but I'm not persuaded that the brake issues about which he's complained were present when he bought the car and I consider that it was his choice to make that declaration because he then had no real use of the car;
- the investigator recommended that a charge of £115 for each month that he's had the car would be fair and reasonable – and I consider that to be a fair and reasonable basis for Mr K to pay for the use that he's had from the car – so I find that NewDay should refund to Mr K £7,000 less the monthly charge of £115 from January 2018 until the car is collected from Mr K;
- NewDay has already paid £5,265.81 to Mr K to reimburse him for the cost of repairs – but there was a significant delay between the costs being incurred and the payment being made to him – I agree with the investigator that NewDay should pay interest on the amount that it paid to him from the date that each of the costs was incurred by Mr K until the date that it reimbursed him for those costs;
- insurance and tax costs are ordinary running costs of a car and I'm not persuaded that it would be fair or reasonable for me to require NewDay to reimburse Mr K for those costs – but I consider that it should reimburse him for the £180 that he paid for the inspection report (with interest); and
- NewDay has already paid £175 compensation to Mr K for the inconvenience that he's been caused, I'm not persuaded that it's failed to comply with its statutory obligations and I don't consider that it would be fair or reasonable in these circumstances for it to pay him any compensation other than as described above.

## **Putting things right**

I consider that Mr K should be allowed to reject the car and that NewDay should take the actions described above.

## **My final decision**

My decision is that I uphold Mr K's complaint and I order NewDay Limited to:

1. Arrange for the car to be collected from Mr K at no cost to him and to take ownership of the car.
2. Make a payment to Mr K to reimburse him for the £7,000 that he paid for the car less a charge of £115 for each month from January 2018 until the car is collected.
3. Pay £180 to Mr K to reimburse him for the cost of the inspection report.
4. Pay interest on the amount at 3 above at an annual rate of 8% simple from the date of payment to the date of settlement.
5. Pay interest on the amounts that it paid to Mr K in July 2019 to reimburse him for the repair costs at an annual rate of 8% simple from the dates that Mr K made those payments until the date that the cost was reimbursed to him.

HM Revenue & Customs requires NewDay to deduct tax from the interest payments referred to above. NewDay must give Mr K a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 December 2020.

Jarrold Hastings  
**Ombudsman**