

The complaint

Mr O complains about the quality of a car he bought using a credit card supplied by NewDay Ltd ("NewDay"), trading as Aqua. He's disappointed they haven't considered a claim he made under section 75 of the Consumer Credit Act 1974 ("section 75") and that a chargeback request was unsuccessful.

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.

Having done so I agree with the investigator's view of this complaint. Please let me 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 considering a complaint about a financial services provider, 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 if Mr O made a claim through them for breach of contract or misrepresentation.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through 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.

The car should have been of satisfactory quality when supplied. The relevant law also says the quality of goods is 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.

In a case like this which involves a car the other relevant circumstances would likely include things like the age, mileage and price at the time the car was supplied to Mr O. The car here

was fifteen years old and although it had completed a lower than average mileage when supplied, I think, given its age, a reasonable person would expect it to be exhibiting signs of wear and tear.

Mr O has explained that he had problems with the battery and timing chain resolved shortly after he took receipt of the car. The relevant legislation gives a business an opportunity to repair any faults that may have been present when the car was supplied so I think the business did the right thing.

He says that subsequently, warning lights on the dashboard are still present and that roadside recovery services have suggested there are several problems with the vehicle. But I've not seen evidence of those faults and in the absence of evidence the car is now faulty, and that those faults were present at the point the car was supplied, I don't think it is reasonable to ask NewDay to support Mr O's request to reject the vehicle. As there's no evidence the contract has been breached.

For similar reasons I don't think there is evidence that a chargeback request could have succeeded. I think NewDay were reasonable when requesting an arbitration of this with the chargeback scheme provider. But the merchant defended the chargeback request that NewDay made and, as the scheme provider rejected the claim on the evidence provided, I don't think NewDay could have done anything else.

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 O to accept or reject my decision before 4 September 2020.

Phillip McMahon
Ombudsman