

## **The complaint**

Mr M is unhappy that NewDay Ltd trading as Marbles declined his Section 75 claim.

## **What happened**

Mr O purchased a car from a merchant for £2,890 (including £200 for an extended warranty) and paid for it using his Marbles credit card.

Within a few weeks of Mr O purchasing the car, the gearbox failed. Mr O was unable to resolve matters with the merchant, so he contacted NewDay to make a claim under section 75.

NewDay reviewed the claim and advised Mr O that there wasn't enough information to reach a decision. It asked Mr O to provide an independent engineers report in order that it could continue to investigate the claim.

Mr O provided a photo of a parcel containing a car part which he said the merchant had sent to him. He said this proved that the merchant knew the car was faulty. Mr O said he wasn't going to provide an engineer's report.

NewDay rejected the claim. It said there wasn't sufficient evidence to support the claim.

Mr O wasn't happy with the outcome and complained to this service. He said the car was faulty when it was sold and that the warranty he'd purchased for £200 had been misrepresented to him as it had a wear and tear exclusion which meant that it didn't cover cars which were over 10 years old. He seeks a full refund of the purchase price of the car and the warranty.

Our investigator said there wasn't enough evidence say that the car was of unsatisfactory quality at the point of supply, and that the fault was more likely to be due to wear and tear, given the age and mileage of the car. In relation to the warranty, the investigator said she was persuaded that this had been misrepresented to Mr O and that NewDay should refund the cost of this.

Mr O didn't agree. He said the warranty had been a key factor in his decision to purchase the car. He didn't think the investigator had given due weight to his assertion that the mileage on the car had been altered by the supplying dealer, and said the mileage had also been a key factor in his decision to purchase the car.

## **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.

Because Mr O's purchase of the car was financed by credit supplied by NewDay, Section 75 gives him an equal right to claim against NewDay or the supplier for misrepresentation and/or breach of contract.

A misrepresentation is an untrue statement of fact which induces a customer to go ahead with a contract.

Mr O says the warranty was misrepresented to him because an exclusion clause excluding cars over 10 years old wasn't drawn to his attention.

Mr O also says the car was misrepresented because the mileage had been altered.

I've considered all of the available information leading up to the purchase of the warranty. Whilst an exclusion clause for older cars is a relatively common exclusion, I'm persuaded that the agent in this case didn't bring this to Mr O's attention. And I'm persuaded that the warranty was a main factor in Mr O's decision to purchase the car. The agent would've known that the warranty wouldn't cover the car Mr O was purchasing. I think the agent should've made this clear to Mr O and I'm satisfied that a misrepresentation by omission has occurred, for which NewDay must accept responsibility.

I've considered the available information about the mileage of the car at the point of supply. I understand Mr O's concerns about this but on balance, there isn't enough evidence to persuade me that the mileage was fraudulently altered as Mr O suggests. There isn't any clear evidence that the mileage was altered with fraudulent intent – it could very easily have been a human recording error. The difference between the mileage at MOT and point of supply is 925 miles. I don't think this amount of mileage would be enough to make a difference to a consumer's decision on whether or not to purchase a car.

On balance then, I'm satisfied that the warranty was misrepresented but not the mileage.

I've gone on to consider whether there was a breach of contract. In order to find this, I would need to see evidence to persuade me that the car wasn't of satisfactory quality at the point of supply. I've considered the evidence provided by Mr O. I've also taken into account that when a second-hand car is supplied, as in this case, it's more likely that it will have a degree of wear and tear and require repairs than if it was a brand new car. In this case the car was 12 years old and had covered 75,000 miles, so I'd expect significant wear and tear.

Based on the evidence I've seen, and in the absence of an engineer's report which says that cars wasn't of satisfactory quality at the point of supply, there isn't enough to persuade me that the car had an inherent fault. I appreciate that the supplier sent a new part to Mr O, but this of itself doesn't prove that the car was faulty at the point of supply. I think it's more likely that any fault was caused by wear and tear.

Because of this, I won't be asking NewDay to refund the purchase price of the car.

### **Putting things right**

To put things right, NewDay Ltd trading as Marbles should refund the sum of £200 to Mr O and reconstruct his credit card account as if the £200 hadn't been debited.

### **My final decision**

I partially uphold the complaint and direct NewDay to take the action set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 September 2021.

Emma Davy

**Ombudsman**