

The complaint

Mr H complains about JAJA Finance Ltd's (JFL) refusal to give him the refund he has requested.

What happened

In brief Mr H's stance is that in January 2019 he used his credit card provided by JFL to pay a deposit on a second-hand car. He paid the balance via part-exchanging his original car. Mr H explains he bought the car as a gift for his wife, but he also used the car. The sales invoice for the car is in his wife's name, although he signed it.

Mr H says the car was misrepresented to him and his wife and that also unknown to them at the time, the car had a number of faults at the point of sale that made the car not of satisfactory quality. Mr H says he paid £369.96 for repairs to the car. On this basis Mr H wanted to reject the car and be refunded. He got nowhere with the seller of the car, a limited company who I will call "C". So instead Mr H complained to JFL. Mr H suggested he was entitled to refund from JFL under Section 75 of the Consumer Credit Act 1974 (Section 75).

JFL refused Mr H's request for a refund. Its reasoning was that in order for Mr H to have a valid claim under Section 75, there needs to be a relevant relationship in place known as a debtor-creditor-supplier relationship ("d-c-s relationship"). At first, JFL's stance was that no such d-c-s relationship exists because Mr H's wife, rather than Mr H is the debtor as far as the d-c-s relationship is concerned. It came to this conclusion because Mr H's wife's name is on the sales invoice. JFL suggested this was significant because in its opinion the sales invoice also forms the contract of sale. On this basis JFL did not agree it had to give Mr H a refund. However, it agreed that it had not provided the level of customer service that Mr H is entitled to expect, and it offered and paid him £75 for this.

Dissatisfied with JFL's response Mr H came to our service.

Once the complaint was with us we asked Mr H for further details about the purchase. Mr H explained that his wife chose the car. But he also indicated that he bought the car on the basis of environmental concerns. He told us that he part-exchanged his previous car to fund the purchase. His original car was worth more than the new car, there was a balance remaining once he bought the new car from C. Therefore, C paid him this balance via a cheque which he then banked in his sole account.

Further Mr H also explained that he always intended to use the car, which he did in fact do. He was the main driver on the car insurance policy. And he indicated that his household decided to come down from two cars to one. Hence the purchase. So, the car was intended to be a family car. Mr H suggested that his wife's name was on the invoice not because he has bought the car as a present for his wife, but because C told him it needed the name of the person who would be the registered keeper of the car and that was his wife. But he made the point that the registered keeper of a car is not necessarily the owner of the car. He maintained in this instance he was the owner of the car.

Moreover, Mr H told us that one of the reasons he purchased the car was due to the information he saw in an advert that C had taken out. The advert said that the car had a full service history. He took this to mean that the car had been serviced in line with the manufacturer's guidelines. But when Mr H took the car to be checked out at a main

dealership, he found out this was not the case. The car had been serviced, and that servicing had been documented but crucially for him the servicing had not been done in line with the manufacturer's recommendations.

Mr H sold the car privately for £7,500. Mr H told us about losses he felt he had made and how he thought any redress should be calculated. In particular, he objected to being charged anything for the use he had had of the car. Mr H also sent us an article about an individual who he said had a successful claim against his bank in relation to a car. It seems that this service never issued a decision on this complaint. Mr H suggested this complaint was broadly the same as his own and therefore he ought to get the same redress. He suggested if we did not give him the same redress we would be acting unfairly towards him.

In the meantime, JFL agreed that there was a valid d-c-s relationship JFL also appeared to accept the contract for the car had been misrepresented. Further it also appeared to accept that the car had not been of satisfactory quality when sold and this was a breach of contract.

One of our investigators looked into Mr H's complaint. He concluded that in the circumstances it was fair and reasonable to ask JFL to take a number of steps to put things right. He recommended that it refund the deposit with interest if necessary. He calculated a settlement figure that he recommended JFL had to pay. In particular our investigator said Mr H could be charged for the use he had of the car and that should come off the settlement figure. Also, the proceeds of the sale of the car should come off the settlement figure. He recommended that JFL refund the cost of the repairs that cost £369.96 plus pay interest on that sum. Further he recommended JFL pay £150 in total for distress and inconvenience. Although he noted that £75 of this £150 had already be paid to Mr H this was according to JFL, and Mr H acknowledged he had received the £75.

Initially Mr H accepted our investigator's recommendation. On that basis JFL calculated how much it needed to pay (£5,103.26) and paid the full amount to Mr H to settle the complaint. Subsequently Mr H rejected the recommendation. As far as I am aware the £5,103.26 was not returned to JFL by Mr H when Mr H rejected the recommendation.

In summary Mr H asked for the sum of money he said he had incurred in transferring his £100 deposit from his credit card account with JFL to a new account with a third party, this sum is £2.95. JFL agreed to pay this sum as a goodwill gesture and it did this before the complaint came to me. Further, it appears that Mr H has returned to his previous point about considering it unfair that a deduction has been made for his use of the car.

Mr H asked that an ombudsman review his complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Both parties now agree that Mr H was the contracting party in relation to the purchase of the car. They also agree the car was misrepresented and that there was a breach of contract. It follows I don't need to look at those points any further in this decision. The only question now is about the redress. It appears that the parties also now agree although repair might have been a possibility at some points during this complaint since Mr H has now sold the car a refund is the most appropriate option.

Mr H relies on Section 75. He asks for the redress which he suggests he is entitled to under Section 75. When I look at a complaint I have to take account of relevant law. Relevant law here includes Section 75 of the Consumer Credit Act 1974 ("Section 75"), which both parties accept is the case. However, I think it's important to set out my role here. In 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. Rather, in deciding what's a fair way to resolve Mr H's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law as I have already said. Therefore, I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mr H pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts.

The redress for misrepresentation is to put the consumer into the position he would have been in but for the misrepresentation. The redress for breach of contract is not quite the same. But I'll focus on the redress for misrepresentation as this gives Mr H the most generous redress.

One of the things that Mr H has asked for is to be refunded for the full purchase price of the car without deduction for the use of that car, I can see why is asking for this, up to a point. I think it unlikely that Mr H would have gone ahead with the purchase if he had been aware of the car's service history which is what the material misrepresentation was about here. But equally if Mr H had not gone ahead with the purchase it does not follow that he would have got free motoring. And he would have got the use of the car for nothing if I were to give him the redress he has asked for. On that basis I do think it is fair and reasonable that I should take account of his use of the car when I think about putting things right..

That said, the calculation of the redress in this instance is not an exact science. Mr H has invited to me to look at the example of a complaint by a third party, who never got a final decision from this service so it would seem, and where I don't know all of the relevant details. He suggests that the example situation is more or less the same as his and he asks why this service is treating him differently. I have to look at each complaint on an individual basis. Moreover, I can't be sure how close that example is to Mr H's complaint as I don't have all relevant details. In any event the complaint never had a final decision, and even if it had that would not be a precedent that I would be obliged to follow. This service does not operate under a system of precedents like the courts. For all of these reasons, I can't properly be guided by the example that Mr H points to.

When I think about the use he has had of the car, and what he ought fairly and reasonably pay for this, I think it is fair and reasonable to consider what he might have paid if he had had to pay a monthly fee for the use of the car. I recognise Mr H does not agree with this approach. He has suggested instead as well as looking at and following the example he has sent in, we should also consider the different ways he might have funded the purchase of the car. I don't think this is relevant. The question here is what Mr H ought reasonably pay for having used the car during the period that he did. Alternative potential funding models that Mr H might but did not use to buy the car, shed no light on this. I agree with the methodology which we used earlier in this complaint to work out what this deduction for use should be. The methodology was already explained in detail earlier in the complaint, so I see no merit in repeating that detail here again.

Normally if I was asking JFL to refund Mr H in such circumstances I would say this was on the proviso that the car was returned to it but that cannot happen here. Rather, Mr H has

correctly sought to lessen his loss. His method of doing this was to sell the car. He has the proceeds of that sale so those proceeds ought fairly and reasonably be taken off any redress otherwise Mr H would be compensated twice for the same loss, that would be inappropriate. In any event, I don't think this point is disputed.

Further, I find that Mr H's loss was also the deposit of £100 and the repair costs of £369.96. He should be refunded for both with interest.

In addition, I can see that there was some confusion on JFL's part about what Mr H was complaining about and next steps. But the £150 it has offered and paid I find is appropriate in light of the distress and inconvenience this may have caused Mr H to experience.

Somewhat unusually JFL paid the redress (in the belief that the investigator's recommendation had been accepted) but afterwards Mr H then rejected the investigator's recommendation.

In the circumstances, I think JFL needed to put things right. I think compensation of £5,103.26 is fair and takes into account of the points I have set out above. Given that this sum has already been paid by JFL I'm not going to order it to pay anything further.

As to the £2.95 that Mr H tells us he incurred when he decided to transfer the £100 balance representing his deposit to a new credit card account I don't consider this is a loss that flows from anything JFL had done wrong. I would not have ordered JFL to pay this. For that reason, I don't mention it in the redress.

My final decision

My final decision is because JFL has already paid the redress set out above, I make no further order or award. I simply leave it to Mr H to decide if he wants to accept the redress already paid by JFL in full settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 December 2021.

Joyce Gordon
Ombudsman