

The complaint

Mr A complains about the way NewDay Ltd trading as Fluid handled his claim under section 75 of the Consumer Credit Act 1974.

What happened

In February 2021 Mr A purchased a car and paid £500 of the £8000 purchase price using his Fluid credit card. The sale included a one year warranty which was subject to the servicing conditions being met. The warranty invoice said the car had completed 82,155 miles.

Within a week of getting the car, Mr A heard a ticking noise coming from the engine. He booked the car into a main dealer for a service and for investigation into the ticking noise. The main dealer removed the cylinder head and found excessive movement on one of the pistons. It told Mr A that the engine needed replacing. The main dealer also identified an issue with a damaged filler tube flap and said this had been caused by previous repair work carried out by the supplying dealer when it fitted a new fuel pump before the sale of the car to Mr A.

Mr A didn't authorise any repair work, nor was the car serviced. He paid £538.21 for the investigation and diagnosis.

Mr A contacted the supplying dealer and asked it to cover the repair costs. It said it could source and fit a new engine for £5000 and offered to meet half of these costs.

Mr A wasn't happy that he was being asked to meet half the costs of repair and made a formal complaint to the supplying dealer. It responded and said that because Mr A had taken the car to a third party garage without authorisation, it was no longer in a position to determine the nature of the fault.

Mr A replied and said the fault had been diagnosed by the third party garage but no repair work had been carried out. In April 2021 Mr A made a section 75 claim to NewDay.

NewDay rejected the claim. It said the supplying dealer hadn't been given the opportunity to inspect the car and therefore it was unable to show whether the fault was present at the point of supply.

Mr A wasn't happy with the response and complained to this service.

Our investigator upheld the complaint. She said that based on the finding of the diagnostic report she was satisfied that there was a fault with the car. She said that because Mr A had only been in possession of the car for a week before experiencing the fault, it was likely that the fault was present at the point of supply. The investigator said that Mr A had given the supplying dealer the opportunity to inspect and repair the car, but it had refused. She also said that under the relevant legislation, the supplying dealer should've covered the costs of repair in full. She said Mr A should be allowed to reject the car.

NewDay didn't agree. It said the car had passed an MOT prior to the point of supply without

any issues. It said that if there had been a fault at the point of supply, this would've been apparent straightaway. NewDay queried why Mr A had taken the car to a third party garage when he experienced the fault rather than to the supplying dealer. It said the supplying dealer should've been given the opportunity to look at the car first.

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.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr A's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that NewDay's response to the section 75 claim wasn't fair or reasonable.

Mr A hasn't said there's been a misrepresentation, so I'll focus on whether there's been a breach of contract. The relevant law says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, there's a presumption that it was present or developing at the point of supply and it's up to the business to put things right. The business is allowed one opportunity to repair the car. If the repair isn't successful, the consumer can reject the car. After 6 months the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality when supplied.

The diagnostic report from the third party garage shows that the pistons are damaged and that the engine needs replacing. Based on what I've seen, I'm satisfied that there's a fault with the car. The fault was diagnosed around 2 weeks after the point of supply. Mr A hadn't covered very much mileage at all during this time. As I've already said, there's a presumption that faults occurring in the first 6 months were present at the point of supply. I haven't seen any evidence from NewDay or the supplying dealer which rebuts that presumption. It follows that the supplying dealer is under an obligation to put things right.

NewDay has said that it rejected Mr A's claim under section 75 because he didn't give the supplying dealer the opportunity to inspect and repair the car. I disagree. Based on what I've seen, I'm satisfied that Mr A reported the fault to the supplying dealer and gave it the opportunity to carry out repairs. The supplying dealer offered to carry out repairs but wanted Mr A to pay 50% of the repair costs. This wasn't fair or reasonable, nor was it in accordance with the relevant legislation.

I've taken account of what NewDay has said about the third party garage carrying out a diagnostic. There's no evidence that the third party garage carried out any repairs, so I don't agree that this is a case of unauthorised repair. I appreciate that the third party garage didn't put the cylinder head back on, but I don't think this was a good reason for the supplying dealer to refuse to carry out repairs. The evidence suggests that the cylinder head would need to be removed in order for repairs to be carried out, so I don't think the supplying dealer's ability to repair has been compromised here.

Putting things right

I'm satisfied that there was a fault with the car which the supplying dealer had a

responsibility to repair at no cost to Mr A. I'm also satisfied that the supplying dealer was given the opportunity to carry out those repairs. It failed to do so. In the circumstances, Mr A should be allowed to reject the car. Taking everything into consideration, I don't think NewDay's response to the section 75 claim was fair or reasonable.

My final decision

My final decision is that I uphold the complaint. NewDay Ltd trading as Fluid must:

Arrange for the car to be collected at no cost to Mr A

Refund the cost of the car (£8000)

Refund the cost of the valet and paint correction (£277)

Refund the cost of the diagnostic report (£538.21)

Refund postage costs (£27.40)

Refund transportation costs (£90)

Refund transportation costs (£95)

Pay 8% simple interest on all sums refunded from the date of payment to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 March 2022.

Emma Davy
Ombudsman