

## **The complaint**

Mr D complains that Barclays Bank UK PLC unfairly declined his claim, under section 75 of the Consumer Credit Act 1974, for reimbursement of the costs incurred carrying out repairs to a car.

## **What happened**

In September 2021, Mr D purchased a used car using the credit card he held via Barclays. The car cost £3,484 and was around 12 years old. It had a mileage of 94,756.

Mr D says that the advert for the car said it came with a full-service history, a spare key and a one-month warranty. Mr D took the car for a test drive and agreed to purchase it, although he had some concerns about the windscreen wipers and the condition of the steering wheel. After agreeing to take the car, Mr D says that the supplying dealer wasn't then able to supply the service history or the spare key but said they would send these items on to him. Mr D says that the dealership also didn't supply him with the terms and conditions of the warranty.

A short time after taking the car, the engine management light illuminated, and Mr D called out a roadside assistance company who diagnosed an issue with the catalytic converter. The technician undertook a temporary repair and removed the error code, so the warning light wasn't activated. However, Mr D says the same thing happened a day later and he took the car to a garage who also undertook a repair and removed the fault code.

Mr D reported this issue to the dealership who asked that he bring the car in. Mr D says the dealership wouldn't agree to change the part that the roadside technician had said was faulty as it didn't accept the report they had provided. The dealership says that its own technician wanted to investigate the fault for themselves and would have acted on any fault code that was showing. However, it says there was no fault code recorded when the car was brought in, but it had cleaned the O2 sensor as requested by Mr D.

Mr D says that at this time he had also asked about the spare key and missing service history. He says he was then told by the dealer that it didn't have these items. Mr D says he asked for a refund of £550 to reflect the value of the missing key (£200), the cost of a wiper (£50), the roadside assistance report (£100) and the loss of value in the car due to the missing items (£200). The dealer didn't agree, and Mr D says from this point there was a breakdown in the relationship between himself and the supplying dealer.

Mr D says that he then experienced issues with the car's gearbox. He spoke with a garage who said it would cost £75 to inspect the car and around £1,500 for the repair. Mr D says he contacted the dealer and asked about using the warranty to cover the repair. He says he was told that the warranty had ended, though he disagreed with that.

The supplying dealer repaired the gearbox but requested Mr D pay half the cost which amounted to £320. Mr D says prior to the gearbox repairs he also had to pay £204 to have a lambda sensor replaced due to a warning light illuminating, and £219.84 to have the car serviced.

Mr D made a claim to Barclays about the condition of the car. He asked to be reimbursed for the cost of the car, together with the costs he'd incurred having the car repaired and serviced. Barclays didn't uphold his complaint.

Barclays said it had reviewed his claim under section 75 of the Consumer Credit Act 1974 as it didn't fit the criteria for the chargeback scheme. It said that it noted the car had been collected and accepted as seen by Mr D at the point of sale and so it wouldn't be able to assist with the missing items.

Barclays said that, due to the car's age and mileage, it didn't think the repairs that had been undertaken were unreasonable. It said that without seeing a copy of the warranty it wasn't able to say if the warranty should have covered the repairs that had been carried out. Barclays also said that, as the invoices for the car weren't in Mr D's name, this meant there was no valid section 75 claim.

Mr D disagreed with the decision taken by Barclays to decline his section 75 claim and complained to this service. Our investigator recommended that Mr D's complaint be partially upheld, and that Barclays should reimburse him a total of £524 to cover the cost of the repairs to the gearbox and lambda sensor. Our investigator said he didn't think a reasonable person would expect those repairs to have been required after such a short time and around an additional 1000 miles having been driven from the point of supply. He said the car wasn't as durable as would be expected and so hadn't been of a satisfactory quality when acquired by Mr D.

Our investigator also said that Barclays should pay Mr D £100 compensation for the distress and inconvenience caused by the delays and time taken to resolve his complaint.

Mr D accepted our investigator's view but said there were now further repairs being undertaken to the gearbox by another garage. Our investigator explained that any new issues would need to be raised with Barclays first.

Barclays disagreed with our investigator's view as to the durability of the car. It said that a car of this age and mileage would be expected to require maintenance and repairs to serviceable parts, and the issues with the gearbox were likely due to wear and tear. Barclays said there was no evidence of any manufacturer's fault with the parts that had required repairs.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

My role here was to decide whether Barclays had acted fairly and reasonably in its response to Mr D's claim under section 75.

Mr D said that the car was both misrepresented to him as it had been advertised with a full service history and a spare key, when this hadn't been the case, and that there had also been a breach of contract as it hadn't been of satisfactory quality at the point of supply. Mr D had also raised an issue regarding the warranty cover which had come with the car.

I'd seen that Barclays had considered if chargeback applied but, as the car had remained in Mr D's possession, decided that it hadn't. Chargeback is a process that involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the companies which run the card networks. It allows customers to ask for a transaction to be reversed if there's a problem with the goods or

services they've paid for. There's no automatic right to a chargeback and it isn't a guaranteed method of getting a refund.

Looking at the circumstances of Mr D's complaint I thought the decision by Barclays not to pursue a claim under the chargeback scheme had been reasonable. Barclays then opened a claim under section 75 for Mr D.

Section 75 of the Consumer Credit Act 1974 may apply when the goods or services purchased via a credit agreement cost over £100 and up to a limit of £30,000. The general effect of section 75 is that if a consumer has paid for goods or services with a credit agreement, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider, which here is Barclays.

For a claim under section 75 there must also be an established link between the debtor (customer), the creditor (the lender) and the supplier (the retailer). Here, although Mr D purchased the car with his credit card, the purchase invoice for the car was in his wife's name as was the V5. Mr D said that the car being in his wife's name was an error made by the dealership and that the car was purchased for both himself and his wife to use. They had decided to purchase a second car due to their personal circumstances and because it was cheaper to drive into London in that car than the diesel car they already owned. I'd seen that Mr D is on the insurance to drive it.

I thought it was reasonable to say that Mr D had been clearly involved in the decision to purchase the car. He was also the person who had dealt with the supplying dealer regarding the faults and the repairs. So, although Mr D wasn't the person named on the sales invoice, I thought there was sufficient evidence to say that the car had been a joint purchase between Mr D and his wife and that it was to be used by them jointly. And having considered Mr D and Mrs D's situation, and the significant cost of the car, I thought such a purchase would be intertwined in their finances as a couple. I therefore thought it was reasonable to consider Mr D as a joint contracting party with the supplying dealer for the car and that this was a matter of joint affairs. And thus, there was a valid debtor-creditor-supplier relationship.

Looking then at whether there was a misrepresentation of the car, to be satisfied that a misrepresentation had occurred there would need to be evidence that an untrue statement of fact had been made about it, and that Mr D had been induced into the contract because he had relied on that statement. I'd seen that Barclays said that as Mr D had accepted the car without being provided with a service history or the spare key then there had been no misrepresentation.

I'd seen that a copy of the original advert couldn't be provided so I didn't know what was said about the service history or spare key. However, when Mr D had collected the car, he was aware these things were missing and, in light of that, I thought it was reasonable to say that the service history and spare key weren't the reasons Mr D had decided to buy the car. I thought Barclays had acted reasonably in deciding there wasn't enough evidence to show a misrepresentation had occurred.

I appreciated that the car had faults within a short time of being supplied to Mr D, but that wouldn't necessarily mean the car was of an unsatisfactory quality and that therefore there had been a breach of contract.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of

the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here the car was around 12 years old and had a mileage of about 95,000. So, some issues of maintenance and repair would be expected as parts would have deteriorated with use. The first issue experienced by Mr D had been due to a problem with the O2 sensor and it was likely this was the cause of the lambda sensor being replaced in November 2021. However, a lambda sensor will require replacement over time as it is an item that will deteriorate with use. And looking at this car's age and mileage, a repair of this nature would be reasonably expected around the time that it had arisen. I'd seen that Mr D had been able to drive the car for around 1000 miles before this repair. So, I didn't think the car needing this repair at that time meant it wasn't as durable as would have been reasonably expected.

The gearbox repair had been undertaken at the start of November 2021, although I appreciated the issue appeared to have arisen earlier. Again, gearboxes aren't designed to last for the full lifetime of the car and will require repair and replacement over time. Looking at the age and mileage of this car, I didn't think faults developing with the gearbox would be unusual or unexpected, even though it had arisen within one month or so of Mr D acquiring the car. Mr D had been able to drive an additional 1000 miles in it before the repair was necessary.

Mr D had also raised the costs of having the car serviced, which included some parts being replaced such as the oil and air filters. However, services are part of the maintenance and repairs that are necessary when owning a car. I thought it would be reasonable to expect that, when servicing a car of this age and mileage, further maintenance costs would be incurred.

I appreciated this would be of disappointment to Mr D, but I thought the car was of a satisfactory quality, when taking into account its age and mileage at the point of its supply to him. The faults that had developed were due to wear and tear and a reasonable person would have expected repairs would be required within a reasonable period of time. And I thought it would be fair to say that, in these circumstances, a reasonable period of time would have been relatively short as the car's components had been exposed to significant use by the time it was supplied to Mr D.

Mr D had said he believed the repairs should have been covered by the warranty but hasn't been able to produce a copy of this as he said the dealer hadn't provided it to him. The dealer said the warranty was for 30 days and had expired by the time Mr D had called about the gearbox issues. Without a copy of the warranty I couldn't fairly comment on whether the date Mr D had reported the gearbox fault had been in time or not. But it appeared that Mr D had notified the dealer either just after the warranty had ended or on its final day. However, looking at the sales invoice for the car, it set out that there was '*No warranty for any wear and tear, preventative maintenance ...*' This appeared to indicate that it was unlikely that, if the warranty had been valid, the repairs that had been carried out on the car would have been covered.

As a claim under section 75 was for Mr D to prove and with the lack of the copy of the warranty, the unclear end date of the warranty together with the nature of the fault, I

thought Barclays had acted fairly in deciding that there was insufficient evidence to prove that any of the repairs should have been covered under the warranty.

So, when looking at the evidence, I didn't think Barclays' decision to decline Mr D's section 75 claim had been unfair as I didn't think there was evidence which had supported there had been either a misrepresentation or a breach of contract.

However, I didn't think Barclays' final response letter had been clear enough as to why Mr D's claim had been declined and I thought it would have been helpful if it had been more clearly explained why the age and mileage of the car had been important factors. I also thought there had been a delay in it reaching a conclusion which would have caused Mr D distress and inconvenience. I therefore thought it would be fair for Barclays to pay Mr D £100 compensation for its handling of his claim.

I'd seen that Mr D had raised that there had been further issues with the car's gearbox which might be linked to the supplying dealer's earlier repairs. Mr D would need to raise this with Barclays first for it to investigate. Mr D would also need to provide evidence as to whether these issues were of an inherent nature or due to a poor repair.

For the reasons set out above, I didn't intend to uphold Mr D's complaint as to the quality of the car being unsatisfactory, but I did think it would be fair for Barclays to pay Mr D £100 compensation for its handling of his claim.

Barclays agreed with my provisional view. Mr D says that he has nothing further to add to the evidence that's been provided.

### **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.

Although neither party has asked me to review my provisional decision, I have still re-considered the evidence and looked again at my conclusions. And having done so I haven't changed my mind.

I am still satisfied that the car was of satisfactory quality at its point of supply to Mr D. I think the repairs that were undertaken were due to wear and tear which would have been reasonably expected in a car of that age and mileage and the car was as durable as would have been reasonably expected. So, I think Barclays acted fairly in declining Mr D's section 75 claim as there wasn't evidence of a misrepresentation or a breach of contract.

I also think Barclays' decision was fair in concluding there was insufficient evidence that the warranty that came with the car should have covered the cost of the repairs.

However, I am also still of the view that Barclays should have provided Mr D with a better service and that £100 compensation is fair and reasonable in the circumstances.

I'm therefore partially upholding Mr D's claim.

### **Putting things right**

I'm asking Barclays to pay Mr D £100 compensation for the distress and inconvenience caused to him by its handling of his claim under section 75.

**My final decision**

As set out above, and although I appreciate this will be of disappointment to Mr D, I'm not upholding his complaint as to the quality of the car being unsatisfactory. But I think it's fair for Barclays Bank UK PLC to pay Mr D £100 compensation for its handling of his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 September 2022.

Jocelyn Griffith  
**Ombudsman**