

The complaint

Mr W complains about the way John Lewis Financial Services Limited (“JLFS”) handled a claim under section 75 of the Consumer Credit Act 1974 (“CCA”).

What happened

In August 2020, Mr W acquired a new car from a dealership. He paid a deposit of £250 using his JLFS credit card. And the remaining balance was financed by a hire purchase agreement with another finance provider – who I’ll refer to as “R”.

When Mr W took delivery of the car, he discovered that it didn’t have automatic wipers – a feature he was told would be included as standard. It came to light that by the time the car had been delivered, this feature was only available as an added extra.

Mr W raised a complaint to R and the dealership. They were unable to identify a like-for-like replacement car with automatic wipers but instead, in September 2020, set out a number of options in an attempt to resolve the matter. This included a replacement car in a different colour; a replacement car with a higher specification provided Mr W paid the difference in costs; rejection of the vehicle; or retention of the car with cash compensation.

Mr W didn’t think the offers went far enough. So, in October 2020, he raised a claim to JLFS under section 75 of the CCA.

JLFS initially considered the claim under the chargeback process and in December 2020, it was declined. JLFS said the chargeback rules didn’t allow for a claim where the supplier had offered a resolution. Mr W informed JLFS the offer made wasn’t acceptable and asked it to consider the claim under section 75. He was asked to provide all the evidence supporting his claim, but Mr W confirmed this had already been provided. Around this time, Mr W referred his complaint about R to our service.

Throughout January 2021, Mr W chased JLFS for confirmation that his claim had been passed to the section 75 team. And in February 2021, after expressing dissatisfaction that his emails had gone unanswered, he was told a complaint had been logged. This was responded to shortly afterwards, with compensation of £30 being credited to Mr W’s account by way of an apology.

Mr W contacted JLFS again in April 2021 as he still didn’t have an answer to his section 75 claim. And JLFS issued a further complaint response in April 2021 explaining that a section 75 claim couldn’t be pursued for the same reason as the chargeback claim – as the supplier had offered a resolution.

Mr W sent several emails to JLFS between April and July 2021 in response to the rejection of his complaint. But he didn’t receive anything back.

In July 2021, an ombudsman at our service issued a final decision on Mr W’s complaint about R. They said the range of solutions offered to Mr W were fair and reasonable in the circumstances. And they didn’t think R needed to do anything more. Mr W subsequently

accepted this decision and opted to retain the car with cash compensation for the misrepresentation of its features.

Mr W returned to JLFS and in August 2021 it acknowledged that it had failed to handle his claim correctly. It admitted the claim had never been considered by the section 75 team and that Mr W's emails hadn't been responded to. To put things right, it passed the claim to the correct team and offered £250 compensation.

JLFS went on to consider the section 75 claim and made an offer of £1,000 in full and final settlement. It said this was in line with the offer previously made by R which had been considered fair by the ombudsman.

Mr W wasn't happy so, in January 2022, he brought his complaint about JLFS to our service. JLFS subsequently found out that Mr W had accepted compensation of £1,000 from R, so it retracted this offer.

In May 2022, our investigator issued her view on the complaint but didn't uphold it. She said whilst there had been failings in the way Mr W's claim was handled by JLFS, she considered the offer of £250 compensation to be fair. She was also satisfied JLFS didn't need to take any further action on the section 75 claim as things had been resolved between Mr W and R.

As Mr W didn't agree, the complaint has been passed to me for a final 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.

Customer service

It's not in dispute that Mr W received poor customer service from JLFS whilst handling his claim under section 75. JLFS acknowledges that it failed to pass the claim to its section 75 team and that many emails from Mr W went unanswered. So I don't need to decide whether it did something wrong here – it did. What I need to decide is whether it did enough to put things right.

Where a business has done something wrong, I'd expect it to put the customer back in the situation they would've been in had everything been done correctly. In this case, JLFS passed Mr W's claim to the section 75 team thereby putting him back in the situation he would've been in had they actioned things correctly at the outset.

But this doesn't make up for the nine-month delay in doing so, and the impact this would've had on Mr W. For this, JLFS has offered £250 compensation and I need to decide whether that's a fair amount based on the impact its actions had.

Whilst JLFS took no action on Mr W's claim between January and September 2021, I'm mindful that during that time Mr W had offers on the table from R to resolve his dispute. And he had a decision from our service to say these offers were fair.

So I've taken into account that although JLFS were wrong not to be pursuing things, the impact was slightly tempered by the fact that R – as the supplier of the car – were already dealing with the same dispute at that time and actively trying to resolve things. And Mr W wouldn't be entitled to a settlement under section 75 if the dispute had already been resolved by the supplier.

So I'm not persuaded the delay in actioning the claim has caused a detriment to Mr W outside of some distress and inconvenience he undoubtedly would've experienced from having to continuously chase JLFS for a reply that wasn't forthcoming. I can understand this would've been frustrating, especially when the limited replies he did receive were unhelpful and incorrect.

Taking everything into account, I'm satisfied £250 fairly compensates Mr W for what went wrong here.

Section 75 claim

Section 75 of the CCA allows consumers who have paid for goods or services using a form of credit to claim against their credit provider for any breach of contract or misrepresentation on the part of the supplier of the goods or services.

But for section 75 to apply, there are certain criteria that need to be satisfied – one of which is establishing a debtor-creditor-supplier agreement (DCS) between the parties. Whether or not there's an established DCS agreement is based on the way the arrangements between the parties are structured.

In this case, Mr W paid £250 to the dealership as a deposit. But the car was sold to R, who then supplies it to Mr W under the hire purchase agreement. So this adds a party to the transaction which could mean the necessary conditions for a valid section 75 claim don't exist. This is because the arrangement for the transaction in dispute are structured as Mr W – JLFS – the dealership – R.

Even if I'm wrong on this point, I'm mindful that the substance of the claim has been dealt with by R. Ultimately Mr W can't be compensated twice for the same set of circumstances. As the dispute was in fact resolved, by way of an offer from R that Mr W accepted, the matter is concluded.

On that basis, I don't consider it unreasonable for JLFS to retract its offer of settlement. Mr W has been compensated by R for what went wrong. So even if section 75 does apply here, there's no claim to be made.

My final decision

John Lewis Financial Services Limited has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that John Lewis Financial Services Limited should pay £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 September 2022.

Sheryl Sibley
Ombudsman