

The complaint

Mr A complains about a used car he bought using his credit card account with Lloyds Bank PLC.

What happened

In August 2020, Mr A bought a used car from a dealer. To pay for the car, Mr A used his credit card account with Lloyds. Before the sale, Mr A and the dealer exchanged emails regarding the general condition of the car. Mr A says this was important because he intended to use the car to help with his business.

Once Mr A had completed the purchase, he took the car to a garage accredited by the car's manufacturer. Mr A says the garage told him the car needed repairs to several parts. So, Mr A asked the dealer to pay for the repairs.

The dealer said they would repair items listed on the warranty, but nothing else, as that was due to expected wear and tear. Mr A took the car to the dealer for some of the repairs, but a short while afterwards noticed problems with the air conditioning and the heating. However, the dealer refused to carry out or pay for any further work.

Because Mr A used his credit card with Lloyds to buy the car, he contacted them to make a claim under section 75 of the Consumer Credit Act 1974 (CCA). He asked Lloyds to accept his claim for the purchase price of the car, and wanted them to pay around £2,000 for the repair costs he said he had incurred. Lloyds explained to Mr A that they wouldn't look at his section 75 claim, because he was using the car for business purposes. Mr A didn't accept that and brought his case to us.

One of our investigators looked into Mr A's case and found that Lloyds should have considered his section 75 claim. They concluded the dealer gave Mr A incorrect information about the car's condition, which had induced him into buying it.

The investigator asked Lloyds to refund the cost of the car, pay for the repair costs and add an interest payment to the repair costs. The investigator also said Lloyds should remove any associated interest and adverse information connected to the purchase.

To try and resolve Mr A's complaint, Lloyds offered to pay Mr A the difference between the car's purchase price and any sale price, should Mr A decide to sell it. Lloyds also offered to remove any adverse information and refund some of the repair costs, where Mr A could provide proof of payment. Mr A didn't accept the offer and said Lloyds should compensate him further for the distress and inconvenience he's experienced. He also said Lloyds should pay him all the repair costs.

The investigator didn't change their conclusions and Mr A's case has been passed to me to make a decision.

I sent Mr A and Lloyds my provisional decision on this case, on 10 October 2022. I explained why I think the complaint should be upheld. A copy of my provisional findings is included

below:

Section 75 of The CCA

This case is about a payment Mr A made from his credit card account with Lloyds, which is a regulated financial product. As such, we are able to consider complaints about it.

The relevant piece of legislation I've thought about is section 75 of the CCA. This provides protection for consumers for goods and services bought using credit. Under section 75, subject to certain criteria, consumers who use a credit card to pay for goods and services, have an equal claim against the finance provider, for any breach of contract or misrepresentation by the supplier.

I've thought about Lloyds' initial response to Mr A's complaint. Lloyds said Mr A couldn't make a section 75 claim as the car was to be used for business purposes. I agree with the investigator here, in that Mr A bought the car using a credit card in his personal name, meaning he is able to bring a section 75 claim about it. I can see that Lloyds have subsequently accepted this.

In Mr A's case, he says section 75 means he has an equal claim against Lloyds, because the dealer told him something about the car that wasn't true. So, with what I've said in mind, I agree that Mr A was able to ask Lloyds to consider if he has a claim under section 75 of the CCA.

The quality of the car

Under the Consumer Rights Act 2015 (CRA), there is an implied term written into contracts that goods supplied need to be of satisfactory quality. The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances.

In Mr A's case, he says the car had faults which should have been fixed before he bought it. If the goods provided by the supplier are not of satisfactory quality, then this is a breach of contract.

So, Lloyds' responsibility to Mr A is to consider his section 75 claim and decide if the car was of satisfactory quality. If it's found it was not of satisfactory quality, it would be for Lloyds to then offer Mr A an appropriate remedy.

Mr A bought a used car from the dealer, that was 14 years old and had covered around 70,000 miles at the point of supply. So, I think there'd be different expectations than if the car was brand new. In other words, I think a reasonable person would expect the car to show signs of wear and tear.

Within the information Mr A has provided, are several estimates for repair from a manufacturer accredited workshop. The repairs range from investigating an engine management light, to replacing the engine and gear box mounts. Mr A has also sent us a video of a mechanic inspection, showing a leak and perished seals.

I can see that the dealer responded to Mr A's initial emails about the quality of the car, to say that some of the concerns identified would be expected given the car's circumstances. The dealer also told Mr A that the warranty doesn't cover the other faults, as they are mostly down to wear and tear.

I've also thought about the repairs carried out by the dealer after the sale, and the agreement reached with Mr A about the cost of those repairs. Furthermore, I think the various estimates Mr A got for the repairs from other garages, were with the intention of eliminating the majority of the wear and tear. And I don't think it would be fair for Lloyds to be responsible for paying to bring the car back up to that standard.

I've considered what everyone involved with this case has said, including the circumstances of the car. Overall, I think the car was of a standard that a reasonable person would say was of satisfactory quality at the point of sale. I think the age, mileage and what we know about the repairs recommended to Mr A, is consistent with what a reasonable person would expect.

So, I don't think Lloyds need to take any further action about this part of Mr A's section 75 claim.

Misrepresentation

In summary, the CRA says goods must match the description given. Section 75 of the CCA says a customer may have a claim against a finance provider, if the goods have been misrepresented by the supplier. I need to consider this with Mr A's case. But, for a claim to succeed, I also need to decide if any misrepresentation resulted in Mr A entering into the contract with the dealer.

I've looked at all the emails between the dealer and Mr A. At the beginning of Mr A's enquiry with the dealer, he asked very specific questions about the condition of the car. Mr A asked if the car was in "top condition" if there were any "scuffs or dents" and if the car was "mechanically sound". Mr A also told the dealer that he needed an exceptional car for his employment and was concerned about the running costs compared to his existing car.

In response, the dealer replied with very short emails making comments such as "no paint needed, inside superb", "engine spot on", "a very tidy example" and "only fault is CD player not working".

The dealer also asked Mr A to discuss the car further in a telephone call and invited negotiations over the price. The emails show that Mr A asked the dealer what his best price would be.

Having considered everything, I don't think the dealer gave Mr A the answers to the questions he had asked, before he travelled to see the car. I think Mr A's subsequent messages show he was frustrated about the lack of detail from the dealer.

I accept the dealer's emails gave Mr A encouragement that the car would be suitable for his employment. But I don't think the dealer gave Mr A the impression the car was free of wear and tear, or in the exceptional condition that Mr A was looking for.

From looking at the correspondence after the sale and at the sales invoice, I can see that the dealer reduced the price of the car, once Mr A had looked at it. The emails show the price was reduced because the car needed some new parts, as well as two new tyres. On balance, I think Mr A and the dealer discussed the condition of the car at the sales office and this is likely to have resulted in the lowering of the advertised price.

In all the circumstances, I think it was Mr A's visit to the dealer, his viewing of the car and the discussions about the purchase price, which resulted in Mr A entering the contract to buy the car. While I understand that Mr A was looking to get a car, in a very specific condition for his employment, I don't think the emails between the dealer and himself alone, led to him going

ahead with the purchase.

So, I don't think there was a misrepresentation of the car's condition, which led Mr A into buying the car. It then follows that I think Lloyds have treated this part Mr A's section 75 claim fairly.

The offer from Lloyds

Lloyds have explained that they are prepared to pay Mr A the difference between the price he paid to the dealer, and the price at which he sells the car. In other words, Lloyds will pay the difference, should Mr A sell the car for less than he paid for it.

For that to happen, Lloyds say Mr A will need to provide proof of the sale price. I think asking for that information is fair, as it's likely Mr A will be able to show proof of an incoming funds transfer to his bank account, or a receipt from a dealer.

During our investigation, Lloyds said they'd consider some of the repairs Mr A has paid for. Mr A was able to show where he paid for investigation and diagnostic work, a new battery, an alloy key and for the work carried out on the engine mounts.

As a result, Lloyds have agreed to pay Mr A £339.98 for some of the costs and repairs he has told us about and has sent us evidence of. I accept that Lloyds' offer doesn't cover all the items Mr A says he's paid for.

But, I've concluded that the dealer didn't mislead Mr A and that a reasonable person would consider the car of satisfactory quality at the point of sale. And I also think that Mr A had some use from the car since August 2020. So, overall I think Lloyds' offer to pay for some of the costs is fair.

Finally, Lloyds has also agreed to remove any adverse information, about the payment for the car, from Mr A's records with credit reference agencies. Again, because of my findings about the quality of the car and what Mr A was told about it before the sale, I think this offer is fair and reasonable.

I recognise that Mr A may be disappointed that I've not agreed with his main argument that he was induced into the purchase by the emails from dealer. But, in all the circumstances, I think Lloyds' overall approach to his section 75 claim is fair.

Mr A responded to the provisional decision and in summary, he said:

- Had the dealer told him about the costs he may have to pay to repair the car, he wouldn't have gone ahead with the purchase.
- He'd like his travel costs to the dealer and some other repair work included in the offer from Lloyds, to bring the total to £577.58.
- He'd like an additional award for the distress and inconvenience Lloyds have caused.
- The car has already been sold for a favourable price, so a payment for the difference isn't needed.
- There shouldn't be any adverse information recorded on his credit file.

Lloyds accepted the provisional decision, but wanted more clarity on the information to

remove from Mr A's record with credit reference agencies.

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.

Mr A has reiterated that he wouldn't have bought the car from the dealer, had he known about the repair work he eventually went on to pay for. I acknowledge what Mr A says and where his frustrations have come from, after the purchase was made.

But, from looking at the evidence available about what was said before Mr A bought the car, I'm still not persuaded there was a misrepresentation by the dealer, which induced Mr A into the sales contract. So, I don't think Lloyds should have to take any further action regarding this part of Mr A's section 75 claim.

I also understand why Mr A has asked for some further costs to be added to Lloyds' offer, as well as a payment for the distress and inconvenience he says he has suffered.

However, I've concluded that there hasn't been a breach of contract by the dealer and that Lloyds don't need to take further steps in respect of Mr A's section 75 claim. It then follows that I don't think it would be fair to ask Lloyds to increase the offer they've made.

In his recent response, Mr A told us that he has now sold the car for a favourable price, meaning Lloyds' offer to refund the difference isn't needed. I'm grateful to Mr A in providing an update and I agree that this means the related part of Lloyds' offer doesn't need to be pursued further.

While I acknowledge that Mr A may be disappointed where he hasn't managed to recoup all the costs of the repairs from the sale, I'm relieved to hear he has at least achieved more than the price he paid to the dealer.

Both Mr A and Lloyds have raised questions about any potential adverse information from the transaction on Mr A's credit card, when he bought the car from the dealer. Mr A says he doesn't think any adverse information was recorded and Lloyds have said similar.

For clarity, Lloyds offered to remove any adverse information, related to the credit card transaction for the purchase of the car.

In other words, if Mr A missed any repayments after that transaction, because of the dispute over his section 75 claim, then that information should be removed from the details recorded with credit reference agencies.

In all the circumstances, I still think Lloyds have treated Mr A's section 75 claim fairly. I don't think there was a breach of contract by the dealer. So, I still think Lloyds' offer to pay Mr A for some of the repair costs he's incurred, and to remove adverse information from his credit file is fair.

Putting things right

For these reasons Lloyds Bank PLC should:

- pay Mr A £339.98 for some of the repairs he arranged; and

- remove any adverse information in relation to the payment to the supplier from Mr A's records with credit reference agencies.

Lloyds must pay this amount within 28 days of the date on which we tell them Mr A accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Lloyds deducts tax from any interest they pay to Mr A, they should provide Mr A with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Lloyds Bank PLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 November 2022.

Sam Wedderburn
Ombudsman