

The complaint

Ms R complains about the quality of a car she bought using a credit card supplied by NewDay Ltd ("NewDay"), trading as Marbles.

What happened

I issued my provisional decision on this complaint in December 2022. An extract from that provisional decision is set out below.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I know it will disappoint NewDay, but I don't currently agree with the investigator's opinion and I'm expecting to uphold this complaint.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

As the card here was a credit card it was possible to process a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met. The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then NewDay are responsible. The relevant law also 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 a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Ms R. The car here was already about 13 years old and had completed over 111,000 miles. It was also quite a low value vehicle as it only cost Ms R £900. So, I think a reasonable person would expect it to be showing significant signs of wear and tear and to accept that some components may be coming to the end of their useful life.

However, I don't think a reasonable person would expect a car even of this age, mileage, and price, not to work after only a couple of weeks. The AA report explains that the battery was flat, a spark plug was stuck, two cylinders weren't firing and there was significant oil in the hole for the coil and also in one of the spark plug holes. Ms R has explained that the AA engineer warned her that the cylinder head would need to be removed to remove the spark

plug and I think the oil in the coil and spark plug holes suggested an engine leak and potentially a serious one. I don't therefore think this car was of satisfactory quality.

The relevant legislation gives consumers the right to reject goods that are of unsatisfactory quality within 30 days. A text from Ms R, sent on 20 July 2021 within 30 days of purchase, explained that she didn't feel the vehicle was "fit for purpose" and she was clearly asking M to take the car back and refund her money. As a request was made to return the car within 30 days and I think there was evidence the car was of unsatisfactory quality I don't think NewDay were reasonable when they rejected Ms R's claim under section 75.

Whilst I understand M was prepared to take the car back and repair it, the dealership was 120 miles away and there appeared to be an expectation that Ms R would pay to transport the vehicle. I don't think that was a reasonable offer and I think Ms R should have been allowed to invoke her short term right to reject the car and to get her money back.

Ms R has explained that she's subsequently scrapped the car and received £135 for it. I think NewDay should refund the shortfall between the £900 Ms R paid for the car and the £135 she managed to sell it for. It's fair, however, that Ms R should pay for the limited use she had from the car. She was able to use it to drive the 120 miles, or so, back from her holiday with her family before the car stopped working. So, I think it's fair for NewDay to make a deduction from the refund to compensate them for the use Ms R has had from the car. Given the limited use, I think a £50 deduction is fair.

Ms R has also explained that she has incurred other costs as a consequence of the car failing. She's explained there was a cost for cancelling her insurance and car tax and I've seen a bill from the emergency breakdown service for £22 to cover the call out after she got the car home. I think it would be fair for NewDay to refund the £22 and to add interest to that amount from the date it was paid (15 July 2021) to the date of settlement. I'm also expecting to ask them to refund the insurance cancellation costs and any road tax fee if Ms R can evidence those to NewDay. They'll need to add interest to any refunds.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell NewDay Ltd to:

- Refund the £900 Ms R paid for the car, less £135 she has already recouped from scrappage and less £50 for fair usage. Add 8% simple interest per year to the refund from the date of payment to the date of settlement.*
- Refund the £22 it cost Ms R for her emergency breakdown callout as that wouldn't have been necessary if the car was of satisfactory quality. Add 8% simple interest per year to that refund from the date of payment (15 July 2021) to the date of settlement.*
- Refund any insurance or road tax cancellation charges Ms R has incurred as a consequence of this issue and if Ms R can provide evidence of those costs.*

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.

Ms R accepted my provisional decision and Creation didn't provide any new information. I've not therefore been persuaded to change that provisional decision.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell NewDay Ltd to:

- Refund the £900 Ms R paid for the car, less £135 she has already recouped from scrappage and less £50 for fair usage. Add 8% simple interest per year to the refund from the date of payment to the date of settlement.
- Refund the £22 it cost Ms R for her emergency breakdown callout as that wouldn't have been necessary if the car was of satisfactory quality. Add 8% simple interest per year to that refund from the date of payment (15 July 2021) to the date of settlement.
- Refund any insurance or road tax cancellation charges Ms R has incurred as a consequence of this issue and if Ms R can provide evidence of those costs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 8 February 2023.

Phillip McMahon
Ombudsman