

## The complaint

Mr F is unhappy with Lendable Ltd's response to his claim made under s.75 Consumer Credit Act 1974.

## What happened

In September 2022 Mr F bought a used car from a dealer I'll call C. The cash price of the car was £28,950 and Mr F paid a £500 deposit using his Lendable credit card.

Mr F said that when he went on a test drive before he bought the car, he noticed a faint "vibrating and squeaking" noise coming from the driver's side. He said he made C aware of this and asked one of its technicians to have a look.

After this C confirmed its technicians had *"done all the checks you have requested"* and *"there are no problems to report"*. C's sales executive said she would *"take it (the car) out myself today to ensure the points you raise do not arise"*.

Within a week of buying the car Mr F said he noticed the noise was still present. He said he also noticed a fine scratch on the dashboard screen when he was cleaning it down.

Mr F asked C to fix the noise and the scratch and explained if they could not do this, he would exercise his right to reject the car under the Consumer Rights Act 2015 ("CRA").

Mr F took the car to another manufacturer franchised dealer, who I'll call D on 12 October 2022 to have a look at the noise and the scratch. D's job card said the scratch was not repairable and recommended a new dashboard unit. It also said a rattle was found coming from the driver's side and that the cause was a loose wire coming from the driver's rear seat. It said it secured the wiring.

C told Mr F it was not prepared to let him reject the car on the basis of the things he'd identified. It said none of its technicians or sales executives had identified the scratch before the sale and Mr F had two opportunities to inspect the car thoroughly before he bought it. It said used cars will have signs of use. C did however offer to inspect the car to locate the noise.

Mr F asked Lendable to step in and help in October 2022.

Lendable got an independent expert to examine the car in January 2023. The report prepared by the expert said it was *"unable to confirm any rattling noise or anything of concern"*.

Lendable responded to Mr F's claim in complaint in February 2023. It said there was insufficient evidence of a breach of contract by C as the independent report it had commissioned concluded the vehicle was in satisfactory condition.

Mr F then referred his complaint to this service.

Around April/May 2023 Mr F took the car to D again as he said he experienced a loud banging noise on start-up and a coolant leak. D said it couldn't find any faults but did note that it heard the noise Mr F had previously identified as coming from the driver's side.

In July 2023 another ADR scheme adjudicated on a complaint Mr F brought to it about C. It said based on the pre-sale communications between Mr F and C, it had become an express of the contract that the noise Mr F identified on the test drive would be addressed. It said because C failed to do this, there had been a breach of contract. The scheme asked C to address and rectify the noise at no cost to Mr F and to allow him to reject the car and refund what he paid (less a deduction for usage at a rate of 32p per mile) if it was unable to do this.

C arranged to collect the car from Mr F and in October 2023 it paid him £27,213.

An investigator thought Mr F's complaint should be upheld in part. He said there had been a breach of contract by C as it had failed to fix something it agreed to fix before the sale took place.

The investigator thought Lendable should pay Mr F one of the consequential losses he proved he incurred. So, he asked Lendable to pay Mr F the cost of some replacement tyres he installed in January 2023, less a 25% deduction for usage. He also asked Lendable to pay Mr F £150 compensation for the way it handled his claim.

Mr F did not agree with the investigator's assessment. He said he incurred a number of other costs which Lendable should also meet and said he was put to significant inconvenience which warranted more compensation.

Lendable did not confirm whether it accepted or rejected the investigator's assessment and provided no comments or evidence in response to it. The complaint was therefore referred to an ombudsman for further review.

### **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.

I am looking here at the actions of Lendable and how it responded to Mr F's s.75 claim. In doing so I will of course consider what happened and how C acted, but I am also required to take into account relevant law which I think in this case includes things like s.75 and s.56 of the CCA and the CRA.

S.75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. So, for me to find that Lendable should have met Mr F's s.75 claim, I'd need to be satisfied that there was a breach of contract or misrepresentation by C.

S.56 of the CCA also provides that antecedent negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement are deemed to be conducted by the creditor. This means Lendable is liable to Mr F for the acts and omission of C in the pre-sale negotiations relating to the car.

I am mindful that an alternative ADR scheme has already looked at and made a decision on Mr F's complaint about C – which he accepted save for his reservations about additional losses. While the scheme didn't make a decision about Lendable's actions and had different powers to this service in respect of what it could award, it is difficult not to consider its

findings as part of my decision here. I say this as it appears on balance that C might have acted upon the decision when taking the car back and paying Mr F a proportionate refund (its position before the decision was that it would not allow Mr F to do this). So, events have already been influenced significantly by the scheme's decision.

Having looked at the pre contract negotiations between Mr F and C, I think it's clear that Mr F had concerns about the noise that he'd heard on the test drive and wanted to be sure it was resolved. I think taken as a whole, C's responses to Mr F's questions could have implied that if the noise was identified it would be fixed. This could have been a contractual promise or if not at least a representation upon which Mr F might reasonably have relied when making his decision to buy the car.

With this in mind, I see no reason to depart significantly from the other scheme's overall findings insofar as C was most probably liable to Mr F in some way once it became apparent the noise was still present and had not been fixed.

As an aside, C paid Mr F around £1,700 less than he paid for the car. That doesn't seem to tally up with the allowance for usage the other ADR scheme's decision said C could make. It appears less was deducted than a calculation based on Mr F's mileage would have permitted. Nevertheless, I'm mindful that the CRA provides a reasonable deduction for use can be made upon the final right to reject being exercised. And the deduction that has been made (which works out at around £140 per month) appears quite generous to Mr F as its unlikely he'd have been able to hire the car or acquire it on finance for that kind of monthly payment. It appears therefore he was not disadvantaged by the sum he received from C.

This leaves me to consider whether Lendable should meet Mr F's claim for his additional losses and his request for compensation in respect of distress and inconvenience he said he was caused.

Mr F said he doesn't have receipts for several of the costs he's claiming. I appreciate why given the passage of time this may be the case, but without such evidence, it wouldn't be fair to ask Lendable to compensate him for them.

Mr F has provided proof of purchase for the tyres he bought in January 2023. He said Lendable should pay him the full cost of these, and the other losses he's claiming for, because if it had met his claim when he submitted it in October 2022 the car would have been returned and he wouldn't have incurred those other losses in the first place.

I don't agree with this. At the time Mr F presented his claim to Lendable I don't think it was clear there had been a breach of contract or misrepresentation. The evidence Mr F had obtained at that point showed that D had identified but (in its view) fixed the noise. And I'm not persuaded the minor scratch on the dashboard made the car of unsatisfactory quality given its age and mileage at the point of sale, and the fact that it could have been picked up on inspection by Mr F. So, it wasn't yet clear there was a fault that C needed to fix.

The independent report that Lendable commissioned said it couldn't find the noise and overall, the car was satisfactory. I think it was reasonable for Lendable to rely on that report when it declined Mr F's claim in February 2023.

However, a later inspection of the car in May 2023 did show the noise was still present. And as we now know, C agreed to take the car back and pay Mr F a sum close to the original cash price, seemingly in accordance with the alternative ADR scheme's decision about what should happen if it couldn't fix that noise. Lendable has been aware of this since the investigator sent his assessment yet hasn't provided a response. So even if it was reasonable to decline Mr F's claim in February 2023, things have moved on since then and

new evidence has become available.

All things considered, it seems fair in this case to require Lendable to meet some of the cost of the tyres. Although Mr F might reasonably have expected to need to replace tyres fairly soon after buying a three-year old car, he would also have expected more than nine months of use from them once he did. I find the investigator's suggestion of 75% of the cost to be reasonable seeing as Mr F did get the benefit of some use. Mr F has provided evidence he had to pay £699.96 when he bought the tyres.

I can see it took around four months for Lendable to provide its response to Mr F's claim and I don't think that was reasonable. Mr F said he suffered distress and inconvenience during this time as he was uncertain about how much he should use the car if it was potentially going to be returned. I think the sum recommended by the investigator fairly reflects this and all things considered, I don't find Lendable should pay him anymore.

I recognise Mr F's strength of feeling that he should be able to claim more from Lendable and I do appreciate how inconvenient things must have been for him. I am mindful however that unless exceptional circumstances apply, the courts generally do not make awards for things like distress and inconvenience in breach of contract claims – which is of course relevant to Mr F's like claim against Lendable under s.75. I don't think those exceptional circumstances apply here, so I don't think Lendable needs to pay Mr F compensation for distress and inconvenience that was caused by C.

### **My final decision**

For the reasons I have explained, I uphold Mr F's complaint in part. To put things right Lendable Ltd must pay Mr F:

- £525 towards the cost of the replacement tyres, and;
- £150 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 27 June 2024.

Michael Ball  
**Ombudsman**