

The complaint

Mr D complains about a used car he purchased which was partially funded through his Lloyds Bank PLC ("Lloyds") credit card. He says the car became faulty shortly after he purchased it, and these faults were never fixed.

What happened

In November 2022, Mr D purchased a car for £22,000 that had previously covered just under 14,000 miles, paying £100 from his Lloyds credit card and financing the rest by debit card and by trading in his existing car.

Mr D says the car became faulty within a couple of weeks. He took the car back to the dealership and this was returned to him a couple of months later. The dealership put in a new battery and updated the car's software. However, Mr D says the car started displaying the warning 'shift to neutral to start vehicle' despite it being in motion and at speed. So, Mr D took his car into a third-party garage who, he says, showed him its remote monitoring system which had numerous error messages attached to the car. The car was then recovered to the dealership as it was deemed not roadworthy. The dealership returned the car to Mr D in April 2023, but the car then broke down and was again recovered to a garage.

In July 2023, Mr D raised a claim under section 75 of the Consumer Credit Act 1974 ("s75") to Lloyds. While Lloyds considered this, the dealership agreed to buy the car back from Mr D for £21,000. So, Mr D sought to claim certain consequential losses back from Lloyds.

Lloyds didn't uphold Mr D's claim or his complaint about this. They said they hadn't received evidence to prove that a breach of contract or a misrepresentation had occurred.

Mr D wasn't happy with Lloyds' response and so referred his complaint to us. Our investigator didn't recommend that the complaint should be upheld. He felt, in summary, that Lloyds hadn't acted unfairly by declining Mr D's s.75 claim as they hadn't been provided with enough evidence to show there was a fault with the car.

Mr D didn't agree and so his complaint was passed to me for a decision. I issued my provisional decision on 5 August 2024, in which I said the following and which forms part of my final decision:

'I've taken into account the relevant law which in this case is s.75. This allows Mr D to make a like claim against Lloyds for a breach of contract or a misrepresentation by the supplier of the goods he purchased. I'm satisfied that the necessary criteria for a s.75 claim was met by Mr D.'

The Consumer Rights Act 2015 ("CRA") is also relevant to this complaint. The CRA implies terms into the contract between Mr D and the dealership that the car will be of satisfactory quality. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods: (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It's reasonable in my view to note that the car here wasn't new and had already travelled just under 14,000 miles when Mr D purchased it. So, it wouldn't be reasonable to expect a used car like this to be in the same 'as new' showroom condition which it would have been when it was first sold or supplied. But just because the car was used with some mileage, doesn't mean that Mr D has no right to claim the car wasn't of satisfactory quality. And, if Mr D can reasonably show that to have been the case, that would constitute a breach of contract on the part of the dealership from where he bought the car. And Lloyds could be held equally liable for this under s.75.

I've considered both the evidence that Mr D supplied to support his claim and how Lloyds considered that claim. In my view, Mr D had to supply reasonably persuasive evidence that the car had a fault (or faults), and that this gave rise to a potential breach of contract in respect of satisfactory quality. But Lloyds also had to consider his claim appropriately.

From the evidence I've seen, Lloyds appears to have only asked Mr D to provide an independent report and to consider the use of a data logger to show that the car wasn't of satisfactory quality. I say this because, when I asked Lloyds what information they considered, they sent me an e-mail chain between themselves and Mr D in which they asked for these things, with particular emphasis on the independent report. My view though is while the provision of an independent report may have helped Lloyds to determine whether Mr D's s.75 claim should succeed, this wasn't as vital a piece of evidence as Lloyds seem to have believed. Mr D's evidence should also have been considered.

I asked Mr D what evidence he sent to Lloyds to support his claim. He's told me that he sent breakdown/recovery reports and photos of the faults from the car's computer. I've looked at this evidence and have seen that there were numerous photos taken of messages displayed on the dashboard, as follows:

- 'Electrical power saver active, some features turned off' – 15,954 miles
- 'Electrical power saver active, some features turned off' – 16,699 miles
- 'Electrical power saver active, some features turned off' – 16,736 miles
- 'Electrical power saver active, some features turned off' – 16,744 miles
- 'Park pilot malfunction' – 16,348 miles
- 'Active park malfunction' – 16,348 miles
- 'Shift to neutral to start vehicle' – 16,702 miles
- 'Shift to neutral to start vehicle' – 16,763 miles
- 'Check adaptive headlamps' – 16,745 miles

It's difficult for me to know exactly whether all the above messages constituted faults. However, I think it likely that at least some of these were bearing in mind that there were two messages saying there was a malfunction of some sort. Mr D has also said that the message saying 'shift to neutral to start vehicle' appeared after the car was in motion. I have no reason to doubt this and, if that was the case, then that would indicate there was some sort of fault with the car's system. And by then, Mr D had already taken the car in to the dealership where they had performed a software update and a battery change. I've seen a warranty invoice from January 2023 showing that this work was carried out when the car had covered 15,334 miles overall. I've also seen evidence from Mr D that the car broke down on at least two occasions. There is a breakdown report from a third party from February 2023 with the car's mileage at 16,683 and one from April 2023, where the breakdown was attributed to a loss of power.

Having considered what the CRA sets out about durability, I think a reasonable person would not expect a car to suffer these problems at such low mileage. It seems there were significant issues with either the battery and/or the electrics. This in my view demonstrates the car wasn't sufficiently durable. And because of this, the car was not of satisfactory quality as required and set out in the CRA. I think that Lloyds had enough evidence to consider that there was a breach of contract by the dealership and that Mr D's claim should have been successful as a result. I don't agree that Lloyds had to have an independent report to have reached that outcome and I find that Mr D had sent in sufficient persuasive evidence to support his claim. So, I'm currently inclined to say that Lloyds didn't consider Mr D's complaint about his claim appropriately. As I have found the car wasn't of satisfactory quality, I will now consider what is required to put things right.

The car was bought back by the dealership, and I gather there is no residual cost that Mr D wishes to reclaim in respect of the price of the car. Mr D has though said that he's suffered the following consequential losses:

- Breakdown cover of £134.76*
- Insurance of £138.34*
- Car hire of £100*
- Fuel costs of £86.61*
- Train fare of £3*
- Clean air zone cost of £9*

I've seen evidence that Mr D incurred all the above costs (which I can send to Lloyds if they wish). So, I need to determine what, if any, costs would be fair and reasonable to ask Lloyds to refund.

Mr D has said that he couldn't transfer the breakdown cover to his current car as this came with breakdown cover included. I have no reason to doubt this, and I note that this cover was taken out in June 2023. I think it unlikely that Mr D had any benefit from this cover bearing in mind I've not seen much in the way of evidence that he was driving the car from then until it was bought back. So, I think it reasonable that Lloyds refund this, with interest.

I also currently think that Lloyds should refund the insurance cost of £138.84, with interest, for similar reasons. This insurance was taken out in June 2023 and, as I've mentioned above, I've seen little evidence that Mr D used the car from that point. And I provisionally find that the other costs Mr D seeks to reclaim are examples of where he mitigated his losses as a result of the car being of unsatisfactory quality. I'm satisfied that he used a hire car when he wasn't able to use the one subject to this complaint. And I'm satisfied that he incurred the other costs as a direct result of not being able to use the car. The fuel, clean air zone costs and train cost occurred when Mr D travelled to collect and then use a family member's car. It seems therefore that Mr D acted reasonably here rather than rack up more hire car costs (which he could have asked Lloyds to refund). So, I think those other costs should be refunded, with interest.

I also think that Lloyds should pay compensation to Mr D for their poor handling of his s.75 claim. I find that they should have considered the evidence he had sent to them and, at the very least, explained why the evidence wasn't sufficient. So, I propose that Lloyds pays Mr D £150 in respect of this. I would just add here that Lloyds isn't liable to pay any distress and inconvenience caused to Mr D by the dealership's breach of contract as the particulars of s.75 do not cover this'.

I asked Mr D and Lloyds to send me any further evidence or comments they wanted me to consider. Both replied saying they agreed with my provisional 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.

As Mr D and Lloyds agree with my provisional decision, it follows that I uphold this complaint for the reasons set out in that decision (as copied in the preceding section above).

Putting things right

Lloyds needs to refund Mr D the following:

- Breakdown cover of £134.76, with interest from 11 June 2023.
- Insurance of £138.34 with interest from 11 June 2023.
- Car hire of £100 with interest from 13 June 2023.
- Fuel costs of £86.61 with interest from 2 August 2023.
- Train fare of £3 with interest from 10 June 2023.
- Clean air zone cost of £9 with interest from 25 June 2023.

The interest element of my award should be paid at 8% simple per annum, from the dates the respective costs were paid (as shown above) to the date of settlement.

Lloyds should also pay Mr D £150 for the inconvenience he was caused by their handling of his claim.

My final decision

I uphold this complaint and direct Lloyds Bank PLC to do what I have set out in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 September 2024.

Daniel Picken
Ombudsman