

## **The complaint**

Mr M complains about the way in which NewDay Ltd, trading under its Fluid brand, handled his claim after he used his credit card to pay for a car which was faulty.

## **What happened**

On 14 March 2023 Mr M bought a used car from a dealership which I'll call "C". The sales invoice recorded that Mr M paid a total of £2,750, that the car had been first registered in 2004 and that it had a recorded mileage of 53,102 miles. The car came with a one month engine and gearbox warranty. Mr M paid £2,000 of the price using his Fluid credit card.

Within a couple of weeks Mr M reported to C that the car would not always start, especially in the morning. He has provided screenshots of his SMS exchanges with C from the end of March until June 2023. They indicate that Mr M tried switching the car's battery (for one supplied by C) and disconnecting the radio in his attempts to fix the problem. Both appeared to work for a short time, but the car then failed to start again.

Finally, Mr M changed the car's spark plugs for a new set, which did resolve matters.

In that time, C offered to inspect the car and service it (including changing the spark plugs) and offered to compensate Mr M for his time and the cost of the plugs. It put a figure of £250 on that.

In early June 2023 Mr M made a claim for a refund to Fluid. It credited his account with £2,000, but C then defended the claim. It provided a copy of a pre-sale inspection report which said that the car was roadworthy and that the engine started.

In August 2023 the credit was reversed. Mr M complained to Fluid.

Fluid said that it had acted correctly in reversing Mr M's chargeback claim and in declining his claim under section 75 of the Consumer Credit Act 1974 ("section 75"). Mr M referred the matter to this service. One of our investigators considered what had happened but did not recommend that the complaint be upheld. Mr M did not accept the investigator's assessment and asked that an ombudsman review the case.

I considered the complaint and, because I expected to reach a different conclusion from that reached by the investigator, I issued a provisional decision, in which I said:

*Mr M's complaint arises because, he says, C supplied a car which was faulty. There are two ways in which Mr M can seek recompense against Fluid, as his credit card provider, in such circumstances – chargeback and under section 75 of the Consumer Credit Act. I'll discuss each in turn:*

## **Chargeback**

*Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Fluid) raises a claim through the scheme against the merchant's provider of card facilities.*

*Fluid did that here, seeking a full refund of the £2,000 which Mr M had paid using his credit card, but the claim was challenged by C. It said that the claim was excessive and noted that Mr M still had the car. In the circumstances, I think it was reasonable of Fluid to take the view that it was not worth pursuing chargeback any further. It was unlikely to be successful under Mastercard's rules.*

*I note that Mr M says he was told the initial refund would not be reversed. I am satisfied however that he was told that was a possibility. But, even if he was not told that, it would not affect Fluid's ability to reverse the refund under the chargeback scheme.*

## **Section 75**

*One effect of section 75(1) of the Consumer Credit Act 1974 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. I am satisfied that the necessary conditions are met here.*

*Under the Consumer Rights Act 2015, it was an implied term of Mr M's contract with C that the car he bought would be of satisfactory quality. What is meant by satisfactory quality depends on the circumstances. In the case of a used car, those circumstances include the car's age, price and mileage. In this case, I think it was to be expected that the car might have some faults and that it would be subject to a degree of wear and tear.*

*But I note as well that the car came with a short warranty in respect of its gearbox and engine. Mr M reported within a couple of weeks that the car would not start – that is, there was a fault with the engine. It is unfortunate that C and Mr M were not in the event able to arrange for C to inspect the car and agree exactly what the fault was. I am satisfied from reading the exchanges between them, however, that Mr M is fairly knowledgeable and that the car did indeed fail to start on several occasions. Fluid was provided with those exchanges, including C's offer to pay Mr M £250 to resolve the matter after Mr M had carried out repairs. I believe they show too that the fault was fixed when Mr M replaced the car's spark plugs with a new set.*

*I do not think that, by making an offer of settlement, C was admitting the car was faulty. I do however believe that the exchanges, taken as a whole, do show that.*

*It is not for me to say whether Mr M does in fact have a claim against C. Nor is it for me to decide whether he has a claim against Fluid section 75 of the Consumer Credit Act. What I must do is decide what I consider to be a fair resolution of Mr M's complaint about Fluid, having regard, amongst other things, to any relevant law – including the Consumer Rights Act and the Consumer Credit Act.*

*I note that C's offer was intended to compensate Mr M for his time and to cover the cost of the spark plugs. And I note too that C provided him with a new battery. Overall, I think a payment of £250 would be a fair resolution of Mr M's complaint about Fluid.*

Fluid did not respond to my provisional decision within the time limit I set. Mr M made further comments; in summary, he said:

- The car was over-priced.
- C had offered to collect the car and inspect it, but had done so.
- £250 is not enough to cover the stress and losses he suffered.
- C did nothing to try to and fix the car.
- He does not have any receipts to demonstrate his losses.

Mr M asked that I review matters and issue 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.

I have considered carefully everything that has provided, including Mr M's further submissions. In my view, however, those further submissions do not provide anything new. That is, they largely repeat the arguments which Mr M has already made – albeit in a slightly different way.

I should stress too that I have no power to make an award to reflect which has been caused by the actions of C. C is not a party to this complaint and has not had the opportunity of making any representations to me. I can only make an award against Pulse and, in doing so, I must have in mind that section 75 only makes Pulse liable for any claim which Mr M might have against C for breach of contract or misrepresentation. Such claims would not usually include claims for compensation for distress. Mr M's further submissions largely concern what C did or did not do, rather than the actions of Pulse.

For that reason, I have not changed my view of how Mr M's complaint should be resolved from that set out in my provisional decision.

### **My final decision**

My final decision is that, to resolve Mr M's complaint in full, NewDay Ltd should pay Mr M £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 December 2024.

Mike Ingram

**Ombudsman**