

The complaint

Mr T complains that NewDay Ltd won't meet his claim under section 75 of the Consumer Credit Act 1974 ("section 75") after he bought a car at auction which was, he says, faulty. Because he paid for the car in part with his credit card, he says that he can bring a claim against the issuer, NewDay.

What happened

In or around December 2023 Mr T engaged the services of a company, which I'll call "Q", to find a second-hand car for him. He provided Q with the specifications of the car he was looking for and an indication of his preferred budget.

In March 2024 Q contacted Mr T to say that it had found a vehicle which it thought was suitable for him and which was to be sold at auction. Mr T instructed Q to bid up to £7,000 and transferred £7,001 to Q so it could do so. Mr T paid £101 by credit card and £6,900 by bank transfer. Mr T was successful in the auction and acquired the car for £5,700 plus a buyer's premium.

Q collected the car and carried out an inspection of it and arranged for an MOT test (which it passed). Q negotiated a refund of £500 in respect of some damaged paintwork and then delivered the car to Mr T.

Mr T says that he immediately identified juddering when he started the car. Subsequently, he noticed a burning smell, consistent with gearbox damage, and established that the flywheel needed replacing; repairs would cost around £2,000.

Mr T contacted Q to complain about the condition of the car. It said that it had acted as Mr T's agent in sourcing the car but that it was not responsible for its condition on sale. It was not the seller. It referred Mr T to its terms and conditions in support of its position.

Mr T therefore contacted NewDay. He said that Q had not provided a car which was of satisfactory quality and that NewDay was therefore liable, along with Q, to put things right.

NewDay did not accept that it had any liability to Mr T. It agreed with Q's position that it was not the seller of the car; it followed, NewDay said, that section 75 did not apply to the credit card payment Mr T had made to Q.

Mr T did not accept NewDay's argument and referred the matter to this service, where one of our investigators considered what had happened. She did not, however, recommend that the complaint be upheld. She noted that the car had been sold "as seen". Even if section 75 did apply, therefore, Q had no liability to Mr T, and neither did NewDay.

Mr T did not accept the investigator's assessment and asked that an ombudsman review the case. I did that and issued a provisional decision, in which I said:

Mr T says that he has a claim for breach of contract against Q and that he therefore has a "like claim" against NewDay under section 75.

Section 75 says:

75 Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

(2) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under subsection (1), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

(3) Subsection (1) does not apply to a claim —

(a) under a non-commercial agreement,

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...

Section 12(b) is referred to in section 75(1) and says:

12 Debtor-creditor supplier agreements.

A debtor-creditor-supplier agreement is a regulated consumer credit agreement being —

...

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or ...

And section 11(1)(b), referred to in section 12(b), includes:

11 Restricted-use credit and unrestricted-use credit.

(1) A restricted-use credit agreement is a regulated consumer credit agreement —

...

(b) to finance a transaction between the debtor and a person (the “supplier”) other than the creditor, ...

and “restricted-use credit” shall be construed accordingly.

The effect of section 75(1) is, therefore, that a card holder who has a claim for breach of contract against a supplier can also bring that claim against a credit card provider which has financed the transaction, either in whole or in part. Mr T says that he bought the car from Q and that it was not of satisfactory quality. He says he therefore has a claim for breach of contract against Q and a “like claim” against NewDay.

Mr T’s agreement with Q

Q says that its relationship with Mr T was not one of buyer and seller of the car. It says that its role was to source a car to meet Mr T’s requirements and then to bid for it on his behalf at the auction. It did not buy the car itself and never owned it.

Mr T’s contract with Q included the following:

8. I understand that from the moment a winning bid is lodged, this car is my possession, although [Q] will be unable to register with the DVLA as such until the V5 (logbook) has been received from the auction provider.

9. I understand that auction cars are 'sold as seen' and unless misdescribed (including details on 'Assured Reports' but excluding those on 'Essential Checks') I have no right to return the vehicle or seek full or partial refund.

10. I understand that [Q] are only buying a car on my behalf and I am not buying a car from [Q] ... but rather purchasing it 'as seen' from a vendor at auction and [Q] cannot be held responsible if I am dissatisfied with my purchase.

The agreement also included further provisions saying that Q was not liable for any work that might be needed on the car, that Mr T should check any maintenance or repair costs and that the car was being sold at a trade auction rate and that traders expect some work to be needed.

In my view, these terms – and in particular clause 10 – make it clear that Q was not the seller here. Q's role, having sourced the car, was to bid for it in line with Mr T's instructions and, if successful, to arrange for delivery to him. It was bidding not on its own behalf but as Mr T's agent.

Mr T says, not unreasonably, that the terms should reflect the reality of the situation. That is, a seller cannot avoid liability for defects in goods, for example, by writing a term into a sale contract saying they are not the seller. But I don't believe that is what has happened here.

The usual position where goods are sold at auction is that the seller instructs the auction house to sell their goods on their behalf to the highest bidder. The seller remains the owner of the goods until the auctioneer declares them sold. At that point the buyer is obliged to pay the bid price and the seller (usually through the auctioneer) is obliged to deliver the goods.

I believe that is what happened here. The seller was the (unknown) person who instructed the auctioneer to sell the car. Q's terms and conditions accurately said that it was not the seller; neither was the auctioneer.

It follows that Mr T does not have a claim against Q as the seller of the car, since it was not the seller. It also follows that he cannot have a claim against NewDay under section 75. Even if the seller were liable to Mr T for any defects in the vehicle, section 75 would not apply, since the sale was not financed under arrangements between NewDay and that seller.

Other matters

Since I have found that Q was not the seller of the car, I don't need to comment on its actual condition at the point of sale. I note however that Mr T has cited The Consumer Rights Act 2015 in support of his position that the car should have been of satisfactory quality and that a trader cannot avoid liability where goods are not of such quality.

However, where goods are sold at auction, the protection given to consumers is much more limited than, for example, where there is a direct sale by a trader. Section 2(5) says:

For the purposes of Chapter 2, except to the extent mentioned in subsection (6), a person is not a consumer in relation to a sales contract if—

- (a) the goods are second hand goods sold at public auction, and
- (b) individuals have the opportunity of attending the sale in person.

Chapter 2 includes provisions which, for example, require a consumer contract for the sale of goods to be read as including a term that goods will be of satisfactory quality. But the

effect of section 2(5) is that Mr T was not a consumer, and so the contract was not a consumer contract.

I have concluded that Q was not the seller, so the references in its terms and conditions to the car being 'sold as seen', for example, were not, I believe, an attempt to avoid liability on its part. Rather, they were a notification to Mr T that his rights against the actual seller were likely to be much less than he might otherwise have expected.

I note too that Mr T has said that Q's website encourages buyers to pay at least £101 by credit card in order to obtain protection up to £30,000. He takes that to mean that Q accepts that section 75 applies to its activities. I can understand why, since the figures are broadly in line with those referred to in section 75(3)(b). But if that was Q's intention, it does not accurately reflect section 75; the key figure for exclusion of a claim under section 75(3)(b) is the price of an item, not the amount paid by credit card. And in any event, advice on Q's website (or anywhere else for that matter) cannot override the provisions of the Consumer Credit Act or bind NewDay.

In the circumstances, I believe it was reasonable of NewDay to decline Mr T's claim.

Mr T did not accept my provisional findings. He explained that the auction house concerned was British Car Auctions ("BCA"). Its terms and conditions, he said, demonstrated that the car had been sold to Q, not to him, and that he had therefore bought it from Q. Mr T believes that the auction was held online.

He also noted that Q's own terms and conditions had only been provided some months after he had engaged that business to source a car for him. They were not therefore binding on him.

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.

Much of Mr T's further evidence here concerns the relationship between Q and BCA and the actions of Q. I stress however that my role here is to determine, by reference to what I consider to be fair and reasonable in all the circumstances, how Mr T's complaint about NewDay should be resolved.

My provisional decision was based primarily on my finding that Q was not the seller of the car. Because of that, the necessary relationships for section 75 were not in place. But I noted as well that the consumer protections which applied to sales contracts and set out in the Consumer Rights Act were generally more limited in the case of auction sales.

Mr T says that BCA's terms and conditions show that Q must have bought the car on its own account and sold it to him, rather than buying it on his behalf. In saying that, he has referred to, amongst other provisions, the following terms:

- Clause 1.1.8, which defines "Buyer";
- Clause 1.1.8, which refers to the process for registering with BCA;
- Clause 9.1, which sets out who the parties to a sale contract are; and
- Clause 13.1, a warranty on the part of the buyer that it acts in the course of its business, not as a private consumer.

Mr T says that BCA's terms prohibit a buyer from acting as an agent. I don't believe they do expressly say that. BCA's website, however, says that it does not allow private individuals to participate in its auctions, a restriction which is consistent with clause 13.1. A buyer must show they are involved in the motor trade before they can register to bid at a BCA auction. I think therefore that it's likely that, if BCA knew someone was bidding on behalf of a private buyer, it would not allow that. Its terms and conditions are clearly written with trade buyers in mind. It's possible of course that Q did disclose the full position to BCA, but I have seen no evidence to suggest that was the case.

Q says that it was bidding and completed the sale on behalf of Mr T. If that's correct, therefore, it's strongly arguable that it did so in breach of its agreement with BCA. It would appear too that the warranty it gave under clause 13.1 was untrue.

Mr T says that a further effect of BCA's terms and conditions is that he has no contractual relationship with BCA. He did not buy the car from BCA and has no right of redress against it. Again, I think that analysis is correct – in the same way that, if Q had not paid the purchase price, BCA could not have recovered it from him.

Not all auction houses apply the same restrictions as BCA. And some will hold auctions which are only open to trade buyers and others which are open to private buyers.

As I am now satisfied that BCA did not permit trade dealers to bid on behalf of private individuals, I have considered whether that makes any difference to my finding that Q did just that. There is a clear contradiction between the statement in Q's own terms that it was acting on behalf of Mr T and the statement it made to BCA that it was acting in the course of its trade and, by implication, on its own account. They cannot both be true.

Clause 10 of Q's terms was clear in stating that Mr T understood he was not buying a car from Q. And, had the car been bought at an auction at which private individuals were able to bid, I don't believe there could be any real doubt about the position.

As I say, the argument arises here because the two sets of terms are not consistent. Either Q gave BCA a warranty which was not true, or it incorrectly set out the position in its own terms.

Mr T argues that Q must have been acting on its own account because that is what it told BCA. That does not necessarily follow, however. It's also possible that Q made an incorrect or incomplete statement to BCA. In my view, that is what happened in this case. The structure of Mr T's arrangements with Q was that Q would act on behalf of Mr T in finding a car. Once it had done so, Mr T would provide it with funds to buy that car so that Q could bid at auction. The arrangement was not that Q would buy a car to sell on to Mr T. In saying that, I note that Mr T was required to provide funds before the auction up to his budget limit; that's not consistent with Q buying a car on its own account and then selling it to Mr T.

I know that Mr T feels strongly that Q did not act as his agent, but clause 10 of Q's terms said: *"I understand that [Q] are only buying a car on my behalf and I am not buying a car from [Q] ..."* In my view, that cannot be read to mean anything other than that Q did not sell the car to Mr T. It bought it as his agent – albeit undisclosed to BCA or the seller.

The main significance of Q not disclosing to BCA that it was acting on Mr T's behalf (apart from the possible breach of warranty) is that it was liable to pay the purchase price and take delivery of the car. But it did not make Q the seller to Mr T. And I don't believe either that any agreement between Q and BCA changed what Q had agreed with him.

Mr T says that he was not provided with any terms until some time after he had engaged Q. He accepts however that he agreed to those terms online, albeit only shortly before the auction took place. Since Mr T's underlying claim here concerns the terms on which Q was acting in the auction process, I do not accept his argument that he was not bound by those terms. Nor do I accept that he was entitled to any cooling-off period or that Q was under any duty to explain its terms to him.

As I have explained, it is not for me to say whether Mr T has a valid claim against Q – or any other party involved. Rather, it is to decide on an outcome to his complaint about NewDay which I consider to be fair and reasonable. In my view, NewDay's response was a fair one.

Finally, I noted in my provisional decision that the rights afforded to consumers who buy at a public auction are more limited than they would be in other circumstances. Since it now appears that the auction was not open to private individuals, it's possible that Mr T has more protection than I previously suggested. But, even if that's the case, it does not change my view about his complaint about NewDay. Nor does it affect any rights Mr T may have to take action against any other party involved.

My final decision

For these reasons, my final decision is that I do not uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 August 2025.

Mike Ingram
Ombudsman