

## **The complaint**

Mr P complains that Lloyds Bank PLC has declined his claim under section 75 of the Consumer Credit Act 1974 ("section 75"). He says that a car he bought and paid for in part with his credit card was defective.

## **What happened**

Mr P agreed to buy a used car which he saw advertised publicly. He agreed a price of £2,200 (lower than the advertised price) and made a payment of £450 with his Lloyds credit card to "House of Menswear".

When Mr P took the car for a test drive, however, he noticed a warning light on the dashboard. He says he was assured by the seller that this was nothing to worry about and that it would be easily resolved with a reset.

Mr P paid the balance of the purchase price to "Bosh Clothing Limited". When he asked about that company, he was directed to the website of House of Menswear.

Mr P says that, within a few days, the car was undriveable. A reset had not resolved the issue with the warning light, and, Mr P says, repairs would cost more than what he had paid for the car.

Mr P referred the matter to Lloyds. It sought a refund of the card payment through the chargeback process. That was successful, and Mr P received a refund. When it considered whether Mr P could bring a claim under section 75 in respect of the balance, however, Lloyds said that it did not apply. Its reasons included that payment had been made to two different parties and that section 75 did not apply to a private sale.

Mr P referred the matter to this service, where one of our investigators considered what had happened. She was not however persuaded that there was sufficient evidence of a link between the payments Mr P had made and the purchase of the car. She noted too that the sale had not been made in the course of the seller's business, and so Mr P had limited protection under The Consumer Rights Act 2015 and the Sale of Goods Act 1979.

Mr P did not accept the investigator's assessment and asked that an ombudsman review the case.

## **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.

Section 75(1) 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.*

Section 189 includes: "... *"finance" means to finance wholly or partly, and "financed" and "refinanced" shall be construed accordingly...*"

That means that it makes no difference to the application of section 75 whether part of the price of goods is paid other than under a debtor-creditor-supplier agreement. Where a credit card is used, it is sufficient that only part of the payment is made with it. The balance can be paid by bank transfer, as it was here, or even to a different person.

The key issue in deciding whether section 75 could apply in this case is, in my view, whether the credit card payment was made to the seller of the car or to an "associate" of the seller (as defined in section 184).

That issue is not as straightforward as it might be in some cases, because (i) there is no single contractual document which sets out the seller's details and (ii) it is not clear what legal form "House of Menswear" takes – an individual, partnership or trading name, for example.

In my view, however, the available evidence indicates that, whatever its legal status, House of Menswear was the seller of the car. Had that not been the case, it seems to me unlikely that it would have responded to the chargeback claim in the way it did. If it had sold something other than the car, it would have said that; and if it had simply been collecting the card payment on behalf of a different seller, it would have had no reason not to explain that either.

The bank has also suggested that section 75 does not apply to a private sale. But there is nothing in section 75 to suggest that. It would be unusual of course for a private individual to be able to take credit card payments in that capacity, but it in theory they could do so as a sole trader or through an associate. If they were to do so, there seems to be no reason why section 75 could not apply.

Mr P says in any event that he was told this was not a private sale. The car was a former lease car being sold by a business.

I am satisfied therefore that section 75 could apply here, so I have considered Mr P's underlying complaint about the car.

I note that the advertisement to which Mr P responded said that the sale was a private one. On the face of it, that may seem inconsistent with a sale by a business. But the key distinction (and no doubt the reason including that information) is not between a sale by a business and a sale by a private individual, but whether the sale was made "... *in the course of a business...*" or by "... *a person acting for purposes relating to that person's trade, business, craft or profession...*". If that was the case, the sale contract must be read as including a term that the car would be of satisfactory quality under, respectively, The Sale of Goods Act 1979 or The Consumer Rights Act 2015.

I don't believe the sale here can be said to have been made in the course of the seller's business or that the seller was acting for purposes relating to its business. The seller's business was clothing sales, not car sales. He was not buying from a car dealership.

I note what Mr P says he was told about the reason for the warning light and that it would, in effect resolve itself. I agree with the investigator, however, that the evidence about this from the time of sale do not really support Mr P's case here. Apart from anything else, an

actionable misrepresentation must induce someone into a contract; but, by the time of any discussion about the warning light, Mr P had already agreed to buy the car and had paid some of the purchase price.

It's arguable that the fact that the chargeback claim was successful might be an indication that the section 75 claim should succeed as well. But, while similar issues might be relevant in some cases, the requirements of each are not quite the same, and I don't believe I can fairly conclude that the outcome of the chargeback claim should determine the outcome of the section 75 claim.

It is not for me to say whether Mr P does in fact have a claim against the seller. Nor is it for me to decide whether he has a claim against Lloyds under section 75. What I must do is decide what I consider to be a fair resolution of Mr P's complaint about the bank's decision to decline his claim. In the circumstances, however, I think it was a reasonable decision to take.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 August 2025.

Mike Ingram

**Ombudsman**