DRN-5762114

The complaint

Mr R complains that Lloyds Bank PLC ("Lloyds") rejected his claim under Section 75 Consumer Credit Act 1974 ("s.75").

What happened

In the autumn of 2023 Mr R bought a car from a dealer. A few days later he wrote to the dealer to say he did not want to keep the car and he wished to return it. The dealer refused. It said that sale didn't fall withing the distance selling rules as he had competed the transaction at its premises and so there was no 14 day cancellation period. The dealer also said that the car had covered more than 250 miles and so fell outside the terms and conditions of its money back guarantee. Later it referred him to the National Conciliation Service ("NCS").

The NCS concluded he was entitled to return the car. It thought he had concluded the contract remotely, but this decision did not address the documentation signed by Mr R at the time he collected the car. It presumed that the contract was concluded before he visited the dealer. The dealer did not accept this.

Mr R raised a claim under s.75 with Lloyds. It rejected his claim so he brought a complaint to this service. Our investigator didn't recommend it be upheld.

The detailed timeline of events is as follows:

• 14 to 28 Sept 2023 - Phone calls between Mr R and the dealer and videos provided.

• 16 Sept 2023 – Mr R paid a deposit of £250 using his Lloyds credit card.

• 28 September 2023 – Mr R signed an e-contract and paid the balance by bank transfer.

• 30 Sept 2023 – The dealer emails Mr R thanking him for choosing it.

• 2 October 2023 – Mr R collects the car from the dealer and signed a vehicle invoice and a vehicle order form (unsigned by the dealer).

• 7 October 2023 - Mr R writes to the dealer to say he wishes to return the car and to pay for the mileage he had covered which was in excess of 250.

Mr R set out his case in some detail and with great clarity. He believed there had been both a breach of contract and misrepresentation.

In his complaint Mr R explained the applicable law is provided by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("the CCR").

Mr R set out the basics of contract law in support of his argument as follows:

"To make a legally binding contract, 5 elements must be satisfied: offer, acceptance, consideration, intention and capacity:

Offer: One party makes an offer

Acceptance: The other party accepts the offer

Consideration: Each party provides consideration to the other. Consideration can be:

• a promise to pay money

• a promise to do something

• a promise not to do something, or

• Promise to provide something else of value. That doesn't mean it needs to be valuable £1.00 could be valuable consideration. And it doesn't have to be money.

Intention to be legally bound: Both parties have an intention to be legally bound by the agreement (which is proposed by the offer, and then accepted)

The parties have contractual capacity: The parties are legal entities recognised by law, such as companies, limited liability partnerships and individuals of at least 18 years of age.

Once those elements exist, you have legally binding contract."

He said that prior to him visiting the dealer the five elements had been met and so the contract was concluded.

He added that the dealer had not provided the requisite form as set out in the distance selling regulations allowing him to cancel. He said this meant the dealer had not fulfilled its contractual obligations. He went on to say that the burden of proof lay with the dealer in showing it had met the required provisions of the regulations.

He also considered the dealer's assertions and those of Lloyds that if the car had travelled more than 250 miles then the guarantee did not apply. He referred to the dealer's terms and conditions which state: "the customer must keep the Goods in a reasonable condition and return the goods or make them available for collection, pay the company's reasonable costs of collection, where the Vehicle odometer records more than 250 miles travelled from the odometer reading at Delivery or Collection (as shown on the Invoice) the sum £1 per mile over 250 miles, and the reasonable costs of any rectification works for damage caused to the Vehicle whilst in the Customers possession."

With regard to misrepresentation Mr R said he had read the dealer's website terms and conditions and he was convinced he was covered by the distance selling regulations. He said there were numerous references to distance selling on the website and none dealt with having to sign a contract at the dealer's premises to complete the contract. He said this requirement denied a customer from completing a distance sale.

Our investigator took the view that because Mr R had the opportunity to inspect and test drive the car before taking it away indicated he had the opportunity to say no to the deal while at the dealers. He felt this meant the contract was not concluded until Mr R visited the premises. He was not persuaded by any of Mr R's arguments and noted there was no fault with the car so there was no basis for him to be allowed to return it.

Mr R didn't agree and asked that his complaint be considered by an ombudsman. He made further submissions and felt that some of the relevant facts had not been considered. He said these included:

- “the e-contract (attachment A1) signed four days before I visited the dealers premises, and

- the confirmation of purchase email (attachment A2), I received before I visited the dealers premises, and

- the printed copy of the Vehicle Order (attachment A3), which has not been signed by the seller and therefore does not comply with T&C 2.1 as it does not form the contract, and .

- the dealers comments, as a result of the NCS report, (attachment A7) eventually accepting that the contract was formed at a distance”

He felt the dealer’s explanations had been accepted by both Lloyds and our investigator without question.

I issued a provisional decision as follows:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I have every sympathy with Mr R, but I do not consider I can uphold his complaint. I will explain why.

Section 75

When someone makes a payment on their credit card, in order to make a valid s. 75 claim against their credit card issuer they need to have used the credit card to pay a company they have a claim against for breach of contract or misrepresentation. S. 75 gives the debtor (the credit card account holder) the same claim against their credit card issuer as they would have against the supplier of goods or services, so long as that claim is for breach of contract or misrepresentation.

This is because s. 75 itself is worded in the following way:

“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.”

The debtor in this case is Mr R, because he paid the deposit for the car using his credit card account. The transaction financed by the credit card account was the order of the car, and the supplier was the dealer. S. 75 says that it is the debtor who needs to have a claim against the supplier in respect of a misrepresentation or breach of contract.

The primary element of Mr R’s complaint is that the contract falls within the distance selling regulations which give him the right to return the car. The key question is when was the contract concluded?

When was the contract concluded?

Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Mr R would have had a right of cancellation if the contract was a ‘distance contract’, that is:

"A contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded." (see Reg. 5 of the CCR)

The supplier's position, with whom Lloyds agrees, is that the contract was not a 'distance contract' because contractual paperwork had been signed at the dealership for the purchase and Mr R had the opportunity to test drive the vehicle as well. That was appreciating that R had paid a deposit for the car online and confirmed his intention to purchase the vehicle (i.e. made an offer) online. He then paid the balance by bank transfer before visiting the dealer's premises.

In short, the dealer's position, and by extension Lloyds, is that this was an 'on-premises' contract. The significance of this being that such contracts have no cancellation rights under the CCR. The definition of an on-premises contract under regulation 5 of the CCR is fairly unhelpful in that it simply states this is:

"…one which is neither a distance nor off-premises contract"

For completeness, an off-premises contract includes:

• "A contract concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the trader's business premises.

• A contract for which an offer is made by the consumer in the simultaneous physical presence of the trader and the consumer in a place which is not the trader's business premises.

• A contract concluded either:

- *on the business premises of the trader, or through any means of distance communication, immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer.*

- *A contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer."*

The general rule is that a contract is 'made' at the time when, and place where, the acceptance of the relevant offer is communicated to the offeror.

This is reflected in the terms of the contract I've noted which state:

"The Order is the Purchaser's offer to purchase the Vehicle upon these terms. The Contract is formed upon the Seller accepting that offer by an authorised representative of the Seller signing and dating the Order." (see clause 2.1 on 'Formation of Contract')

The definition of the 'Order' in the terms and conditions appears to refer to the 'Vehicle Order' which appears to have been overleaf of the terms and conditions (not to be confused with the Vehicle Invoice). This document appears to have been signed both digitally and in-person by Mr R as the Purchaser/Buyer, but not the supplier as 'Seller' nor any authorised representative.

Contrary to Mr R's submissions, this does not in my view, mean the contract was a distance contract and there are several bases for my reasoning which I set out below in this

numbered list and thereafter:

1. Recital 20 of the Consumer Rights Directive (2011/83/EU) (the 'CRD') implemented by the CCR makes it clear that:

*"…a contract which is negotiated at the business premises of the trader and finally concluded by means of distance communication should not be considered a distance contract**. Neither should a contract initiated by means of distance communication, but finally concluded at the business premises of the trader be considered a distance contract**." [my emphasis]*

2. Recital 37 of the CRD provides that:

"Since in the case of distance sales, the consumer is not able to see the goods before concluding the contract, he should have a right of withdrawal. …"

3. An offer to purchase may be accepted by the conduct of the seller such as the delivery of goods;

4. Per Chitty on Contracts ('Chitty') at 4-083 to 4-087 an "offer which requires acceptance to be expressed or communicated in a specified way by generally only be accepted that way" but that rule is traditionally based on an assumption an offer is drawn up by the offeror and that stipulations as to the mode of acceptance are made for his own benefit.

5. Therefore, if the terms of an offer are drawn up by an offeree, usually for their benefit and protection, and the offeree accepts by some other mode i.e. conduct instead of by way of signature it is usually evidence that the offeree has waived the stipulation as to the method of acceptance, and "the acceptance should be treated as effective unless it can be shown that failure to use the stipulated mode has prejudiced the offeror".

6. In Chitty, referring to Reveille Independent LLC v Anotech International (UK) Ltd [2016] EWCA Civ 443 ('Anotech') the Court of Appeal found that a contract had been concluded despite remaining unsigned by the offeree as required by the terms because:

a. the contract was on the offeree's standard form and the signature requirement was for its benefit;

b. the requirement was waived by the offeree performing the contract as contemplated;

c. there was no prejudice to the offeror, who had benefitted from and had actively facilitated the offeree's performance;

d. subsequent conduct on both sides confirmed the existence of the contract;

and

e. finding a contract "accords with what would be the reasonable expectations of Lord Steyn's honest, sensible business people". (see Chitty at 4-087)

7. I've taken into account the caveat to the Anotech judgment was that the offeree's "failure to sign the contract was at the expense of certainty as to the precise date the contract was formed" at [53].

Applying the above to the facts of this complaint, it is clear that Mr R was not merely visiting the dealership to take delivery of the goods, but for the purposes of test driving the vehicle

and then for him and the supplier to conclude the contract as evidenced by his further signing of relevant documents (albeit he had previously signed the Order document digitally).

I have not seen any clear evidence to the contrary demonstrating that the dealer had 'accepted' the contract before Mr R came to its premises.

That the dealer as the 'offeree' appears to have failed to sign the Order in line with the method of acceptance stipulated in the offer terms it drafted does not mean that the contract was otherwise concluded than on premises. It would appear that acceptance in this case was by conduct i.e. delivery of the vehicle to Mr R on the date he visited the premises.

Therefore, it was likely concluded at that point and was an on-premises contract. The failure to accept by the stipulated mode of acceptance has not prejudiced Mr R since if the supplier had signed the Order to confirm acceptance as it indicated it would at the dealership under the contract then he would have not been in any better position (i.e. he would not have had cancellation rights in any event).

It does make the exact timing of acceptance less certain, but considering the circumstances of the complaint it appears unlikely that the supplier had accepted Mr R's offer before he came to its business premises (unless there is evidence which clearly demonstrates acceptance at some earlier point in time or which demonstrates that ordinarily the supplier would have accepted by signing before a purchaser visited the dealership such that there would have been a prejudice to Mr R by the alternative mode of acceptance).

I have noted for example that Mr R considers the supplier had accepted the offer by reference to a document titled 'Verification' which was marked as 'initiated' and 'finalised' at an earlier date/time than the date when Mr R went to visit the supplier. My view is that it is not clear that this was to be treated as 'acceptance' of Mr R's offer and it looks to have been a document to 'verify' rather than to conclude a contract.

The NCS opinion

I have taken into account the NCS opinion, noting that it found in Mr R's favour, but it is important to flag the opinion is not legally binding or dispositive of the dispute between supplier and complainant such that Lloyds s.75 liability falls away.

I also noted that the supplier's response to the NCS opinion appeared to play down the significance of the clause on formation of the contract I've referred to earlier stating:

"Paragraph 2.1 of our Terms and Conditions (T&Cs) agreed to by the Claimant when reserving the Vehicle and placing the Order, states that the contract is formed upon the Seller signing and dating the Vehicle Order (the Order). Paragraph 2.1 does not state that the contract is completed or concluded at this point and in accordance with those terms."

I disagree with this to the extent that I do think that if the supplier had signed the Order that would likely have constituted the conclusion of the contract, but I'm not satisfied they did conclude it before Mr R visited the premises and in any event where there is no good evidence the dealer 'accepted' Mr R's offer at an earlier point.

I have also noted that the dealer told Mr R that he could not return the car as it had covered over 250 miles since he collected it. Having read the terms and conditions set down by the dealer I consider that to have been an incorrect statement. That does not change my view that this was not a distance sale and so Mr R had no grounds for returning the car.

The s.75 complaint and the CCR

The rights of cancellation under the CCR are statutory merely and don't imply a right to cancel into a contract. The CCRs give consumers a right to cancel certain contracts within a certain time period (Regulations 27 to 38). This right to cancel (Regulation 29) is not treated as an implied term. So enforcement of Regulation 29 wouldn't constitute a 'claim' for breach of contract for the purposes of s. 75, but it is a right that can be exercised by consumers.

Therefore, a breach of the CCR in that respect would not be a claim for breach of contract. Where the right to cancel triggers other regulations which do give rise to some contractual responsibilities then it may be that s.75 will come into play if those are breached. I have not been able to identify any contractual responsibilities which come within the ambit of s.75. As such this undermines the fundamental element of Mr R's claim and his subsequent complaint. Quite simply there is no breach of contract as required by s.75.

Misrepresentation

To establish misrepresentation, it needs to be shown that the seller made a statement of fact (rather than opinion) to the purchaser, which induced them to enter the contract and was, in fact, untrue.

Mr R has also said that the dealer misrepresented the CCRs and their application to its sales. He said he studied both the dealer's website and the CCRs, but he does not appear to have sought clarification from the dealer to ensure his understanding was correct.

I have reviewed the current material on the dealer's website dealing with distance selling and I have not identified any material which could be said to be a misrepresentation. These currently state:

"3.2 If the Vehicle is purchased at a distance within the meaning of The Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013, the Purchaser may within 14 days of delivery cancel the Contract and require the Seller to refund the Purchase Price. In this instance, the Purchaser must keep the Vehicle in a reasonable condition and return the Vehicle back to the Seller at the address shown on the invoice, without undue delay and in any event not later than 14 days after the day on which the Purchaser communicates the Purchaser's cancellation of the Contract to the Seller. This deadline is met if the Purchaser sends back the Goods before the period of 14 days has expired."

and

"Distance Sales and Off-Premises Returns

If you wish to return a car purchased off-premises, contact the store you purchased the vehicle from providing a completed Distance Sales and Off-Premises Sales Returns Form."

These appear to be factual statements and do not go into detail about the application of the CCRs. They do not misrepresent the process and the fact they do not explain concluding a contract on the premises means it is not a distance sale is not of itself misleading. It is possible for customers to make a purchase from the dealer without attending the premises or to complete the purchase at a distance and simply collect the car without either test driving it or completing the relevant paperwork.

Conclusion

While I have every sympathy with Mr R I cannot safely conclude that the contract he entered into with the dealer comes with the CCR's and so he did not have a right to return.

Furthermore, I cannot see that the issue of whether a contact is caught by the CCRs is one which would lead to a claim under s.75 for breach of contract. Not can I see that there was evidence of misrepresentation by the dealer."

Mr R didn't agree and made a detailed submission which I have summarised in brief as follows:

He believed the E-Contract was more than a simple verification and set out details of the electronic system, Scrive, used by the dealer. He said that he viewed the electronic document titled "Confirmation: e-signed document [the dealer] - Vehicle Order…" as confirmation of the sale rather than verification.

He explained that e-signatures are legally binding and the e-contract stated "*This document contains the terms of contract. Sign it only if you wish to be legally bound by them*."

When an offer is made and it is accepted by the offeree it transforms a simple proposal into a legal commitment.

In his comments on the Anotech judgement Mr R said he believed the offer had been accepted by the offeree prior to him visiting the premises.

He provided a standard email sent by the dealer prior to collection which thanked him for purchasing his new car and advising him to read the attached documents. It also set out what documentation was required to be provided. It said that: "*We will schedule an appointment to complete all the paperwork."*

He thought my comments on when the contract was concluded failed to take into account the e-contract which he thought showed the sale had been completed and this was confirmed by the email he had supplied with his response.

He said that legal title had passed once he had paid for the car. i.e. once funds had cleared. That meant that the contract had been concluded prior to him visiting the dealer. He also referenced comments by the dealer in response to his claim which he believed supported his position. He also commented on the use of words such as 'made' or 'formed' or 'concluded' to describe what happened with the contract. He felt the definition of a distance sale by the Motor Ombudsman was clear.

He didn't think the e-contract he signed allowed for the car to be rejected before he drove it away.

He raised the question of the integrity of the dealer's documents and compared eh e-contract with the printed version with his signature.

Finally, he disagreed that there was no breach of contract as I suggested in my provisional decision. If the sale was a distance sale, then the dealer had breached the contract by refusing to accept the return of the car as allowed for in 3.2 of that contract.

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 thank Mr R for his detailed reply. I want to acknowledge that I've summarised the events of the complaint and his arguments. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I also want to assure Mr R that I've reviewed everything on

file. If I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I should make it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them.

Mr R has made many legal arguments which are possibly better suited to legal proceedings. My role is to decide what is fair and reasonable after having due regard to the law and the relevant rules and regulations.

I will begin with the issue of breach of contract. The CCRs give consumers a right to cancel certain contracts within a certain time period (Regulations 27 to 38). This right to cancel (Regulation 29) is not treated as an implied term. So, enforcement of Regulation 29 wouldn't constitute a 'claim' for breach of contract for the purposes of s. 75, but it is a right that can be exercised by consumers.

That said, when a consumer validly exercises their right to cancel, Regulations 34 and 35 of the CCRs are brought into play which cause traders to have certain contractual responsibilities.

As Mr R says he believes he as a valid right to reject, but I am not so persuaded and so I do not think a breach of contract has been established.

Although Mr R has set out a wide range of arguments in support of his claim the key issue is whether this was a distance contract. A distance contract has to be negotiated and concluded via the exclusive use of distance communication (e.g. phone, email, online messaging, post), with a supplier which normally offers to sell goods or services in this way. I accept that Mr R signed a document remotely and paid the full amount due, but I do not consider that he concluded that contract until he visited the premises.

As the email he submitted recently notes a meeting would be scheduled to complete the paperwork. Mr R entered into an arrangement to buy the car and he then visited the premises, test drove the car and signed paperwork. I think that was the concluding step in the deal. I think it reasonable to conclude that if Mr R was unhappy with the car after taking it for a test drive then he would not have concluded the deal and would have asked for the return of his money. And I believe that the dealer would have returned it.

If Mr R had simply collected the car I would find his arguments more persuasive, but the fact he signed documents and took it for a test drive indicates that the contract had not been exclusively concluded by means of distance communications.

I appreciate his view that the documentation signed online brought the contract to a conclusion and I can see some of the attractions of his arguments. However, he has not persuaded me that this was the end of the process. I think it reasonable to conclude, as Lloyds has done that the contract did not fall within the CCRs and so I cannot safely conclude that it came to the wrong decision.

Nor do I think any of the other issues raised takes me to the conclusion that this was a distance selling arrangement. I appreciate I am not in agreement with the NCS, but the reasons I set out in my provisional decision have not changed and there is nothing further I can add to my reasoning on that point.

I have noted Mr R says that he did consider having it delivered, but this didn't happen for

unspecified reasons. Again, had this happened then I may have found in his favour, but as things stand and applying the fair and reasonable test I do not consider I can uphold his complaint.

In conclusion, while I have every sympathy with Mr R and after due consideration I do not consider I can uphold his complaint.

My final decision

My final decision is that I do not uphold this complaint.

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

Ivor Graham
Ombudsman